REPUBLIC OF SLOVENIA

HUMAN RIGHTS OMBUDSMAN

Fifteenth Regular Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for the Year 2009

Abbreviated Version

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Ljubljana, October 2010

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NATIONAL ASSEMBLY OF THE REPUBLIC OF SLOVENIA
Dr Pavel Gantar, President

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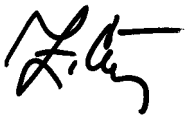
1102 Ljubljana

Mr President,

In accordance with Article 43 of the Human Rights Ombudsman Act of the Republic of Slovenia, I am sending you the 15th annual report concerning the work of the Slovenian Human Rights Ombudsman in 2009.

I would like to inform you that I wish to personally present the executive summary of this report, and my own findings, during the discussion of the regular annual report at the National Assembly.

Yours respectfully,
Dr Zdenka Čebašek Travnik,
Human Rights Ombudsman



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Ombudsman's Findings, Opinions and Proposals

1. OMBUDSMAN'S FINDINGS, OPINIONS AND PROPOSALS

Zdenka Čebašek - Travnik, MD, DSc, Human Rights Ombudsman of the Republic of Slovenia

The Annual Report by the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) is a statutory obligation of the institution. At the same time it is the responsibility of the Ombudsman to give a comprehensive presentation of the findings and opinions on the state of human rights in our country.

In this introductory part, it is very difficult to draw the line between the developments in the past year and the current events. Any calendar boundary is just administrative and creates a seeming order but life goes on regardless of such limits. The initiatives received in 2009 are maturing just at the time of the finalisation of this report and they shed light on some open questions. We will write about them in the next annual report.

The topics related to, the essence of the social state, the functioning (or non-functioning) of the rule of law, pollution of the environment, badly protected rights of some population groups (children, the elderly, persons with special needs and others) continue year after year.

In the National Assembly discussion on the annual report for the year 2008, the deputies noticed and welcomed our endeavours in the field of human rights and commended the preparation and formulation of the report. At the same time they drew our attention to some issues that could be improved. Due to the problems related to the adoption of Ombudsman's recommendations, we were faced with the dilemma of whether to sum them up in a survey this year again or, as we did in the past, leave it to the deputies to extract and draft recommendations from the report. We are aware of deficiencies and advantages of either approach. The decision to prepare recommendations again this year was supported by our desire to allow, both the Ombudsman and the deputies to the National Assembly and

others responsible for the implementation, the clearest possible picture of what happens with Ombudsman's recommendations in individual areas over a given period of time. Our idea was to present the implementation schedule of recommendations by printing the previous, i.e. the repeated recommendations, in a different colour. However, when checking which Ombudsman's recommendations were implemented we found poor results. We thus repeat the majority of last year's recommendations, to again draw attention to the irregularities and/or weaknesses found.

Now, after half of my term of office completed, I am already able to assess how the Ombudsman can determine changes in society and how these social changes reflect in initiatives addressed to the Ombudsman.

The first part of my findings is devoted to the question of whether Slovenia (still) remains a social state. Regardless of the actual meaning of a social or welfare state, I point out numerous changes, which make it more difficult or even impossible for individuals to access goods and services that a welfare state should provide for everybody. Several issues are at stake and this time we are particularly highlighting health and social care, employment and education, housing policy and justice. The Ombudsman's office has received initiatives from individuals for all these areas, and some of them will be presented among the selected cases.

Services in these issues are less accessible to persons who lack financial means. This has been confirmed by reports in the media and by initiatives to the Ombudsman. In the housing issue, there are two types of initiatives: from individuals and families threatened by eviction, and from those with insufficient income to pay rents; in some cases both problems coincide (eviction due to unpaid housing costs). We find that many still cannot believe in the reality and finality of eviction and hope to prevent it by denying or not responding to the official notice. By doing so, they also miss those legal options that were still available. The situation is even worse because municipalities fail to provide sufficient housing units of temporary accommodation for the evicted individuals and families. The autonomy of municipalities has shown its bad side in the housing policy – since municipalities are not legally obliged to provide sufficient non-profit rental apartments or housing units for those who cannot afford to pay market rents. A national reform of housing policy is urgently needed.

It is more and more obvious that the rule of law is better functioning for those who have money and can afford lawyers. Even if the Bar Association claims that there is no connection between the lawyer's fee and the quality of service, practice proves otherwise. Initiators, who have been granted free legal aid after complex proceedings report that attorneys did not put sufficient effort into their case; they found no time to talk to them or to study the evidence. Knowing that the decision on granting free legal aid also depends on the assessment of possible success in court, it is even more obvious that people without money cannot achieve much more. It goes without saying that the Ombudsman is addressed by citizens, who are unsatisfied with court decisions and these are also the parties, whose claims have failed. The Ombudsman cannot and may not intervene in cases before courts, but when we read the judgements and study some court procedures we can see inconsistencies and some rather unusual decisions. In many cases these inconsistencies are also noticed by higher judges, who then reverse the judgement and remit the case for re-trial. This then often results in further delays and requires even more money. This becomes especially obvious when court experts have to be engaged and advance money deposited for their work; this is, financially, too high a burden for many individuals and thus successful production of evidence is condemned to failure in advance.

A further growing topic of concern is the recognition that the financial resources of a family determine how and where the children will be educated. It starts as early as in preschool care and education and continues with differences in grades and out-of-school activities in elementary school, selection of secondary school and decision on further studies. In our opinion it is particularly controversial that there is a lack of appropriate provisions for all categories of children and young people with special needs, where children coming from poorer families are, yet again, worse off.

Access to health services is a similar story; those with more money have it easier. Dental services are unavailable to people from the social margin. Waiting times for services under compulsory health insurance are very long. Persons with decayed or missing teeth (and, consequently, of bad appearance) have fewer employment opportunities and, in turn, less possibility to have their teeth treated. No sooner than when they become toothless, are they entitled to get their complete false teeth paid for. Limited financial resources also influence the treatment of other diseases, which require expensive medicines. We received letters from several initiators who were not included in the shortlist of patients for whom such medicines were secured. It is well known that persons with disabilities or handicap are less employable and have less money to acquire appropriate aids and appliances for easier overcoming of obstacles. In 2009, I want to highlight the deaf and hard of hearing population. Deaf students are not guaranteed payment for sign language interpreting to allow them to attend lectures; deaf parents are not eligible to receive baby-monitors to help them perceive the cry of their newborn. Donations by charitable individuals and charity associations cannot substitute the aid from the state, which failed to step in.

Social care, which should provide support to the poorest citizens, alleviates the most severe situations of distress but we find that this is not enough. Where are the actual limits of poverty? When will official statistical data be up-to-date and comparable with NGO's information? The Ombudsman is addressed by individuals, who have utilized all available forms of financial and other assistance, but still cannot pay their utility bills and rents (or housing costs). They have long ago abandoned printed media and they can only dream of a computer with which they could find useful information on the Internet. Even the cost of travel to the local centre where they could exercise their rights in a personal interview is too high for them. We are faced with initiatives from elderly persons reporting that their relatives »have taken them out of home« (elderly homes), where they felt well and enjoyed good care which they are now missing. Of course, their relatives need the money intended for the (sur)charge of services in the elderly home to cover their own needs.

The area of employment, likewise, provides evidence that the situation is more difficult for those who have insufficient funds (saved) at the moment, when they are put on the list of unemployed, and should (maybe) initiate a procedure against their previous employee to enforce their rights.

Based on these findings, I can state that any social order and arrangements, which allow for accumulation of wealth in the hands of individuals, inevitably cause hardship and distress to other groups of population. The state, especially if declaring to be a social one, should provide for a more balanced distribution of goods to all people. Moreover, the state should see to it that everybody has equal access to education, health care and judicial protection. However, according to our findings, Slovenia is alarmingly moving away from these platforms, and the Government's response to these adverse shifts is too slow. For this reason, I am joining the serious debate on universal basic income as an approach that would instigate people to more actively participate in life without fear of subsistence.

The second series of findings on the issue whether Slovenia is a child-friendly state is related to the 20th anniversary of the Convention on the Rights of the Child. We marked

this important anniversary with several event of which I must give prominence to the International Conference on Children's Rights and Protection against Violence, organised by the Human Rights Ombudsman together with the National Assembly and the Ministry of Foreign Affairs. Among the participants to the conference were, the next President of the Republic, Dr Danilo Türk, many esteemed high guests - including the Council of Europe's Commissioner for Human Rights, Thomas Hammarberg, who stressed that prohibition of corporal punishment of children is a key decision to take for the recognition of the rights of the child. The children who actively participated in the conference were a great contribution to it and thereby set a high standard for the organisers of similar conferences in the future.

However, the success of the conference cannot conceal the weaknesses and unresolved issues in the field of protection of the rights of the child. Slovenia continues to be a state in which corporal punishment of children is not prohibited, where children with special needs have quiet a few problems in implementing their rights, where foster care shows its weaknesses – but no appropriate alternative has been provided. Slovenia remains one of the few European states with legitimate discrimination of children who live in families of same-sex partners. It is a shame that Slovenia cannot afford a protected ward for children and young people who need intensive pedo-psychiatric treatment. A bright point certainly is the success of advocates in the "Advocacy – Child's Voice" project, but even this is endangered because legal regulation has not been adopted yet. The promise to solve the problem in the Family Code is moving away together with the project, Moreover; children remain exposed to long-lasting court procedures and years-long uncertainty after their parents' divorce. It is sad that the discussion on the new Code, which comprises of more than 300 Articles and brings important innovations, especially regarding the protection of the rights of the child, is mainly directed to and focused on the provisions defining the family and equality of partners in a family.

For this reason, too, I devote the third series of findings to the question of whether Slovenia (still) remains a state governed by the rule of law. Court procedures continue to be the area of Ombudsman's work for which most initiatives are received, as we have shown in the statistical survey. However, in my introduction I do not highlight court backlogs, which are slowly but steadily reduced, but rather the cases where people cannot exercise their rights due to a gap in the law or lack of case law. Mobbing is one of such cases; it is mentioned in both labour and penal legislation, but none gives much hope to victims of mobbing. No surprise, then, that there is practically no case law and that initiators wander from one state institution to another, looking for help. The legislation in force provides them with no effective protection, authorities claim that they are not competent, and procedures are too formalistic. Obviously employers are well aware of this, as they can exert pressure on employees without any serious sanctions. Legal protection of employees thus often only exists on paper, since employees dare not complain about poor working conditions. Employers' threats are expressed in various ways, not only by specific measures. The Ombudsman has no direct competence over employers, except in public sector, and for that reason the majority of those with violated rights under labour legislation do not turn to the Ombudsman but, regretfully, they neither turn to courts to seek remedy.

A special story of the (non-) functioning of the state governed by the rule of law is again and again discovered in court procedures involving children. Interlocutory injunctions in particular, which are far from being interlocutory, cruelly interfere with the rights of children who do not know with whom of their parents they will share their home for several years. Similarly painful are court procedures for the non-payment of child support. It happens that court procedures take so long that the children grow up in the meantime, while non-payers take advantage of all of the ways of appeal possible for several years. We therefore again recommend implementing family courts.

The currently proposed amendments to legislation confirm our findings with regard to executions. In addition, we repeatedly receive complaints on the work of court experts, predominantly due to the long time taken to prepare the expert reports; an increasing number of cases indicate that they fail to perform their task in compliance with the law. Some experts resigned from the function because they were not satisfied with the acting of the Ministry of Justice that requested regulation of the matter; such cases were noticed particularly in the field of expertise in psychiatry and clinical psychology. Complaints about the work of attorneys continue – in dealing with them, the Bar Association of Slovenia should take into consideration complaints against attorneys are predominantly filed by legally ignorant parties who are not familiar with the Bar Association's procedures.

The Ombudsman's Report for the year 2009 also contains a new approach to the completed cases, with focus on the share of justified initiatives. When analysing the areas with more than one hundred cases, we find the largest share of justified initiatives in the field of education, followed by health care, social affairs and internal affairs. Among areas with growing index, special concern shall be devoted to the environment and spatial planning, where both the absolute number and the share of justified matters warn of serious problems. Much more should be done to promote responsibility for a healthy living environment, which should be presented as a solidarity right. It might be good to include more of these topics in education programmes.

The analysis of justified initiatives inevitably raises questions of control and supervision in the relevant areas. When we discover deficient inspection services or delays in the decision taking by second instance bodies, the answers we get are nearly clichés – "we do not have enough staff to do the work". So there are not sufficient inspectors, not sufficient employees to see to the complaints, to answer to the distressed. It is not the Ombudsman's task to assess the work of the ministries; however, I cannot but note the floors full of »written-offs«, i.e. those who are, whatever the reasons may be, not entrusted any particular work by the incumbent government, but who in compliance with the legislation in force cannot be dismissed or replaced by people who would perform the work better or more in compliance with the current orientation. Many among these »written-offs« claim mobbing, but what their possibilities are to exercise their labour rights, has been mentioned above. Especially due to such lack of clarity and inefficiency of legal procedures, the Ombudsman's office decided to prepare a special project – to support employees in the prevention of mobbing; to this end, contacts have been established with the Labour Inspectorate of the Republic of Slovenia.

This was the second year of the Implementation of the National Preventive Mechanism (NPM) under the Act on the Ratification of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Improvements have been established in prisons, but still there are hardly any opportunities for the majority of the convicted persons to give more meaning to their time of serving the prison sentence with some positive activities (work, education) and therefore many are just looking for faults in the system and are testing them on their own cases. The state should provide jobs for those who wish to work during serving their sentence, which, with the current carrying out of various maintenance and investment projects, should not be too great a problem- even if legislation would have to be adjusted accordingly.

At the time of adopting the Mental Health Act we cautioned of the vagueness and unreasonable solutions, which have proven justified. The field of forensic psychiatry remains unresolved and we can only hope that the competent ministries (of health and justice) will finally find common grounds and set up such a ward. Commendable, however, are the results of controls in police stations where we now only seldom come across irregularities. Our implementation of the NPM is also closely monitored from abroad, where we

often present it as invited lecturers; recently, we also received several requests to accept individual representatives of other NPMs as observers in Slovenia. They are particularly interested in how we engage representatives of NGOs and the effect of our reports on the acting of authorities.

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In continuation we present some relevant topics as they arise from our work and are not classified by any specific key.

We heard and read a lot about the ethics of public servants (government employees) which is even more important in working with people who are, for various reasons, deprived of freedom of movement (closed hospital wards, closed sections of social and juvenile institutions and prisons). We cannot turn a deaf ear to the convicts complaining about the inappropriate conduct of prison officers, if it happens that they even in public cannot control their violent behaviour. People are losing trust in police officers as they are the ones responsible for traffic accidents while driving under the influence of alcohol, and their colleagues allow them to cover up the traces. Initiators also report of inappropriate conduct of employees in municipal offices and administrative units, centres for social work, health care institutions and homes for the elderly, and other similar places. Of course you have to hear the other side, too as the often overburdened staff are exposed to difficult working conditions and strained by interpersonal relations. In cases of such initiatives the Ombudsman cannot take the role of an arbitrator, although initiators often expect just that. Both parties shall rather be repeatedly encouraged to choose a different dialogue, sometimes supported by the presence of either the Ombudsman herself or her deputies and advisors.

In 2009, the Ombudsman was also dealing with cases, which initiators described as poor execution of control over the work in public sector, especially in the health service and judiciary. Both systems have the manner of control defined by law, but it seems that initiators are at least satisfied just with these two. Who is actually controlling whom and what are the effects of these controls? It seems, as if the controlled are being controlled by themselves. At the time of drafting the new Health Services Act, the Ombudsman emphasized an independent institution should exercise that professional control. Not only are the weaknesses in the execution of professional controls by the Medical Chamber of Slovenia at stake, (which we carefully monitored and analyzed) but also the control over all other occupations in health care. If external control was executed (or at least with mandatory presence of external members), both, the providers and the users of health services would gain. Even more, the Ministry would also have a more active and more responsible role in these controls. However, controls in all fields also depend on the functioning of inspection services; therefore, the work of all inspection services shall improve and care shall be taken of their more concerted action within the framework of the Inspection Board.

In terms of accountability, I ask myself who will be held accountable in cases where law has been passed which cannot be implemented and, consequently, violates the rights of individuals. Will, on the basis of penal provisions contained in such law, those who do not implement the law (because they cannot) be the responsible ones? Or maybe nothing will happen? This is the worst possible outcome and confirms my thesis of an inefficient state governed by the rule of law, and such inapplicable law will remain in force. A typical example of such failed legal solution is the Mental Health Act which one-year preparatory period started to be applied in August 2009. People working in health and social care systems have, so far, spent several hundred hours to somehow accommodate to the law. But it does not work, as the Ministry of Health has correctly recognised. Would it not be cheaper, and above all more efficient, if the drafters of the Act listened to the profession and, not least, to

the Ombudsman who already warned the drafters of the foreseen complications during the legislative procedure? This question leads us to yet another issue related to the adoption of new legislation. The Ombudsman already proposed that law should regulate the drafting procedure, especially, with regard to when and under what conditions the public and the profession should be included. The Resolution on Legislative Regulation recommends certain steps, but non-observance of its provisions has no consequences for the proposer. Equally inappropriate is the manner of adoption of regulations at the municipality level, especially in terms of the openness and transparency of procedures.

The Ombudsman is, further, (too) often faced with the non-responsiveness of the authorities to which she turns. Although in our inquiries we normally refer to legal provisions that authorise the Ombudsman to acquire any information, the addressees delay their answers or fail to give correct answers. In either case, the Ombudsman's work is made more difficult, and extends the consideration of the submitted initiative. The Ombudsman's invitations to discussions, which remain un-granted by some ministers, are a specific form of non-responsiveness of authorities. It is a kind of disregard of the Ombudsman's work, which I did not experience in the beginning of my mandate and which should be commented on by the Government.

But on the other hand, we have to report of positive changes and of ministries and Government bodies who cooperate with the Ombudsman very well. This is particularly true of the police who endeavour to respect human rights regardless of who is currently in power. Their involvement is clearly evident in European policies, correct consideration of complaints on the work of police officers and their quite exemplary cooperation in performing the tasks of the National Preventive Mechanism. Further positive steps have been taken with the beginning of the concluding act in the resolution of the erased issue, in successful functioning of the patients' rights representatives (with clearly expressed need to extend their competences to include health insurance), by the appointment of more than eighty advocates of the rights of the child, and with the changes in the implementation of the national minorities' rights.

We still receive proposals and requests for the appointment of special ombudsmen who would take care of the rights of certain age groups (children, the elderly), persons with specific problems (patients, persons with disabilities and the handicapped), national minorities, specific occupations (e.g. soldiers) or other groups, such as students. Some also propose ombudsmen for individual areas, e.g. for environment or discrimination. Comparison with such regulation abroad shows that fragmentation of competences does not contribute to a higher level of protection of rights, and at the same time reduces the visibility and authority of the institution. As a rule, it is not even advantageous for the initiators because they are then faced with the dilemma of which ombudsman to address with their problems. In addition, a multitude of such institutions for a population of two million is also a question of expediency in a time of fierce economic conditions.

The Ombudsman's cooperation with state authorities was rather good, at least at the official level. We participated in the meetings of commissions and committees of the National Assembly, to which we were invited. With joint efforts we realised some good projects, which we report in a separate section. We also had several working meetings with the deputies to address individual topical issues; regretfully some of the deputies to the National Assembly did not respond to our invitations to discussions in which publicly exposed ambiguities or disagreements could be explained.

More and more often we notice that people do not know their rights, and even less the ways to their implementation. To improve the situation, free legal aid covering all areas should be organised in municipalities. In practice, this means not only to direct and send customers to

the competent authorities, but rather, to give them first legal advice. In some municipalities, where first steps in this direction have already been made, we can clearly see that this is not just a utopia.

Too often we come across insensitivity of the state and its employees to special needs of individuals, such as the elderly, persons with disabilities and the handicapped, children with special needs, and those from the social margin of society. The understanding of and feeling for human needs is often replaced by formalisation of relations, which definitely dispel any possibility of human discussion. Even the Ombudsman can get such extremely formalised answers, especially when we discover some irregularities that could be remedied in a very human way, without referring to the legislation or other formal obstacles.

In some areas real fault-seekers emerged; many of them forced into it by circumstances (serving a prison sentence, police powers) or unsatisfied with the situation (environmental protection, foster care, school meals). Their activity can be either completely individual or organised in societies or other forms of association. Some are searching for (and explaining) mistakes in an amateur way, others with enviable professional, especially legal knowledge. What is common to them all is that they disturb the addressees and expect answers from them. As they do not get them or are not satisfied with the answers, they turn to the Ombudsman with the request to intervene at least in obtaining the answers from the addressed authorities.

In Slovenia, we have no comprehensive national institution for the protection and promotion of human rights in accordance with the Paris Principles and EU Directives. This is a serious deficiency, of which we are also warned of from abroad and the same applies to the fact that we still have no appropriate mechanisms for protection against discrimination. It remains unclear which state authority should be responsible for monitoring the implementation of international conventions, including the last ratified Convention on the Rights of Persons with Disabilities. Most states that have ratified the Convention are now preparing amendments to the legislation and, at the same time, control over the implementation of the Convention. The Ombudsman carefully monitors how Slovenia follows these commitments.

The area of international relations is growing in scope and becomes increasingly demanding also for the ombudsmen. International organisations watching over human rights have great expectations of Slovenia both with regard to realistic estimates of possible violations of human rights and fundamental freedoms and in the sense of active participation in the preparation of international instruments and monitoring activities. We repeatedly find that Slovenia needs its national human rights institution, an institution, which would systematically and closely monitor the situation in this field and meet the UN criteria for such institutions (the Paris Principles).

Cooperation with the media remains within the envisaged scope. We do not have many press conferences at our seat in Ljubljana, but we meet with journalists on various other occasions, most often outside the seat of the institution at work performed all over the country. However, the question of how we could, more effectively, inform people through the media about how the Ombudsman can help them to implement their rights remains open.

In 2009, we redesigned the Ombudsman's website (www.varuh-rs.si) which now provides a more transparent access to information prepared for our visitors. The central part of the website contains information on our work; In addition we improved access to documents concerning human rights, added some promotion material and, above all, clearly pointed out how to reach the Ombudsman. We plan to launch an interactive section of our website in 2010, by means of which the initiators themselves can check whether they have already

utilised all the foreseen ways of appeal and how to prepare an initiative for the Ombudsman. We are, in addition, considering the possibility of an interactive corner for children. And we continue to publish materials which are available to all those interested at the seat of our institution.

The Ombudsman's Report for the year 2009 also contains a tabular survey of certain events summed up from the internal database Events into which the Ombudsman's staff enter their participation in various events such as work outside the office, visits related to the Ombudsman's work with the state authorities, local community bodies and holders of public powers, visits within the scope of task performed under the National Preventive Mechanism, participation in technical meetings and professional conferences in Slovenia and abroad, protocol events and others. Due to the mass of information we made a selection of events, which are more significant and show the diversity of Ombudsman's activities.

The employees of the Ombudsman's office endeavour to make our work accessible to both initiators and anybody interested in our work. We do our best to maintain confidence in the Ombudsman at a high level, as has been confirmed in public polls. Upon discovering violations of human rights and violations of fundamental freedoms between the individual and the state authorities, local community bodies or public powers we, the Ombudsman, remain persistent, independent and impartial, which has been acknowledged even by those who are critical of our work. We are well aware that the Ombudsman's authority is based on the power of arguments, which we also present in our recommendations. When and how these recommendations will be taken into consideration, however, no longer depends on the Ombudsman but rather on the current authorities in power.

The Contents of the Work and the Review of Problems

2. THE CONTENTS OF THE WORK AND THE REVIEW OF PROBLEMS

2.1 CONSTITUTIONAL RIGHTS

GENERAL

In 2009, the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) received fewer initiatives (119) than in the year before (160). The most remarkable decrease was noted in the number of newly opened cases in the fields of freedom of conscience, right to vote, protection of personal data and access to public information, while increase was only registered in the field of freedom of association.

2.1.1 Freedom of conscience

In this field, initiators mostly reacted to issues of equal or unequal treatment of individual religious communities, often in connection with some notes in the media. With regard to the largest religious community in the Republic of Slovenia, the Roman Catholic Church we receive both initiatives that reproached the church for its privileged position in comparison to other religious communities, and initiatives that warned of the allegedly unjustified attacks and reproaches. Only few initiatives stated problems with the exercise of the freedom of conscience in the narrower sense, i.e. undisturbed to declare and practice their own religion in private and public life. The only issue to be pointed out is the provision of religious spiritual care in hospitals.

2.1.2 Religious spiritual care in hospitals

In 2008 and 2009, several initiators turned to the Ombudsman in relation to the issue of religious spiritual care in hospitals and other providers of health services. The initiatives revealed that religious communities cannot always freely provide spiritual care, especially in cases of intensive medical treatment or treatment on closed wards at the patient's free will. As a rule, the representatives of religious communities are allowed access to these patients only upon an expressed wish of the patient and an appropriate »approval« by the institution. On this ground, we pointed out to the Ministry of Health that no such restriction exists in the Religious Freedom Act. Thus, it has been called into question why the method of performing religious spiritual care is just left to the practice of individual institutions and providers of health services who perform the activity as a public service. In its answer, the Ministry asserted that health care institutions provide funds for the organisation of religious spiritual care under the Religious Freedom Act. According to health care regulations religious spiritual care is not part of health services and, therefore, they will propose to search for a better solution for the implementation of this right together with the Office of the Republic of Slovenia for Religious Communities. The answer from the Ministry of Health clearly indicates deficiencies regarding religious spiritual care in health care institutions; we therefore judged that the Ombudsman's initiatives and warnings were well founded.

Postponed resolution of such issues raises concern, since the Ombudsman has been pointing them out for quite some time, including the pending Constitutional Court decision on the petition to review constitutionality of provisions in the Religious Freedom Act which was lodged as early as in 2007.

2.1.3 Media ethics

After growing for several years, the number of initiatives received in this field has considerably decreased. The submitted initiatives primarily warn of various unacceptable practices of public and media discourse. We can highlight the initiative warning that more and more hate speech and calling to violence in fan slogans can be noticed at football games. The Ombudsman therefore supports the initiative for a media campaign warning that hate speech and slogans at sports events are unacceptable.

Similar to every year, the majority of initiatives contain complaints from individuals distressed by publications in the media. This is the phenomenon of »trial by media« which interferes with the right of presumption of innocence and can pose a threat to the impartiality of the court procedure. When private media encroach on personal rights, presumption of innocence or even the rights of the child, the Ombudsman can usually only advise initiators and suggest which legal and other remedies are at disposal to protect their rights and interests. Awarded compensations are evidently too low to have dissuasive effect on the sensational oriented media. The distressed has to provide evidence of material and non-material damage suffered by the publication of alleged accusations.

The Ombudsman repeated the proposal to consider the possibility of the enactment of a civil penalty or compensation for unauthorised intrusion into privacy by making a public notice. For several years, the Ombudsman has been warning that a more effective and distressed-friendly mechanism should be developed for the consideration of cases of media intrusion into personal rights of distressed persons. It could include a complaint mechanism (by a media ombudsman) with the possibility to submit the case to (media) arbitration by ones own initiative with the aim to raise ethical standards of media and to protect the interests of the public.

Children are often victims of disputable publications in media. Despite of numerous public warnings by the Ombudsman and repeated warnings of the Journalists' Ethic Council pointing out that sensational relegations of children's privacy and family tragedies in the media are not acceptable, such violations continue. In two cases, the Ombudsman proposed a review of compliance of the journalists' and the media conduct with the Code of Journalists of the Republic of Slovenia. On the basis of our application, the Journalists' Ethic Council established violation of three provisions of the Code.

Prosecution of public incitement of hatred, violence and intolerance

For several years, the Ombudsman has been warning of the danger of hate speech instances (inciting of hatred, violence and intolerance) and deficiencies in its elimination, both in legislation and in practice. We could not be satisfied with the action of the state in this domain. We believe that more should be done especially by the prosecutor's office that could, with well prepared charges, considerably contribute to the sanctioning of hate speech and, consequently, to the raising of public awareness. On the basis of the Ombudsman's warnings and recommendations, the National Assembly adopted the recommendation that holders of public functions at the state and local levels shall not incite or inflame national, racial, religious or other hatred, discord or intolerance and that they shall respond to and condemn such acts. In addition, law enforcement authorities are recommended to consider

such acts seriously and prosecute them consistently. The lack of sanctions is well illustrated with the information published on the web site www.spletno-oko.si. SPLETNO-OKO.SI is a Slovenian hotline which provides means for anonymous reporting of illegal internet contents and it is dealing with the reports concerning child abuse images and hate speech on the internet, on the number of received and reported cases of hate speech. The latest available data show that in the period from 1 March 2007 to 28 February 2009 this report point alone received 443 reports on alleged hate speech, of which 50 were reported to the police. According to the publicly accessible data, there has been only one final conviction for public spreading of hatred and intolerance (against members of Roma community via internet) in Slovenia.

2.1.4 Assembly and association

This subsection comprises initiatives related to the constitutional rights of peaceful assembly and freedom of association. The number of initiatives considerably increased in 2009.

From the viewpoint of the promotion of public interest we have established more problems in terms of freedom of internal organisation and operation in associations with a concession or some public powers. Associations are voluntary, autonomous, non-profit associations of natural persons who have joined together in order to exercise their determined interests. According to the Associations Act, the associations' charters and internal acts shall regulate the rights and duties of members.

In the Ombudsman's opinion, the main problem arising from the cases on the operation of associations, which exercise public powers, are imprecisely defined conditions for the exercise of these powers and the lack of control mechanisms. The cases considered create the impression that state authorities believe that they have, by granting public powers, also transferred the responsibility for the regulation of the domains in question and that no further regulation or control is needed on their part.

As the possibility of legal measures (alone) for the protection of those affected is not sufficient to determine and abolish irregularities in the operation of associations which exercise specific public powers, the Ombudsman proposes to consider at least the introduction of additional complaint mechanisms for the distressed, who promote their interests through such associations. The additional mechanisms could be mediation procedures or an additional appeal possibility with the authority, which has granted the concession. In either case, such procedures should be more distressed-friendly, better accessible and faster than the current (sole) possibility of legal protection. We are of the opinion that this would help sooner to eliminate irregularities mainly related to the lack of internal democracy in associations exercising public powers.

2.1.5 Confidentiality of procedure with the Ombudsman and access to public information

The Ombudsman has already encountered cases where individuals required information, in whole or in part, from the initiatives considered by the Ombudsman. The Ombudsman estimated that public access to the contents of the initiatives could affect the substance and efficiency of the procedure before the Ombudsman, which would be contrary to the purpose and meaning of the existence of this institution. The Ombudsman issued decisions by which the access to information was rejected on the grounds of confidentiality of procedure pursuant to Article 8 of the Human Rights Ombudsman Act, rather than refer to exceptions under the Access to Public Information Act. The Ombudsman is obliged to maintain confidentiality in relation to all participants in the procedure, i. e. to the initiators,

the relevant state authorities and bodies, and on the outside in relation to third persons and the general public. We are determined to persist with this position and to apply any legal remedy, including a petition to review the constitutionality of the Act, in order to implement it. We proposed to the Ministry of Public Administration to prepare amendments to the Access to Public Information Act and to add to the cases in which the relevant body shall deny the applicant access to requested information. Additionally, we advised a special item should state that access shall be denied in matters under consideration by the Human Rights Ombudsman of the Republic of Slovenia on the basis of the Human Rights Ombudsman Act.

Public participation in adopting regulations

In 2009, several initiatives, yet again, highlighted difficulties of specific groups regarding their participation in the process of adopting regulations. In the absence of clearly defined obligations of regulation producers, we were advising initiators to use their constitutional right to petition which, in our opinion, includes the right to a substantive answer from public administration bodies, as long as this right is not more precisely regulated. In the 2008 report, the Ombudsman recommended and the National Assembly accepted the recommendation that public participation in adopting regulations be regulated by a special law defining the range of participants, the time of the debate, the ways of submitting comments, and the obligation of the debate's holders to take a position on the comments and proposals received.

2.1.6 Right to vote

The Ombudsman's recommendations that the National Electoral Commission, the Ministry of Public Administration, and the Ministry of Internal Affairs enable transparent and efficient access to information that is relevant to the right to vote, particularly for persons with special needs, still remain topical. The Ombudsman, has on several occasions, brought forward the problem of voting by post for the voters who are not in the town of their permanent residence on the day of the election, but are neither persons in care in retirement homes nor hospitalized. The National Assembly Elections Act provides that people in care in retirement homes, who do not have permanent residence there, and voters who are hospitalized, may also vote by post, provided that they have notified the district electoral commission or the constituency electoral commission not later than seven days prior to election day. To our understanding, the wording and purpose of this provision shall not be interpreted in the way that the legislator wanted to exclude all other categories of citizens who have found themselves in a similar position. In our opinion such a distinction is not grounded and only arises from a narrow interpretation of the National Assembly Elections Act.

In public discussion on amendments to the National Assembly Elections Act, the Ombudsman once again submitted to Ministry of Public Administration proposals for the modification of the Act.

- The Ombudsman proposes amendments to the rules on the organisation and methods of religious spiritual care in the police, in hospitals and with other providers of health services, as well as in prisons, juvenile institutions, correction homes and special education institutions, in order to better provide appropriate conditions for the implementation of the right to religious spiritual care also for members of minor religious communities.

- The Ombudsman proposes to the Minister of Health to regulate in detail the implementation of the right to religious spiritual care with the providers of health services in the Rules on the organisation and performance of religious spiritual care in hospitals, and with other providers of health services.

- The Ombudsman recommends all holders of public functions, at state and local levels, not to incite or inflame national, racial, religious or other hatred, discord or intolerance in public. In addition, law enforcement authorities are recommended to consider such acts seriously and to prosecute them consistently on the basis of the Slovene Constitution and laws.

- The Ombudsman recalls that a more effective and distress-friendly mechanism should be developed for the consideration of cases of media intrusion into personal rights of distressed persons. It could include a complaint mechanism (by a media ombudsman) with the possibility to submit the case to the (media) arbitration tribunal by own initiative with the aim to raise ethical standards of media and to protect the interests of the public.

- The Ombudsman proposes to the legislator to examine the possibility of the enactment of a civil penalty for unauthorised intrusion into privacy by making a public notice.

- The Ombudsman proposes that state authorities, upon the vesting of public powers, should specify the conditions for their implementation and define effective control mechanisms. And the users should be, in addition to court protection, provided with additional complaint mechanisms including the possibility of mediation

- The Ombudsman submits the initiative to the competent Government offices to carry out a public and media campaign warning that hate speech and slogans at sports events are unacceptable.

- The Ombudsman proposes state authorities and other bodies that, when providing information on important issues and on implementation of rights in individual fields, they shall take into consideration that all citizens do not have access to the world wide web; therefore, information shall be adjusted to these citizens too, and especially to the elderly, the blind and the partially sighted.

- The Ombudsman proposes that in the Access to Public Information Act exceptions to the access should be extended to include the matters under consideration by the Human Rights Ombudsman of the Republic of Slovenia, on the basis of the Human Rights Ombudsman Act.

- The Ombudsman again proposes that the Government prepares and the National Assembly adopts amendments to The Civil Procedure Act, which will allow the blind and partially sighted access to court documents and to written applications by the parties and other participants in the procedure in a form perceivable by them. The courts should also, upon request, provide the blind and partially sighted persons access to court documents and to written applications by the parties and other participants in the procedure in a form perceivable by them, until the deficiency has been removed.

- The Ombudsman again proposes that in the National Assembly Elections Act the discrimination of voters who can exercise their right to vote by post should be remedied.

1. Damaging of tombstones on Muslim graves was treated as a specific criminal offence of public incitement of hatred, violence or intolerance only after our intervention

The Office for Religious Communities sent us information copies of action requesting letters sent to the District Prosecutor's Office in Ljubljana and Police Directorate Ljubljana concerning the desecration of tombstones on Muslim graves in Log pod Mangartom and of the Chapel from the First World War in Gabrje near Tolmin, and regarding the damaging of the Muslim community facility in Ljubljana. In our reply to the Office for Religious Communities we emphasised that immediate response of the state is of key importance at such inadmissible actions and criminal offences, especially if they are burdened with suspicion of a racial or other motive of intolerance, and welcomed the action of the Office for Religious Communities. On this basis the Office forwarded us the letter from the Police Station Bovec, which answered that following the directives of the District Prosecutor's Office from Nova Gorica, the matter is treated as a criminal offence for obstructing a funeral and desecrating a grave.

We later, on 24 April 2009, on our own initiative turned to the District Prosecutor's Office in Nova Gorica with the request for information on their, to date, findings in relation to this case. In particular, we wanted to know why the investigation was directed into the treatment of the above mentioned criminal offence and not also on possible investigation of the suspicion of committing criminal offence of publicly inciting hatred, violence or intolerance under Article 297 of the Penal Code. According to our information, both the Office for Religious Communities and the Islamic Community in Slovenia clearly recognised the symbols on the desecrated graves as nationalistic. With regard to this fact we asked for an explanation of whether (and how) they consider this aspect in their investigation of the case.

As we had received no answer to our enquiry, we brought this forward in our reply to a journalist's question of the prosecution of incidents of hate speech at the press conference on the occasion of presenting our report for the year 2008. The Office of the State Prosecutor General of the Republic of Slovenia reacted to this statement and claimed, both in media and on their website, that the competent Prosecutor's Office sent us its answer on 15 May 2009. Upon our request to provide proof of postal delivery to the Ombudsman, the District Prosecutor's Office Nova Gorica replied that they had no written evidence of delivery »because the said letter was posted after working hours as an ordinary letter with a postage stamp«.

In the answer dated 15 May 2009 (received on 15 July 2009), the District Prosecutor’s Office in Nova Gorica explains that the State Prosecutor on Duty on 7 November 2008 was requested by Police Station Tolmin to conduct the site visit of the damaged monument in Gabrje. This is a memorial chapel to soldiers who died in the First World War. She advised the police officers to qualify the act, on the basis of the established cultural importance of the monument, as a criminal offence of damaging or destruction of goods of special cultural significance or natural values. On the same day, she was informed of the performed site visit on the military graveyard from the First World War in Log pod Mangartom where the tombstones on Muslim graves were damaged. The prosecutor proposed to treat this act as a criminal offence of obstructing a funeral and desecrating a grave under Article 312 of the Penal Code.

After the receipt of complaints and the letter from the Office for Religious Communities, it was established, that the act of damaging the tombstones on Muslim graves was in fact the specific criminal offence of publicly inciting hatred, violence or intolerance under the fourth paragraph of Article 297 of the Penal Code. However the prosecutor underlined that the original qualification of the act in no way influenced the police work, that the police did not detect the perpetrator(s), and that any connection of this criminal offence with other current developments related to the opposition against the Muslim community in the Republic of Slovenia is precipitous.

The Ombudsman finds that after the receipt of the complaints and our intervention the competent Prosecutor's Office acted correctly to qualify the inscriptions of hostile content on the Muslim tombstones from the First World War as a specific criminal offence of publicly inciting hatred, violence or intolerance under the fourth paragraph of Article 297 of the Penal Code. The paragraph provides that more severe sentences shall be imposed for publically initiating hatred, violence or intolerance committed by desecration of national, damaging ethnic or religious symbols, or the movable property of another, desecrating monuments or memorial stones or graves. Therefore, the publicly expressed reproaches by the Supreme State Prosecutor's Office, namely that the Ombudsman critically assessed the work of law enforcement authorities without any grounds in the relevant cases, and withheld the answer that should have been timely sent by the competent Prosecutor's Office, were in our opinion unfounded. **1.1-12/2008**

2. Municipality's encroachment on freedom of citizens' political expression

We received an initiative from two shop owners claiming that the Municipality's inspection measures imposed due to the allegedly prohibited advertising was an abuse of its powers and unwarranted encroachment on their freedom of expression. The following day, many businessmen displayed a call to the citizens to politically protest against the Municipality's development policy for the historic centre of their town and to sign the relevant petition in their shop windows, inspectors from the Inter-municipal Inspection Services visited all shop owners, threatened with »high fines« and requested the removal of the leaflets on the grounds that the businessmen were violating the municipal ordinance on advertising. In addition to the removal of leaflets from the windows, some of the shop owners were also requested to remove the protest leaflets they had inside their shops. The majority of businessmen bowed to the inspection requests, while the initiators requested the service of records of the site visit, lodged comments to the records, and then, after waiting longer, also requested the issue of the offence decision because they wanted to file an appeal.

The Ombudsman sent the Municipality her opinion stating that such inspection measures are contrary to the right to petition (Article 45 of the Constitution) and contrary to the right to freedom of expression (Article 39 of the Constitution). We estimated that the content of the disputed advertisement undoubtedly had the nature of a petition and that the matter fell within the competence of the Municipality. We further estimated that the mayor, by convening a meeting on the petition, responded appropriately and within reasonable time. But in this case, the matter at stake was the question whether the Municipality administration with the introduced inspection procedure did not try to interfere with the very support to or signing of the petition.

It is definitely not enough that human rights guaranteed by the Constitution are only formally or in principle recognised by law. The request to provide for efficient and real exercise of all constitutional rights derives from Article 15 of the Constitution. In addition, we emphasized that effective support to any petition is indispensable if citizens should be informed of its substance. The initiator of such collective expression of political views should then, by nature of things, also have the possibility to spread information on the issue. We estimated that the advertisements did not only inform the citizens of the petition's content, but were also addressing the general public with the intention to invite them to support the petition and, in addition, with the aim to encourage the citizens to reflect on town policy and to open a broader public discussion on their attitude to the development of its historic centre.

Therefore the initiators' action was also protected by freedom of expression. The freedom of political expression is at the very core of any democratic society, and is for this reason very strictly protected by the Constitution; it covers the right to express and disseminate political ideas and the right to receive political ideas. We determined that the action of the Municipality, introducing inspection procedures, represented an encroachment on both the (constitutional) right to disseminate written information and/or political ideas and the right to receive such information. In our opinion, such action cannot be supported by any legal provision, since except for the provisions in the Elections Campaign Act, the Media Act, etc., the content of public expression and/or advertising of political views is not limited by any law, and neither is the manner of exercising this right precisely prescribed. Namely: the manner in which human rights and fundamental freedoms are exercised may be regulated by law whenever the Constitution so provides or where this is necessary due to the particular nature of an individual

right or freedom. Municipalities, then, have no statutory authority to regulate in detail how to gather support for petitions, or to limit this right, especially not in private premises, even if they are intended for commercial activities and contact with customers. The basic purpose of any legal regulation of advertising in the municipality shall above all be in the protection of public order (e.g. protection of consumer interest) in commercial expression.

We therefore estimated that inspection measures were not legal, which is sufficient to establish a violation of the freedom of expression with simultaneous effect of an attempt to limit the gathering of support to a petition. We proposed that the mayor should apologise to the initiators for the identified violation and try to reach an amicable out-of-court resolution of the compensation dispute (e.g. by settlement proposal, mediation, and the like).

The Municipality actually stopped the inspection procedure against the initiators, not because it would agree with the Ombudsman's opinion on illegal encroachment on the right to petition and freedom of political expression, but supposedly because the initiators complied with the inspection measure. The Town Municipality of Kranj was once again warned of their inappropriate action, and they informed us in their answer that one of the initiators filed a complaint with the Administrative Court in Ljubljana against the grounds stated in the Decision on the stop in inspection procedure. For this reason, the Ombudsman stopped the consideration of this case, but will after the Court has issued its decision once again examine the possibility to once again turn to the Town Municipality of Kranj with the Ombudsman's opinion and recommendation regarding the potential violation of the principles of justice and good governance.

The Ombudsman identified the lack of detailed (statutory) regulation of the substance and manner of execution of the constitutional right to petition as early as in the 2005 report. Warnings, which initially related to the obligation of the addressed body to respond was repeated in our reports for the years 2006 and 2007. We repeatedly conclude that the manner of execution of the right to petition needs to be regulated also from the point of providing information about its contents to the public. **1.0-8/2009 and 1.0-16/2009**

2.2 DISCRIMINATION

GENERAL

In 2009, initiatives classified under discrimination section, were fewer than in previous years. Numerous initiatives considered by the Ombudsman with regard to suspected discrimination were simultaneously dealt with in other areas, the majority as labour relationships cases. Some issues were dealt with on our own initiative, especially on the basis of media notes, since it is general knowledge that members of the Roma community are not used to address written initiatives to the Ombudsman. Due to the lack of Ombudsman's competences or not exhausted legal remedies, the majority of initiators of discrimination cases (only) received detailed instructions and guidelines regarding the possibilities for the protection of their rights.

With regard to the recommendations from the 2008 Report, which were adopted by the National Assembly, we can register some improvements. In the time when this report was being prepared, the Government adopted the national programme (strategy) of measures for the implementation of special rights of Roma community members with a two-year delay. Regretfully, they have not yet adopted a comprehensive strategy for reducing all forms of discrimination with various forms of awareness raising, promotion and education of the professional public and the most exposed target groups.

2.2.1 Mechanisms for the protection against discrimination are still deficient

For several years now, the Ombudsman has proposed the adoption of statutory solutions that will in compliance with the acquis ensure greater autonomy, impartiality and institutional independence of a specialised body for the protection against discrimination – the Advocate of the Principle of Equal Treatment. The problem was clearly evident in the case of the Advocate's decision regarding the suspicion of discrimination in the resettlement of a Roma family, which he represented upon the initiative of non-governmental organisations. In spite of the initiative of non-governmental organisations the Ombudsman in this case did not decide to investigate and assess the Advocate's decision, as we do not want to be an appeal instance against the Advocate's decisions, although our position in this specific case might have been different. According to the Ombudsman's opinion, independence can only be ensured by an appropriate institutional solution with organisational separation from the Advocate from the Government, i.e. from the Office of Equal Opportunities. In addition, the Ombudsman is convinced that legal mechanisms for the protection against discrimination are still not sufficient. The Ombudsman's and the Advocate's practice show very low probability that persons accused of discrimination practices will be sanctioned (with sentences imposed in penal or offence procedures).

2.2.2 Slovenia has no comprehensive national institution for the protection and promotion of human rights in accordance with the Paris Principles and EU Directives

The above statement relates to the fact that a national human rights institution (NHRI) with the status and tasks by the Paris Principles (Principles relating to the Status of National Institutions) has not yet been established.

The Ombudsman carries out only part of the tasks defined by the Paris Principles and EU Directives. She autonomously investigates individual complaints upon initiators' proposals or upon her own initiative and, on this basis, identifies deficiencies in the human rights system. But the Ombudsman does not, at least not systematically or permanently, carry out numerous tasks to be performed by the NHRIs under the Paris Principles. An important barrier preventing the Ombudsman to perform obligations under the EU Directives is the Ombudsman's constitutional and statutory limitation of competences to the public sector, while the EU Directives request supervisory bodies for both public and private sector. It has been underlined on several occasions that the Ombudsman's Office with its present available staff is not in the position to perform these tasks properly, although the Ombudsman has acquired status B with the UN Coordination Committee of such national institutions.

An additional problem is the treatment of specific forms of discrimination and the establishment of separate bodies for specific types of unjustified discrimination, for example on the basis of gender, sexual orientation, religion, disability, age and the like. New forms of discrimination are emerging, more and more often we hear about multiple and intersection discrimination, and for this reason the establishment of separate bodies for specific types of discrimination is disputable. In addition, clearly missing are the relevant data on the position of individual vulnerable groups, which could only be obtained by field research. These deficiencies in the institutional protection of human rights, and in particular in relation to discrimination, came to the forefront during the preparation and discussion of the Universal Periodic Report of Slovenia based on commitments regarding human rights made by our State in the United Nations Organisation. We therefore expect further discussions on this issue with the aim to find appropriate solutions to remedy this deficiency in Slovenia. **One of the possibilities is the adequate strengthening of the Ombudsman's Office, because for a state like Slovenia, and for the »users« of services, it is reasonable to have less of these institutions but rather make them more recognisable.** The operation of several bodies in this field would neither be rational nor would it contribute to better transparency and efficiency of the mechanisms for the protection of human rights.

2.2.3 National and ethnic groups

Special rights of national communities

The Ombudsman determines that Slovenia has regulated the position of its both autochthonous national communities well at the normative and institutional levels, which, however, does not mean that no violations occur; but the Ombudsman is not aware of them. The Ombudsman has neither human nor material resources to be more proactive in this field and, therefore, expects, as was the case in 2009, to get help in recording violations from the deputies of the national communities to the National Assembly in the future. The Ombudsman attended the meetings organised by the deputy of the Hungarian national community and the deputy of the Italian national community in the National Assembly. The participants to the meetings presented the problems in exercising the rights of national communities both in the use of their mother tongue with state authorities (lack of translated regulations and bilingual forms) and in the economy, but especially in education. They highlighted that bilingualism is not observed and that social climate is not sympathetic to

the minority. Information of national community was assessed as well organised, but we noted lack of clarity with regard to the use of national community symbols in public. Despite these discussions, no initiatives were submitted in 2009, which would warn of the violation of any special right, guaranteed by the Constitution and law to both self-management national communities and their members. We did, however, consider some cases that were indirectly related to these rights.

In the field of social activities, in particular secondary school education, we considered the initiatives of two teachers of Italian nationality who called our attention to the lengthy decision procedures of the Ministry of Higher Education, Science and Technology in relation to the recognition of professional titles obtained abroad. In the second case, the initiator who obtained her education in another EU member state wanted to teach in schools in the Republic of Slovenia. Her education was namely adequate for teaching in Italian schools. Upon enquiry at the Ministry of Education and Sport the Ombudsman in either case found no violation of regulations or irregularities on the part of the competent state bodies.

Other (not constitutionally recognised) minorities

In several annual reports to date, the Ombudsman proposed the opening of a discussion on the position of and measures for the implementation of collective rights of minorities which are not mentioned as such in the Constitution of the Republic of Slovenia but are so large in number that a stand concerning their status shall be taken. In the 2008 report, the Ombudsman recommended, and the National Assembly accepted the recommendation, that the National Assembly and the Government shall decide on the initiatives proposing the adoption of additional measures. This would be carried out for the protection of these minorities, promotion, development and preservation of their ethnic and national identity, language, presence in public media and establishment of an institution in which the representatives of these minorities would have a counterpart at the state level. As early as in 2003, the Office for Nationalities asked for, and the Institute for Ethnic Studies carried out a research on the situation and status of members of the former Yugoslav nations in the Republic of Slovenia. The research did not receive much attention and the policy for the regulation of the status of these citizens was not formulated on the basis of the research. Further, discussion is needed on the situation of the German community; certain activities which they carried out in 2009 confirm historical presence on the territory of Slovenia and show their efforts for active relations with the majority nation. In recent years, no improvements have been seen in Slovenia in this field. Reassurance of our exemplary regulation of protection of autochthonous minorities and absence of policy towards the non-autochthonous ones, and the differentiation itself on autochthonous and non-autochthonous minorities find ever less understanding in international forums. The Ombudsman thus reiterates the proposal to have a discussion on these issues on the basis of the relevant research in the National Assembly and to adopt a strategy of policies in this field.

Rights of the Roma community

In 2009, improvement was visible again in the promotion of the position and of special rights of the Roma community v Slovenia, regulated by law pursuant to Article 65 of the Constitution of the Republic of Slovenia. The Roma Community Act is gaining ground and the national programme of measures for the Roma was in the final stage of adoption. However, despite these positive measures which the Ombudsman was promoting for several years, we cannot but mention some problems described below. Due to the still noticeable marginalisation and scarce opportunities of the Roma community members alone to care for the implementation of their rights and to make use of the available legal remedies and other possibilities, the Ombudsman's engagement in the field of implementation of minority rights was rather intensive in 2009.

Pursuant to the Roma Community Act, the Government shall in cooperation with self-governing local communities and the Roma Community Council of the Republic of Slovenia adopt a programme of measures (strategy). This program shall address the fields of education, schooling and training, employment, development of the Roma language and culture, improvement of living conditions and others. In the report for the year 2008, the Ombudsman already cautioned the Government to specify the criteria for the determination of autochthonous Roma communities as a prerequisite for the appointment of a representative of Roma in the municipality council, due to the unacceptable contents of the Act amending the Act on Local Self-Government. Whether a municipality should ensure the representation of the Roma community in the municipality council or not, would therefore directly depend on the text of the Government regulation. In 2008, the Ombudsman therefore lodged a petition for the review of constitutionality of the fifth and sixth paragraph of the Local Self-Government Act. We assessed that the competence of the Government for original regulation of this issue was in conflict with the Constitution and threatened the implementation and protection of special rights of the Roma community. In our opinion, the provision of the fifth paragraph of the Act has discriminatory effect and is in conflict with both the Constitution and the commitments made by the State with regard to the prevention of racial discrimination. The Ombudsman estimates that the prerequisite of autochthonism represents unjustified limitation of rights protected by Article 65 of the Constitution and has discriminatory effect. By the time of preparing this report, the Constitutional Court of the Republic of Slovenia has not decided in the matter.

Ombudsman's petition for the review of constitutionality of the Roma Community Act regarding the representation of Roma in the Roma Community Council

The Ombudsman further submitted to the Constitutional Court a petition to review the compliance of Article 10 of the Roma Community Act with the Constitution of the Republic of Slovenia and the obligations of the State under international agreements. The provision foresees less favourable treatment for individual members of the Roma community, and for individual local Roma communities, regarding the provision and enjoyment of special rights. In the opinion of the Ombudsman, the contested provision encroaches on the right to the freedom of association, because in regulating the representation of the Roma community, in relation to the State, it gives undue priority to one of the unions of Roma associations. According to our information and on the basis of initiatives received and talks with representatives of the Government Office for Nationalities, disagreements increase between Roma associations and their representatives from different parts of Slovenia especially between »the autochthonous« (who have, pursuant to the Act, a representative in the Municipality Council) and others, in particular from larger urban centres (primarily Ljubljana and Maribor). A specific issue is also the representation of Sinti in the Roma Community Council, since Sinti are not, and neither wish to be, members of the Union of Roma Associations of Slovenia.

A step forward in the provision of the Roma councillor in Grosuplje Municipality

For several years now, Grosuplje Municipality has denied their Roma political representation through a Roma member to the Municipal Council. The Ombudsman in the 1998 report first pointed out the disrespect for the Local Self-Government Act. The Act amending the Act on Local Self-Government now provides the possibility that, in cases where a municipality fails to secure the Roma community their right to representation in the municipal council by the time of the call to regular local elections, the National Electoral Commission carries out the elections of the Roma councillor on the basis of the law governing local elections.

2.2.4 Elimination of discrimination on the basis of disability

In 2009, we could register some positive changes in the elimination of disability-based discrimination. Since 15 December 2009, the deaf and hard of hearing have been able to watch the National Televisions main evening news (TV Dnevnik) in sign language, which the Ombudsman had been intensively promoting. The Ombudsman, further, warmly welcomes the installation of a lift to the office of the President of the Republic of Slovenia and a part of the Government building. A lift to overcome the stairs barrier represents a school example and symbol for the elimination of discrimination of the physically impaired. In the 2008 annual report we welcomed the Slovene ratification of the UN Convention on the Rights of Persons with Disabilities, and in 2009 we expected the adoption of regulations for the implementation of the Convention provisions. In the beginning of December 2009 the Government presented the Draft Act on Equal Opportunities for Persons with Disabilities for public discussion, and in April 2010 the Ministry of Labour is expected to present the Personal Assistance Act for public discussion.

PROPOSALS AND RECOMMENDATIONS

- The Ombudsman recommends the adoption of statutory solutions that will in compliance with the acquis ensure impartial, autonomous and efficient treatment of alleged violations of the prohibition of discrimination on whatever basis and in all areas.

- The Ombudsman proposes that the Government, having regard for all international commitments, appoints an institution responsible for the implementation of the principle of equal treatment that will systematically gather data, perform analyses and propose measures and strategies for the elimination of systemic forms of discrimination.

- The Ombudsman recommends the National Assembly and the Government to prepare and a strategy for the regulation of collective rights of minorities that are not specifically defined in the Constitution, in which they shall define the policy towards these minorities in the preservation of cultural identity and language, development and preservation of ethnic or national identity of members of these communities and their appearance in public media, and determine the institution to be the counterpart to the members of these communities at the state level.

- The Ombudsman recommends the adoption of laws and implementing regulations and measures for the implementation of the UN Convention on the Rights of Persons with Disabilities.

3. Disrespect of the Constitutional Court decision by the District Court

In the last two annual reports, the Ombudsman brought forward a case on the basis of which we explained our warnings of the discrimination of the blind in court procedures. In a civil action, before the District Court in Ljubljana, the initiator constantly pointed out that as the defendant he is not given the possibility to use the only script he can read, i.e. Braille, as he is blind. He warned that he cannot understand the court documents written in a script he cannot read, which makes it difficult for him to defend his interest in the court procedure. The court was aware of his blindness, but did not in whole accept his proposal to consistently provide him with written communication in Braille (e.g. summons to hearings). He, therefore, successfully lodged a petition for the review of constitutionality of the Civil Procedure Act. The Constitutional Court of the Republic of Slovenia decided that the Civil Procedure Act is not in compliance with the Constitution because it does not regulate the right of access to court documents and to written applications by the parties and other participants in the procedure in a form perceivable to blind and partially sighted persons. The National Assembly was ordered to eliminate the identified incompliance within one year after the decision was published in the Official Gazette of the Republic of Slovenia. The courts shall upon request provide the blind and partially sighted persons access to court documents and to written applications by the parties and other participants in the procedure in a form perceivable by them, until the identified incompliance has been eliminated. The necessary costs shall be paid from the Court's funds.

It is a paradox that the Constitutional Court's Decision was not respected in the very same case, which was the direct reason for the issue of the Decision. In this civil case, the court of first instance issued a judgement, which even three months later was not serviced to the initiator in the adjusted form. We estimated that the Constitutional Court Decision clearly and without any doubt obligates the Court to act as determined by the Constitutional Court. The initiator's attorney should have already filed an appeal, but the initiator still could not even read the contents of the judgement which was in whole in favour of the opposite party and the initiator was imposed the payment of considerable damages.

We therefore addressed the President of the District Court in Ljubljana with the initiative and asked for an explanation of reasons for such conduct of the Court in that matter and of possible measures adopted with the aim to ensure respect for the above-mentioned Constitutional Court Decision. We pointed out that, on the basis of the Constitutional Court Decision (issued on the grounds of this procedure), the initiator in the procedure shall have the right to access to court documents and to written applications by the parties and other participants in the procedure, and even more so the right to be acquainted with the judgement in a form perceivable by him. Otherwise it is not possible to imagine how he can effectively exercise his right to appeal within the preclusive time limit.

Upon our intervention, the Court issued a copy of the judgement in Braille and the preclusive time limit was deemed to start after the judgement has been serviced to the initiator, in a form perceivable by him. The Court explained that the judge was acting »in accordance with established practice« and did not react until the initiator explicitly requested the transcription of the judgement. A further reason given for the delay of the transcription was the sick leave of the hearing judge. Regardless of the presented circumstances, the Ombudsman believes that the Court should act in compliance with the Constitutional Court Decision and immediately provide for the transcription and service of the judgement in Braille to the defendant. **10.0-11/2007**

4. Question of (un)constitutionality of the legal provision which ties the granting of subsidy to the completion of studies

The Social Work Centre asked the Ombudsman to assess the contents of the public call for applications for subsidies granted to young families solving their housing problem for the first time and for subsidized rental flats, published by the Housing Fund of the Republic of Slovenia, which in one item defines as eligible applicants the young families in which at least one of the parents successfully completed his/her studies. They asked for our opinion whether some young families have not been disadvantaged by this provision.

We found that this case is not a direct encroachment on the right to housing. However the question may be raised whether the State, i.e. Housing Fund of the Republic of Slovenia, when implementing its active housing policy measures, is not acting discriminatory, i.e. in contradiction to the principle of equality under the second paragraph of Article 14 of the Constitution, or whether this might even be a violation against the prohibition of discrimination regarding the access to public services which allow for better possibilities in obtaining a suitable flat. The Act on the National Housing Savings Scheme and Subsidies for Young Families Solving Their Housing Problem for the First Time offers various types of benefits in housing saving schemes, in taking out loans and/or in purchase of publicly owned properties and, in addition, allows for the granting of subsidies. The Housing Fund of the Republic of Slovenia thus cannot be reproached with the responsibility for such solution, because their decision taking is based on the law.

What can be disputable in this case is the decision of the legislator, i.e. the question of possible unconstitutionality of the Act on the National Housing Savings Scheme and Subsidies for Young Families Solving Their Housing Problem for the First Time. The Act provides special benefits that the legislators intend to offer to a specific category of young parents and by which they also try to eliminate negative consequences of lengthy studies and delayed independence of the young. The measure thus undoubtedly has a stimulative effect on the young to decide to study and to finish their studies in due time. What is at stake here, then, is a policy of equal opportunities and a measure of active social, housing and family policy and even policy of education.

We explained to the initiators that those affected (e.g. a family in which neither of parents completed university studies) could open the question of constitutionality only after their application for the subsidy would be rejected and they would appeal against such decision. Courts can primarily protect possible violations of human rights, caused by legislation. Should the court, deciding on this particular matter, doubt the constitutionality of the law, it must on the basis of Article 156 of the Constitution, state the proceedings and initiate proceedings before the Constitutional Court to review the constitutionality of the disputed legal provision. On the basis of the Constitution of the Republic of Slovenia and the Constitutional Court Act, anyone who demonstrates legal interest may lodge a petition to initiate the procedure.

For this reason, we suggested to the Social Work Centre to inform the affected parties of the suggested legal channels and to explain to them the possible legal remedies. We also invited them to let us know if any applicant would decide to take this way. No feedback has been received. **10.0-12/2009**

2.3 RESTRICTION OF PERSONAL LIBERTY

GENERAL

This section contains findings from initiatives related to the restriction of personal liberty. We are talking about individuals whose freedom of movement is restricted for various reasons: persons serving a prison sentence, detainees, persons with mental disorders or illnesses, and under certain conditions even some aliens.

2.3.1 Detainees and convicted persons serving a prison sentence

The initiatives of prisoners in 2009 in most cases related to (poor) living conditions and accommodations, to ill-treatment by the staff or to court procedures including the reasons for ordering deprivation of liberty (the factual and legal basis). When dealing with these initiatives, the Ombudsman especially tests respect for human personality and dignity. We can roughly classify initiatives into those which require systemic solutions (amendments to legislation, elimination of overcrowding, improvements in living conditions) and others, more individual ones. We find that many initiatives still refer to the lack of communication and responsiveness in resolving the problems of a person deprived of liberty. Therefore, promotion of speedy and efficient resolution of these problems remains our very important task.

Year 2009 remains marked by space and personnel problems of institutions for serving prison sentences

As well as in previous years in 2009 the institutions for serving prison sentences (prisons) were mainly characterised by overcrowdedness and poor living conditions, together with often emphasized lack of personnel. The Ministry of Justice, also upon the Ombudsman's recommendations, adopted a number of measures for the solution of space and staffing problems. Those worth mentioning are the acquisition of additional facilities for the accommodation of 40 convicted persons in former barracks, renovation of the Dob Prison (capacity increased by 174 places) and the envisaged new construction of the Ljubljana Prison. Regretfully, however, no step forward was noted in relation to the forensic hospital, although the Ministry of Justice promised to speed up the activities for its establishment. The Ombudsman has often stressed that the extended application of alternative sanctions would greatly contribute to the reduction and elimination of overcrowdedness in prisons. Regretfully, not much improvement was seen in this field either.

When considering the initiatives, and at her visits to institutions for serving prison sentences, the Ombudsman identifies the lack of professional staff, such as psychologists, social workers and pedagogues to work with prisoners. This raises concern because the quality of life spent in prison and of social resettlement after release, very much depends on their work. The problems which we identify in dealing with prisoners' initiatives concerning the treatment of drug and alcohol addicts, treatment of sex offenders, and treatment of suicidal prisoners, are of particular concern. In the Ombudsman's opinion, professional work in these fields is insufficient, which, in consequence, may result in a higher rate of recidivism.

New arrangements in prisoners' health care

Since 1 January 2009 prison health care service is included in the public health network. Thus, health care services in prisons are carried out by general practitioners from the local primary health care centres. However, several difficulties were noted due to the transition to the new system of prisoners' health care.

(Non-)performance of public benefit work

The Ombudsman was warned of difficulties encountered by the courts since the enactment of the amendments to the Enforcement of Penal Sentences Act in the procedure of execution of judgements in cases where minor offenders file a request to substitute the imposed fine with the performance of public benefit tasks or tasks to the benefit of the local community. Similar problems occurred with the performance of public benefit work as a substitute for up to two-year imprisonment. Since the enforcement of the amended Act, the performance of public benefit work shall be prepared, managed and supervised by the competent Social Work Centre in cooperation with the Regional Employment Office. In practice, difficulties arise due to the legally unresolved question who covers the costs related to the performance of public benefit work (costs medical examination, insurance, commuting and meals during the work) – shall it be the Ministry of Justice as before the Act was amended or the Ministry of Work, Family and Social Affairs which is competent for Social Work Centres. In order to clarify the issue, the Ombudsman made an enquiry at the Ministry of Justice and received assurance that funds for the performance of public benefit work should be provided for in the revised national budget.

Well thought-out and sensible acting of prison officers

Prison officers are responsible for security, protection, order and discipline in institutions for serving prison sentences. Not last due to the overcrowding of prisons, their work is getting more demanding and stressful. Prison officers are entitled to use coercive measures against prisoners if otherwise they cannot prevent escape, attack, self-harm or major material damage. In this connection we highlight the initiative by several convicted persons in the Maribor Prison, who complained about the conduct of prison officers at the peaceful protest of convicted persons. Upon our enquiry, the Prison Administration assessed that the protest of convicted persons could have been prevented if the leadership of the Maribor institution would have been informed of the case in conflict between the convicted persons and of the contents of their request on time, since the protest was announced in advance and its time was precisely defined. In the complaint procedure before the Prison Administration, incorrect conduct of prison officers in the communication with the convicted persons was doubtlessly established. We value the decision of the Maribor Prison who in this respect organised a broader meeting with the prison staff at which the entire flow of action and procedures was analysed, as an appropriate response.

Importance of accurate medical examination and record in case of use of coercive measures

We already stated in some of the previous annual reports that medical examination is required for professional determination of possible body injuries and origin in case that any coercive measures have been used against a prisoner. Such examination is thus in the best interest of both the prisoner and the prison officers involved, because it can play an important role in verifying the accusations of ill-treatment. It would therefore be correct that medical examination report contained detailed prisoner's statements, including the claims about how the injuries occurred, as well as an assessment of how the alleged ill-treatment corresponds to the findings of the objective medical examination.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on the occasion of its visit to Slovenia in 2006, noticed that, as a rule, doctors did not write down their conclusions about the degree of conformity between the description of the established injury and possible claims of the prisoner about ill-treatment. The Committee therefore recommended eliminating this deficiency. The Ministry of Health informed the Committee that they would prepare instructions for doctors with regard to proper recording of all data and information in the medical files of detainees, prisoners and persons in social care institutions, especially in case of injuries, and instructions with regard to consistent compliance with regulations on personal data protection, medical data in particular, and on handling medical documentation. However, we found that the promise by the Ministry of Health was not materialised in 2009. This was proven in the case of a detainee who claimed to have been beaten by prison officers in the Celje Prison and Juvenile Prison. In this case the doctors who examined the initiator failed to record their conclusions about the degree of conformity between the established injury and the detainee's claims about ill-treatment. We called on the Ministry of Health that given promises should be fulfilled without delay, at least for credibility reasons. On this basis, the Ministry of Health issued relevant instructions to all doctors who provide medical care to prisoners in April 2009. The Ombudsman welcomes these instructions, although we believe that it would be better if the Ministry of Health prepared an appropriate report form and sent it to all competent institutions, which would then request the doctors to consistently complete the forms.

Medical examination still in the presence of prison officers

In 2009 we considered cases where prison officers insisted to be present during the medical examination and/or the prisoner's interview with the doctor, or that the prisoner remained handcuffed. In relation to this, the Psychiatric Hospital in Ljubljana clearly warned that psychotherapeutic treatment of a handcuffed prisoner is not possible. Such treatment namely requires active, voluntary and motivated cooperation from the patient. The Ombudsman again recalls that escort of prisoners to medical examinations must be regulated in such a way that they are not deprived of medical treatment and that conduct of prison officers in such cases is in compliance with international standards for the protection of human rights. Only if the doctor himself requests the presence of prison officers (for example, for security reasons), they may stay in the room in which the medical examination or an interview with the prisoner takes place. But, even then, it shall be assured that prison officers remain out of the hearing, so that they cannot follow the discussion between the doctor and the prisoner. Such is also the position of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment *(»All medical examinations of prisoners (whether on arrival or at a later stage) should be conducted out of the hearing and – unless the doctor concerned requests otherwise – out of the sight of prison officers.«)*.

Religious care of detainees

Every detainee has the right to regular individual and collective religious spiritual care, which is also provided for in the Religious Freedom Act. As far as practicable, any detainee shall have the opportunity to participate in religious practices and receive guidance and books with religious content. On the basis of the above mentioned Act, the Ministry of Justice adopted the Regulation on organization and implementation of spiritual care in prisons, educational institutions, juvenile detention centres and training institutions for physically and mentally handicapped youth. The Ombudsman found that the time schedule of the detention unit of the Maribor Prison limits the visits of the Catholic priest to once a week and Catholic religious practices to every second Sunday in the month. It further provides that religious activities for members of other religions can be organised upon the detainee's

wish expressed in a completed application form. We suggested the Prison Administration to amend the house rules in the detention unit of the Maribor Prison and determine a minimum number of visits of other religious representatives and of other religious practices. We were informed that they adopted the Ombudsman's proposal.

Break in the escort of the prisoner and accommodation in another institution

Outside the institutions for serving prison sentences convicted persons are escorted and guarded by prison officers as prescribed in the Rules on Enforcement of Prison Officers Duties, i.e. without any break. The Ombudsman was addressed by an initiator who was placed into an antechamber (waiting room) for visitors in the Ljubljana Prison (i.e. not in a habitable room), whilst the prison officers escorting, him went to lunch. The room, in which he was placed, had no window, no bathroom or any running water. In addition, it was established that the escort of the convicted person was interrupted without knowledge or permission of the superiors and that this was not recorded in the escort report. Upon the Ombudsman's intervention the Prison Administration resolved the problem by issuing detailed instructions which the institutions for serving prison sentences have to observe when they decide on the break in an escort and temporary accommodation of a prisoner into another institution.

Use of instruments of constraint in courts

When dealing with certain initiatives of prisoners (of detainees and convicted persons serving a prison sentence), the Ombudsman came across cases in which prison officers did not respect the instructions of the presiding judges or judges conducting the hearings in individual court proceedings, to relieve the prisoner of the instruments of constraint during the procedure before the court. In one of the considered cases a detainee who was brought to the main hearing in the District Court of Nova Gorica in prison officers' escort, the presiding judge requested the prison officers to relieve the detainee of the handcuffs in the hearing room. The prison officer failed to follow her request. Upon the Ombudsman's enquiry, the General Office of the Prison Administration explained that prison officers acted in accordance with the policy of the Ministry of Justice, which believes that the decree issued by the commander of prison officers is a document providing sufficient and adequate security measures for the escort and protection of convicted persons outside the institution. However, the Ombudsman is of the opinion that the judge's decision to free the prisoner of instruments of constraint for the time of court hearing (i.e. temporarily) has to be observed, because it is the judge who ordered custody for the detainee and can, thus, also revoke the custody and all the related restrictions. In addition, it shall be noted that only those restrictions shall be used against the detainee, which are necessary to prevent possible escape or discussions that could have harmful effects the successful conduct of the proceedings. Further, it shall be kept in mind that every court has its own security service organised to provide for the safety of judges and other court personnel, and of the parties to and participants in proceedings, to secure undisturbed functioning of the court, and to maintain order in court.

2.3.2 Persons with mental disorders

In the field, which was marked by the implementation of the Mental Health Act in 2009, we were dealing with more initiatives referring to the deprived freedom of movement for reasons of mental disorder or illness than in the year before. The increased number of initiatives was in fact connected with the implementation of the Mental Health Act. To our surprise, however, most of them were sent by providers of psychiatric treatment, and not by individuals to who the Act refers. On their part, we mainly received questions related to the admission of treatment without consent on the basis of court order. Some initiatives

were received from relatives, who wanted the persons close to them to be treated. The considered initiatives show that the Act and its implementation shall be comprehensively monitored and analysed in order to prepare proposals for the necessary systemic changes based on the collected findings.

The Court overlooked the right to an advocate

During our visit to a psychiatric hospital we came across the Decision of the Ptuj Local Court with the imposed security measure of compulsory psychiatric treatment (under the Penal Code). The Decision itself contained no clear evidence that the accused had an advocate during the procedure. The Court explained to the Ombudsman that in the decision-taking procedure they overlooked the provision that the accused must have an advocate if the criminal act was committed in a state of insanity.

Deciding on the admission to the controlled ward of the psychiatric hospital

Several considered initiatives revealed problems with the application of the Mental Health Act. In one case, the court regarded the hospital's note on the admission of persons to treatment (without their consent) in the controlled ward of the psychiatric hospital just as an incomplete application. Since the psychiatric hospital failed to complete its application to the court (as the court requested), it was dismissed. According to the provision of the law, the court shall initiate the procedure for admission without consent in emergency cases ex officio immediately after receipt of the relevant notification from the director of the psychiatric hospital (within one day after the note was received) or as soon as the court acquires knowledge of such admission in some other way (within one day after it has acquired knowledge of a person's admission to the psychiatric hospital without consent). The Ombudsman agreed with the court's explanation that any such notification has to contain (at least) all the elements stipulated in the Mental Health Act, including a statement of reasons for the admission of treatment without consent, so that the court can decide whether or no the admission in the relevant case was really urgent (as it was pointed out also by the Constitutional Court of the Republic of Slovenia). However, in our intervention with the Maribor Local Court we stressed that even the receipt of an incomplete notification from the psychiatric hospital could not relieve the court of its obligation to initiate a procedure if such notification at least made it possible to understand that a person was admitted to the psychiatric hospital without his/her consent, as this is a case in which the court is obliged to institute the procedure ex officio. According to the Ombudsman's opinion, the notification by the psychiatric hospital, thus, shall not be deemed to be an application subject to court decision; it cannot be dismissed as incomplete and the procedure shall be initiated.

2.3.3 Aliens and applicants for international protection

In 2009, the Ombudsman, in the role of the National Preventive Mechanism, visited the Asylum Home in Ljubljana and the Aliens Centre in Postojna (we report on the findings in the section on National Preventive Mechanism).

The Ombudsman received two initiatives referring to the living condition in the Asylum Home and the treatment of the applicants for international protection by the staff of the institution. In one of the cases we made the enquiry and could assess that appropriate measures had been taken for the security of the initiator's family and accommodated persons, in regard to the internal organisation of the Asylum Home.

Recently, the Asylum Home set up a system of regular provision of individual and collective psychological and psychotherapeutic assistance to vulnerable persons with special needs, including unaccompanied minors. Hereby, the Ombudsman’s recommendation from the 2008 report, where we proposed the provision of psychiatric assistance to the applicants for international protection, was fulfilled.

PROPOSALS AND RECOMMENDATIONS

- The Ombudsman recommends the adoption of additional measures to eliminate the obvious overcrowdedness in some institutions for serving prison sentences in Slovenia. The ombudsman further recommends to ensure compliance with the minimum standards by which the respect for human personality and dignity during deprivation of liberty is measured, in order to avoid possible violation of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, stating that no one shall be subject to torture or to inhuman or degrading treatment or punishment.

- The Ombudsman expects that a forensic or prison hospital will be established in the shortest possible time, which will allow for a more appropriate arrangement for the treatment and accommodation of detained persons and prisoners who need psychiatric and other medical treatment.

- The Ombudsman again encourages professionals (psychologists, social workers and pedagogues) to organise their work with prisoners in a way which would give more meaning to the time that the convicted persons spend during serving their sentence, and to prepare them for better social inclusion after they have served their sentence and return into their home environment. The Ombudsman recommends more care to be taken in the treatment of drug and alcohol addicted prisoners, sex offenders and persons at risk of suicide.

- The Ombudsman recommends careful consideration of any conflicts, adoption of preventive measures and correct communication with prisoners, as well as meeting of their possibly justified requests, in order to avoid repressive methods.

- The Ombudsman recommends that the Ministry of Health, in addition to the issued recommendations and instructions given to doctors prepares an appropriate report form and sent it to all competent institutions with regard to the appropriate recording of all data and information in the medical files of detainees, prisoners and persons in social care institutions, especially in case of injuries and claimed ill-treatment. This would then request the doctors to consistently complete the forms.

- The Ombudsman recommends a more appropriate recording of doctors' findings regarding the degree of conformity between the description of the established injury and possible claims of the prisoner about ill-treatment. In case of use of coercive measures, medical examination of the prisoner must also contain a record of objective medical findings based on accurate examination (including the type, place, size and specific characteristics of any injury noticed).

- The Ombudsman again proposes consistent respect for the proposal that medical examination of the prisoner shall be performed out of the hearing and out of the sight of prison officers, so that the prisoner can in the established confidential doctor-patient relation tell the doctor of his/her physical and mental problems without any obstruction and fear. Escort of prisoners to medical examinations must be organised in such a way that the conduct of prison officers is in line with international standards for the protection of human rights.

- The Ombudsman recommends that prisoners should be allowed as many contacts with the outside word as possible in order to avoid social exclusion. Justified reasons must be given for the restriction of contacts. The Ombudsman supports the plans of some institutions for serving prison sentences to install additional telephone cells, so that each convicted person will have the possibility to use phone for a longer time and there will be less time limitations of phone calls.

- The Ombudsman recommends that the house orders of institutions for serving prison sentences be amended to secure equality of all prisoners in satisfying their religious needs and rights to regular individual and collective religious spiritual care, including the possibility to use a special room for these needs.

- The Ombudsman recommends that during court procedures with persons under custody involved all security requirements are respected in order to avoid any threat to security in court or attempt of escape of the person brought before the court. The Ombudsman further recommends increased involvement of court security services, so that instruments of constraint would only be applied when, in the judge's opinion, this is urgently needed.

- The Ombudsman recommends comprehensive monitoring and analysing of the implementation of the Mental Health Act in order to prepare proposals for the necessary systemic changes based on the findings, and thereby to simplify the current procedures stipulated by the law and to provide a high level of respect for fundamental rights of persons during their treatment in the controlled ward of a psychiatric hospital or their treatment in the closed ward of a social security institution.

- The Ombudsman proposes a systemic solution for the accommodation of children who need constant intensive controlled care in special wards and not in the controlled wards of psychiatric hospitals for adults.

- The Ombudsman recommends a more appropriate communication between courts and psychiatric hospitals, and consistent notification of the courts about the reasons that justify admission to treatment without consent, so that the court can decide whether or not the admission in each individual case was really urgent. Eventually incomplete notification by a psychiatric hospital does not relieve the court of its obligation to initiate the procedure ex officio.

CASES

5. Right to exercise in the open must be provided to every detainee

Two detainees who were, upon the court's decision, (compulsory psychiatric treatment and protection in a health institution) placed in the Psychiatry Department of the University Medical Centre Maribor informed the Ombudsman that they were deprived of exercising in the open.

Pursuant to the Criminal Procedure Act at least two hours of exercise in the open must be ensured to every detainee. This must be ensured regardless of whether detention takes place inside or outside an institution for serving prison sentences. Therefore, the Ombudsman requested an explanation why the initiators were not allowed to exercise in the open, from the Prison Administration within the Ministry of Justice.

The Psychiatry Department of the University Medical Centre Maribor explained that the initiators who were, during their detention, placed in the psychiatry department, indeed, were deprived of exercising in the open. For security reasons, two prison officers had to be in the department all the time. If they wanted to take the initiators to exercise in the open, the number of prison officers should be double, for which the institution for serving prison sentences had not sufficient prison officers available. Similar was the explanation given by the Prison Administration. They noted that in practice it is very difficult to ensure exercise in the open to detainees during their stay or treatment in a psychiatric hospital outside the institutions. Courtyards and other places in the open used by other patients of these hospitals are not sufficiently protected. Since psychiatric hospitals are not equipped with appropriate fences and even less with electronic systems for the protection of facilities, the institution cannot provide security of detainees' exercise in the open. The institution could provide for such secure exercising only exceptionally and only if there was no risk of escape.

In this case the Ombudsman assessed the initiative of both initiators as justified. Even in case of objective reasons for which detainees (or any other person) cannot exercise the rights guaranteed by the constitution and law, such deprivation of rights may not be justified. In order to avoid such and other difficulties encountered by both institutions for serving prison sentences and health care institutions (also during the performance of the security measure of compulsory psychiatric treatment and protection in a health institution), the Ombudsman has often highlighted the need for a »forensic« hospital for detainees and convicted persons who would simultaneously need treatment in a health institution. The presented case is yet another proof of this need. **2.3-8/2009**

6. Unexplained use of physical power by the prison officer

An initiator serving a prison sentence complained that a prison officer of the Maribor Prison used physical force against him without any reason. In addition, he claimed that an examination by a doctor was made possible only after several days.

Upon our inquiry, the Prison Administration confirmed that the initiator had got injuries, but that there was no solid evidence that the initiator had been injured due to the use of physical force by the prison officer. However, some medical data matched the statement made by the initiator when interviewed by the authorised officer of the Prison Administration, and with his written statement. He claimed, both orally and in his written statement, that the prison officer who took him to his room hit him several times with his hand on the back of his head and on his neck. Injuries on the head and neck were actually established at the examination by the traumatologist.

There was no doubt that the initiator's injuries occurred during his imprisonment in the Maribor Prison. Therefore the burden of proof, for the explanation of the entire development of event rests on the institution that should conclusively explain the injuries incurred by the initiator and justify the need and the reasonableness of the use of force, if any. We explicitly pointed this out to the Prison Administration and to the Maribor Prison. However, In this case, the institution was not in the position to reasonably explain the initiators injuries during his serving of prison sentence. Thus, the institution shall be held responsible for the occurrence, including the delayed response to the initiator's claims that he had been injured, and the delayed medical examination. Anyway, the subsequent explanation from the Prison Administration stated that the institution adopted measures for the prevention of

such incidents in the future. It was further found that in this case the information of the institution's management about the situation was deficient and, consequently, the instructions on conduct in conflict situations were not issued, which resulted also in this case.

Since the Prison Administration determined the lack of sufficient evidence to introduce a disciplinary procedure against the prison officers involved, we could not but agree with their expectations that the envisaged project of video monitoring of common rooms for convicted persons will additionally contribute to legal and correct conduct of prison officers and their treatment of prisoners in the Maribor Prison. On the one hand, this system will allow better control over their work and, on the other hand, it will make it possible to verify the claims of prisoners about their (ill-)treatment by the prison guard staff. We expect that the project will be realised very soon. **2.2-71/2008**

2.4 ADMINISTRATION OF JUSTICE

GENERAL

The majority of cases handled in this area in 2009, again related to delays in the judicial decisions making or they referred to a disagreement with individual judicial decisions. The unresolved problem regarding backlogs of court cases was again pointed out in some judgments of the European Court of Human Rights in Strasbourg. Judicial statistics for the first nine months of 2009 showed that in comparison to the same period in 2008 the number of unsolved cases decreased and the productivity of courts increased but the data showing that the number of new issues in the same period was higher by 19 percent causes concern. The land register reform proved to be successful since according to the data from the Supreme Court of the Republic of Slovenia the majority of Local Courts solve land register issues promptly. No initiatives from this area were handled.

2.4.1 2009 again marked by numerous normative amendments

In 2009 major changes were made in the area of administration of justice by adopting the Act Amending the Courts Act, Act on Alternative Dispute Resolution in Judicial Matters and the latest amendments to the Judicial Service Act, which are all the basis of a (new) court reform. The changes aim to improve the operation of the judicial system by emphasising greater efficiency and quality of work performed by the courts along with appropriate monitoring. A new feature is the separation of the professional and administrative part of court operation, which is the task of Court Directors. The effects of these amendments, which noticeably have attracted some opposing viewpoints from among the judges, will be shown in the future. Judicial salaries were also regulated in 2009.

The Ombudsman assesses it appropriate to include the professional public in the preparation of legislation from the field of the administration of justice. That is why the establishment of the Punitive Law Council, which was established by the Minister of Justice in January 2009, is welcome. The Council has already handled the assessment of the situation regarding the implementation of the Criminal Code and the area of the Criminal Procedure Act which is again being renewed.

2.4.2 Quality of judicial decision-making is also important

The quality of judicial decisions greatly contributes to fast and effective judicial decision-making. The Ombudsman has no competence to make a direct assessment regarding the regularity of specific judicial decisions or the means of appraising evidence by courts. Safety mechanisms, which enable the monitoring of a judge's work, are intended for this purpose (examining concrete decisions when deciding on a legal remedy which is implemented by the Higher Court, monitoring a judge's work). In a case of observed irregularities, a disciplinary procedure against a judge may be initiated and as the most extreme measure also the judge's dismissal. Some initiators were also of the opinion that judges and prosecutors would work more responsibly if they were aware of the fact that they are replaceable. It is therefore reasonable that they are committed to eliminating the concept of a permanent judicial term of office. Various opinions regarding the necessity

and reasonableness of a permanent judicial term of office have been raised in the past. However the permanent judicial term of office is imposed constitutionally and is an institution which enables the independence of the judicial profession not only with regard to parties to the proceedings but also from any other pressures made with regard to the ruling and content of the decision. Obviously, an individual judge should not abuse this institution in such a manner as using it to avoid his/her responsibility for poor work. Some initiatives, which have been handled, give the impression that the judges do not always act in terms of protecting the reputation of the judicial service and the trust placed in it.

2.4.3 Issues regarding de-registered enterprises

Also in this year some initiators turned to the Human Rights Ombudsman. In their initiatives they pointed to the still unresolved issue regarding de-registered enterprises on the basis of the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act. The aforementioned Act did not resolve the issue of de-registered enterprises that is why the Ombudsman expects the Minister of Justice to make a decision on any eventual further measures necessary for solving this problem.

2.4.4 Act Regulating the Protection of Right to Trial without Undue Delay

Due to large backlogs at Courts a lot of initiators wish the Ombudsman to intervene so that the Court would treat their case regardless of the order of cases to be tried by the court. Such initiatives cannot be acceded. That is why in cases where backlogs of court cases are indicated, attention is drawn to the option of lodging supervisory appeals or other means provided by the Act Regulating the Protection of Right to Trial without Undue Delay. The purpose of the Act is not the elimination of backlogs of cases but an appropriate elimination of their consequences in case of violation of a right to trial without undue delay or violation of a right to trial within a reasonable time limit. It specifies expedited legal remedies: supervisory appeals, motions for a deadline and also compensation measures (just satisfaction).

2.4.5 Introduction of e-justice

Undoubtedly, the use of individual options enabled by information technology may contribute to expediting court proceedings. The project “e-justice”, which is being prepared and implemented by the Ministry of Justice, focuses on providing conditions for the electronic filing of lawsuits, indictments and other procedural acts, electronic service, electronic records opened by the court, the prosecution and the attorney general, and electronic archives. In its transitional provision the Civil Procedure Act regulates that the minister responsible for justice issues the necessary implementing regulations. The Ombudsman requested an explanation from the Minister of Justice with regard to reasons for delays in issuing the necessary regulations which violates legal provisions or deadlines established by the legislator. Obviously these deadlines were too ambitious given the actual technical capabilities of the Slovenian judiciary.

2.4.6 Court experts

Several initiators also turned to the Ombudsman in 2009, filing initiatives to start the procedure due to their dissatisfaction with the work of court experts. Parties are particularly sensitive about the work of court experts when it comes to regulating relations among parents and children. It was found several times that court experts cause additional and unnecessary delay in court proceedings as they do not submit their report and opinion in the time-period defined by the court nor do they inform the court about the delay in a timely

manner. However, neither do courts invite the court expert to explain why he/she has not produced the expert work on time. That is why they do not take action by extending the deadline or by imposing a financial penalty on the expert.

Handled initiatives show that legislative solutions regulating the work of court experts and the imposition of sanctions with regard to their work do not allow the efficient provision of a trial within a reasonable time in practice. That is why the Ombudsman proposed to the Minister of Justice that he examines this issue from the standpoint of the protection of the right to trial within a reasonable time and possibilities of the adoption of more appropriate, and above all more effective normative solutions in relation to the work of court experts, or the possibility of ensuring a more effective use of actions available under the applicable legislation to discipline court experts. It is also important that court experts have the necessary professional expertise, practical skills and experience for their particular type of expert work. The Ombudsman found that the Ministry of Justice does not have the criteria determined, at a normative level, with regard to complying with the requirements concerning their professional competence. It is not possible to leave this task to professional organizations only, as these are generally organized on a voluntary basis which does not ensure the unified quality of work in all 60 areas of work performed by court experts and court appraisers who are needed in order to assist courts in court proceedings.

2.4.7 Executions

Despite all previous measures taken to reduce backlogs of court cases, the Ombudsman notes that in the majority of Slovenian local courts the situation in the field of court executions (with the exception of some minor cases) is still critical. The previous Ombudsman's warnings regarding this issue have not yet been realized. Initiatives handled show that the long duration of execution proceedings is related both to delays in decision-making regarding execution proposals as well as delays in decision-making regarding legal remedies used by parties in the execution proceedings. Delays with regard to the work of execution courts are observed also after a legal remedy has already been decided upon. Unfortunately, these also include several cases of ineffective collection of maintenance claims. These cases, particularly, require special care to be taken as the protection of children's interests is involved.

Initiatives filed by individuals who claimed to be deeply in debt and suffering severe social hardship due to obligations to pay debts are common. Several initiatives (from debtors and creditors) referred to proposals given for the deferment of execution but in practice these may mean a greater deadlock in execution proceedings due to slow court functioning. Also in 2009 there were cases which concerned a refusal by the State and local authorities of a voluntary enforcement of a final obligation awarded. Their attempts to strive for success in court proceedings by applying for legal remedies are not opposed but according to the Ombudsman's opinion the principle of efficiency should also be taken into in account and the State and local authorities should try to agree on a method of enforcing a final court decision in such a way as to take into account the potential consequences of the extraordinary legal remedy applied for.

2.4.8 Temporary injunctions

Several handled cases also referred to decision-making regarding temporary injunctions. Thus a case concerning the Piran Local Court was handled with regard to which the objection filed against the temporary injunction was ruled upon approximately four years later. In the Ombudsman's opinion such a long wait for a decision regarding a legal remedy is inadmissible and unacceptable. One case, dealt with, referred to the lack of a final decision regarding an objection filed against an issued temporary injunction, issued in a case handled by the Maribor Local Court. They claimed that the temporary injunction

was executed in full and its annulment was no longer necessary because the temporary injunction had no effect anymore due to its implementation. There is no legal basis for such a standpoint since Article 25 of the Constitution of the Republic of Slovenia ensures that everyone has the right to appeal or to any other legal remedy against the decisions of courts and other authorities.

2.4.9 Minor offences

The number of cases handled in this area increased drastically (from 82 to 103) in comparison to initiatives dealt with in the previous year. Initiators expressed their disagreement with alleged offences; particularly they complained because of deficiencies in determining facts and collecting evidence needed for making a decision regarding an offence, or they claimed that payment orders have not been (properly) served on them. Several initiatives referred to the sanction imposed for a minor offence (among this the secondary sanction concerning the revoking of a driving licence stands out) and the inability to pay the fine. Questions regarding the possibility of replacing the payment of the fine by performing certain tasks, which in are in the interest of the society or for the benefit of the local community were very frequent.

The Ombudsman highlights the important role of the courts which decide, on requests, for judicial protection since in this case they perform the role of the instance's authority while at the same time ensure legal protection and monitoring of decisions of bodies dealing with misdemeanours (hereafter: »offence bodies«).

Cases were encountered in which decisions by offence bodies or courts were poorly explained. A lot of initiatives highlighted that the Police did not properly determine the actual status of the alleged minor offence. That is why the Ombudsman recommends again that the offence bodies and courts proceed with diligence and ensure greater care with regard to a proper and complete assessment of the actual state of the alleged minor offence since the offender must be guaranteed the fundamental warranty of fair court proceedings and the right to a legal remedy.

When processing some of the cases from this category, the Ombudsman noted an unequal treatment of offenders who request a replacement of the fine imposed by means of a payment order by performing a certain task which is intended for the benefit of society or the benefit of the local community. This was also confirmed by the Ministry of Justice. It was agreed that the Minor Offences Act should clearly define whether or not, in the case of an imposed payment order, the fine could be replaced by performing a certain task intended for the benefit of the society or for the benefit of the local community.

It has been noted that the offence bodies that decide on minor offences in expedited proceedings calculate the court fee in various ways. Traffic warden services, for example, rule on minor offences by means of a payment order for the assessment of court fees, but the Police by means of a decision on costs of the procedure. As a result, this lack of uniformity is visible in legal caution since in a decision on costs of the procedure legal caution makes reference to a request for judicial protection whereas in the payment order it refers to appeal. There is also a difference with regard to authorities that decide on the legal remedy filed (court or offence authority). Now the question arises whether offence bodies have the power to decide on court fees at all. The Ministry of Justice was informed about the Ombudsman's findings regarding the unclear and fragmented arrangement concerning the payment of court fees in offence proceedings which is also not consistent from the point of view of the application of regulations and causes a lot of trouble in practice. In its message to the Ombudsman, the Ministry of Justice indirectly admitted the problem and made notification of how and when it intends to solve it.

2.4.10 For amendment and modification with regard to the sanction concerning the revoking of a driving licence

An initiator strived to have the sanction concerning the revoking of the driving licence in an event when an offence is committed because of addiction to alcohol amended or modified to proposing that instead of this sanction, or with it, the compulsory treatment for alcohol dependence should be imposed or that the person committing an offence, who is under the influence of alcohol be (also) included in a suitable programme for eliminating problems due to alcohol addiction. The initiative was considered reasonable and worthy of consideration. During visits to police stations while monitoring individual cases of detention the Ombudsman notes that individuals were detained due to driving under the influence of alcohol despite the imposed sanction concerning the revoking of the driving licence. Hence it can be concluded that a strict sanction concerning the revoking of the driving licence does not prevent the offenders from going out on the road again. The Ministry of Justice agreed that in preparing the amendments of the Minor Offences Act the possibility of an amendment with a new sanction »alcoholics and drug addicts treatment« needs to be examined.

2.4.11 Free legal aid

Also this year some initiatives concerning the principle of free legal aid, which is defined in the Free Legal Aid Act, were considered by the Ombudsman. The law includes exercising the right to judicial protection under the principle of equality, taking into account the social status of a person who could not exercise the right to judicial protection without the loss for his/her means of subsistence. The non-governmental organizations also highlight the need to simplify the procedure for obtaining the first free legal advice.

In some initiatives handled, it was observed that beneficiaries (usually persons who are not versed in law) who were granted free legal aid were often not informed about the consequences of certain procedural acts. Thus some decisions did not contain a legal caution stating that the granted free legal aid does not cover the cost of proceedings, actual expenses, and the award of costs to the opposite party's representative, and that the residual balance between the costs actually paid in respect of free legal aid and the amount repaid by the opposite party in respect of legal costs will have to be repaid to the State. Problems indicate the urgency to re-amend the Free Legal Aid Act since, in the Ombudsman's opinion, the arrangement does not comply with the requirement to run a social state (Article 2 of the Constitution of the Republic of Slovenia) and means an interference with the right to social security (Article 50 of the Constitution of the Republic of Slovenia). Considering the current conditions in the economic sector at home and abroad, the increasing unemployment and consequently the increasing number of beneficiaries applying for social assistance in cash it is expected that in the future the number of applications for granting free legal aid will increase. As a result of that, the financial burden imposed on the state budget will be proportionately higher, but this is not and should not be the reason for insisting on the current organization of the free legal aid system since, such as it is, it allows guaranteeing the subsistence level of the socially vulnerable groups to be affected and in this manner also their right to social security and dignity.

2.4.12 State Prosecution Office

The number of initiatives covering this area increased; initiatives mainly referred to irregularities in the work of state prosecutors with regard to complaints lodged, and an individuals' dissatisfaction in cases where the complaint was dismissed was especially expressed. A smaller number of cases handled drew attention to the unreasonably long

decision making on the part of the State Prosecution Office with regard to an individual complaint filed. The persons lodging the complaint or even the injured parties, are not specifically informed by the State Prosecutor's office on the course of the hearing of the complaint lodged and thus about the phase of the prosecutor's decision making. The Ombudsman considers that especially in a case of a prolonged settlement of an individual complaint (when, for example, a wait is needed while the police gather additional information) it would be appropriate to inform the person lodging the complaint if at the same time he/she is also the injured party.

The State Prosecutor has to respect the constitution and the laws in carrying out his/her work. The dismissal of a criminal complaint is a procedural right of the State Prosecutor. Prior to accepting such a decision, the State Prosecutor has to consider and respect rights and fundamental freedoms guaranteed by the constitution and the laws both with regard to the injured party and the defendant. The Ombudsman assesses that the decisions concerning the dismissal of complaints should be explained from the point of view of content as much as possible since on this basis the injured party usually decides whether to continue the prosecution or not.

Proposals for assessing the commission of an offence

Pursuant to Article 38 of the Constitution of the Republic of Slovenia, the protection of personal data is guaranteed and the use of personal data contrary to the purpose of its collection is prohibited. The mishandling of personal data constitutes a criminal offence according to the Criminal Code. On 7 March 2006 the Ombudsman sent a copy of one of the articles from the newspaper Direkt to the District State Prosecutor's Office in Ljubljana and suggested the article be assessed from the standpoint of a possible commission of a criminal offence. On 9 December 2009 the Ombudsman received a notice from the District State Prosecutor's Office in Ljubljana that on 12 February 2009 a charge was filed against two persons due to the commission of three criminal offences for the mishandling of personal data. It cannot be overlooked that from the time when the proposal was made to the time of lodging the charge almost three years had passed. At the same time the prosecutor's decision in three cases is till awaited, in which individual media records were sent to the District State Prosecutor's Office in Ljubljana to have them assessed in terms of an eventual commission of a criminal offence under the Criminal Code. In these the information was published from which the identity of a minor could be assumed. In one of these cases, and on the basis of a report from the Ombudsman's office, the District State Prosecutor's Office in Ljubljana lodged charges against two individuals and a TV station upon the suspicion of committing a criminal offence concerning a violation of a classified procedure.

2.4.13 Attorneyship and notaries

Initiatives handled by the Ombudsman in 2009 concerning the work of attorneys were, this time, also primarily related to the quality of legal advice and representation before courts, and the lack of trust between the attorney and the client. Complaints submitted by some initiators still indicate that attorneys do not always issue receipts for payments received with regard to their service. In addition, initiators often do not receive an account of the services rendered. The Ombudsman welcomes the latest act amending the Attorneys Act which, as one of the conditions for practicing in the profession of an attorney, also stipulates the passing of an exam on the knowledge of the act regulating the attorneyship, the attorney's code of ethics, and The Code of Attorney's Professional Ethics adopted by the Bar Association of Slovenia.

On the basis of the Ombudsman's warnings concerning the inefficient work of the disciplinary authorities of the Bar Association of Slovenia and considering recommendations regarding the necessity of ensuring fast, effective and trustworthy decision-making of the Bar's disciplinary boards the Attorneys Act was supplemented. Even under the last amending act complaints against attorneys are not decided upon by attorneys themselves any more because the members of disciplinary boards (although currently in a minority) also come from other professions which may contribute to a more objective decision-making.

PROPOSALS AND RECOMMENDATIONS

- The Ombudsman recommends the adoption of programmes and measures for reducing the number of new cases opened in Slovenian courts, in order to stop an almost 20-percent (data from 2008) annual increase.

- The Ombudsman again invites all judicial authorities to adopt effective programs for eliminating the violation of the human right to decision making within a reasonable time (Article 6 of the ECHR – European Convention on Human Rights) and the right to effective legal remedy (Article 13 of the ECHR), which was pointed out to the Republic of Slovenia several times by the European Court of Human Rights.

- While championing the perseverance of a permanent judge's mandate as a constitutional category the Ombudsman recommends greater diligence in the use of all available legal instruments, which enable control over the judge's work, from the test of a concrete decision in the ruling on a legal remedy (executed by the Higher Court) to the professional control of the judge's work, instituting a disciplinary procedure, and as the most extreme measure, the judge's dismissal.

- The Ombudsman recommends the adoption of a number of implementing acts according to the provisions of the Act Amending the Civil Procedure Act in relation to electronic forms of operation in civil procedures.

- The Ombudsman again recommends appropriate action be taken by the State authorities, which have to ensure conditions for the quality of work performed by court experts and appraisers by adopting more appropriate, and above all more effective normative solutions in relation to their work and more effective use of measures available pursuant to the applicable legislation for disciplining the work of experts, which is not of good quality, is unconscientious and is not delivered within a reasonable time.

- The Ombudsman recommends the formulation of minimum national standards with regard to the appointment, conditions, procedures, and determination of the necessary professional knowledge and skills as well as supporting documents for the appointment or extension of the status of court experts or appraisers.

- The Ombudsman draws attention to the great backlog of court cases in the field of executions and recommends the adoption of modifications and amendments of the Execution of Judgments in Civil Matters and Insurance of Claims Act on a systems level, with which the execution proceedings will be shortened and simplified. The Ombudsman proposes the adoption of additional measures for ensuring the effective collection of claims recognized by the State by means of final court decisions. The Ombudsman particularly suggests greater efficiency in cases of collection of maintenance claims since it concerns the protection of children's interests.

- The Ombudsman again recommends that the state authorities, local community authorities and bearers of public authorities use with a high degree of rationality the possibility of refusing the execution of the obligation imposed. The Ombudsman puts special stress on the fact that disagreement with a final judicial decision does not give anyone the basis for not completing obligations, that is why she recommends judicial decisions be fulfilled without any delay, and any extra work loaded onto courts and any additional financial burden be the debtor's responsibility, together with legal costs and interest for late payments.

- The Ombudsman points out that waiting for the decision regarding the objection filed to a temporary injunction for several years is inadmissible and recommends the adoption of measures for ensuring faster judicial decision-making with regard to temporary injunctions.

- The Ombudsman proposes greater care in the proper and full assessment of the actual status of an alleged minor offence and the elimination of recurring deficiencies in establishing facts and collecting evidence and explanations to reduce the share of those expressing dissatisfaction with an individual decision in these proceedings. The Ombudsman recommends an analysis of the effectiveness of legal remedies envisaged by the Minor Offences Act be made and uncertainties pointed out by the Constitutional Court of the Republic of Slovenia be regulated so that persons committing minor offences would be guaranteed fundamental warranties concerning fair trial and the right to a legal remedy.

- The Ombudsman proposes to unify the case law regarding the treatment of persons committing minor offences upon whom a payment order has been imposed and instead of this fine be sentenced to perform a certain task for the benefit of the society or for the benefit of a local community in place of the fine.

- The Ombudsman recommends a clearer arrangement on a systems level with regard to the issue concerning the calculation of court fees and legal costs which are issued by offence bodies (traffic warden services with payment orders for the calculation of court fees, police with decision on the legal costs) in order to eliminate the lack of uniformity regarding the referral to various legal remedies for judicial protection. It should also be examined whether offence bodies are authorised at all to make decisions on court fees.

- The Ombudsman recommends to amend the sanction of revoking a driving licence validity (in the Minor Offences Act) in cases when a minor offence is committed due to alcohol addiction or under the influence of psychoactive substances, namely with measures of compulsory treatment and prevention of these offenders from being allowed onto the road. The Ombudsman also proposes to consider additional possibilities such as a compulsory examination by an authorised expert who should decide on additional measures (psycho-education, treatment of the addiction).

- The Ombudsman recommends supplementing the system of free legal aid, simplification of the procedures, uniformity of the content provided in the explanations of decisions with clear information to the applicant that the granted free legal aid does not cover the legal costs, actual expenses and cost of the award for the opposite party's representative and that the residual balance between the costs actually paid in respect of free legal aid and the amount repaid by the opposite party in respect of legal costs will have to be repaid to the State. The State should, ex officio, examine if persons who have partially or completely succeeded in the proceedings, may repay the costs paid by the free legal aid without causing damage to their livelihood or the subsistence of their family.

- The Ombudsman recommends additional efforts be made by the State Prosecution Office for the faster handling of complaints lodged and to inform persons lodging the complaint on the course of the hearing of the complaint and the phase of the prosecution's decision making, especially in a case of a prolonged settlement of an individual complaint.

- The Ombudsman recommends the adoption of additional measures to improve the quality of the attorneys work (conscientious, honest, diligent and following the principles of attorneys' professional ethics) and increase the trust between the attorney and the client. The attorneys should always, without exception, issue a receipt regarding the payment received for their work including the account of the work performed. The Ombudsman recommends this obligation be controlled by responsible services.

- The Ombudsman recommends the Bar Association of Slovenia to adjust its Statute and other general acts as soon as possible within the provisions of the Attorneys Act, and define violations of obligations in practicing the profession of an attorney and acts which mean a violation of conscientious work and practice in the attorney's office.

7. Initiator has been waiting for the deceased's estate for 18 years

An initiator requested an intervention due to some long-lasting probate proceedings before the Trebnje Local Court. In response to the supervisory appeal, lodged by the initiator, the President of the Local Court stated that this is one of the oldest cases of this Court and that she is aware of the long duration of the court proceedings. The reasons that the heirs have been waiting for the deceased's estate for 18 years are supposed to be due to a "very complicated case" and a large number of heirs. In 2007 the record was reassigned to a novice judge as the judge in charge of the case retired. The President of the Court remarked that the novice judge could not handle such a complex probate case so as to deal with it immediately. After receiving the supervisory appeal in the beginning of 2009, the President of the Local Court did order the judge to carry out appropriate procedural acts in the shortest time possible. The initiator was also assured that the probate hearing would be held in March 2009.

For several years the Ombudsman has been pointing out unreasonably long judicial proceedings. In this case the probate proceedings have been going on for 18 years. Such a long wait for the final completion of judicial proceedings cannot be defined as "a trial within a reasonable time" which the heirs are entitled to pursuant to the Constitution of the Republic of Slovenia. The trial within a reasonable time is ensured by the right to judicial protection under Article 23 of the Slovene Constitution or the right to a fair hearing according to Article 6 of the European Convention on Human Rights and Fundamental Freedoms. A party to the proceedings who is seeking protection of his/her rights before the court is not interested in personnel problems and other problems of the court causing the ruling to be made beyond the reasonable time. A party to the proceedings reasonably expects treatment by the State and the court in such a way that there will be no violation of such an important fundamental human right as the right to judicial protection.

The initiative was therefore assessed as being justified. The initiator was asked to inform the Ombudsman's office in the event that the court did not abide by the assurance given concerning the timetabling of the probate hearing or if the hearing of the case did not make any progress. **6.4-50/2009**

8. Personal data of an applicant for free legal aid was disclosed due to typing error of the court

An initiator informed this office about the service form issued in proceedings for granting free legal aid before the Ljubljana District Court. On one of the notes informing him about the letter received the initiator was mentioned, whereas on the other, a person unknown to the initiator was mentioned with reference to the initiator's address.

An explanation was requested from the Court whether the indication on the service form was really the court's mistake, how this mistake happened and who was responsible for it. The court explained that while writing the addressee's information on the letter a typing error occurred and thus a person, applying for free legal aid before this court was also mentioned on the letter.

The Court's error is unacceptable. Not only did the initiator receive an incorrectly completed service form but the Court also disclosed personal data of another applicant for free legal aid due to the negligence of its employee. It is therefore correct that the Court should submit an apology for the mistake to the initiator and assures that in the future it will be (more) careful so that such and similar mistakes will not occur. **6.4-95/2009**

9. The Court removed without justification the blocking of transaction accounts (only) after Ombudsman's intervention

The initiator turned to the Ombudsman because both his transaction accounts were blocked in execution proceedings before the Ljubljana Local Court. He stated that he is not the debtor but some other individual with whom they share only a personal name. He informed (after nine days from the blocking of his account) the execution court about this by means of a letter but the court did not respond to his letter for more than a month.

An inquiry was made at the execution court with regard to how the Court handled the initiator's letter. It was understood from the Court's answer that the irregularity alleged by the initiator actually did occur. The court was informed about this not only from the initiator but also from the creditor. In his application to the court, the creditor explained that he submitted to the responsible tax office an inquiry regarding the debtor's tax number, and the authority sent him a certificate of a tax number of a person with the same name but who is not the debtor in the mentioned execution proceedings. On the basis of this information transmitted incorrectly the creditor suggested to the court that it seize two transaction accounts of a person who was not the debtor in these proceedings, that is why he requested the court to inform both banks about the mistake and to issue the cancellation of the seizure on the stated transaction accounts.

The initiative was considered as justified since the court dealt with both the application submitted by the initiator and the application made by the creditor in the judicial proceedings only after the Ombudsman's intervention. Even though the Court was informed about the mistake made, it ordered the two banks only three working days after this office's inquiry to withhold the execution and to unblock the initiator's transaction accounts.

It is unacceptable that the initiator had to wait for the release of the unjustifiably blocked transaction accounts for such a long time after informing the Court about this fact (which was also reported by the creditor!). The action by the tax office was also unacceptable by which a certificate on the initiator's tax number was issued following the inquiry of a tax number of a debtor, although he shared with the real debtor only a personal name. **6.4-183/2009**

2.5 POLICE PROCEDURES

GENERAL

In 2009, the Ombudsman of the Republic of Slovenia processed fewer initiatives concerning the work of police officers than in previous years. Apparently individuals take greater advantage of direct appeal options made available pursuant to the Police Act. The person concerned first turns to the appeal body within the framework of the system where the alleged irregularity occurred. Only if the appeal path does not fulfil the appellant's expectations, may the said person lodge an appeal with the Ombudsman. Initiatives regarding potential violations of human rights during the implementation of tasks by police officers require a thorough and impartial examination of the case while taking into consideration the applicable law. Only exceptionally, does the Ombudsman decide that a moral assessment of an individual act be dealt with, especially if in this manner she wishes to draw attention to the unacceptability of a certain act, which cannot be handled only as an infringement of the law. We are glad to note, that the Police respond to our interventions and in most of the cases consider our proposals, opinions, criticisms or recommendations. The recognition of one's own mistakes and a proper attitude to initiators are especially encouraging. The Ombudsman welcomes the modernization of the Code of Police Ethics and its harmonisation with the European Code of Police Ethics. This document may also help with maintaining the moral values expected of the police officers, who can use it as a guide for moral judgments as they are expected to demonstrate justice and fairness. We welcome the Police's message that within the Police reorganization project a department for the development of the Police, ethics and integrity will be established. This is expected to contribute to strengthening the development of the Police in this area.

2.5.1 The Ombudsman is authorised to inspect police information and documents

On the basis of the Human Rights Ombudsman Act state authorities, local community authorities and bearers of public authority have to provide the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) with all data within their remit irrespective of the level of confidentiality and enable the implementation of the investigation at her request. Also when dealing with complaints referring to police procedures, authorisations for the inspection of information and police documents are used, if necessary. In order to avoid complications, a proposal was made to the Director General of the Police that the Police should re-educate all police officers with regard to the Ombudsman's competences and authorities including the right to inspect their information and documents, which was also done by the Police.

2.5.2 Appeal procedure

The appeal procedure concerning the conduct of a police officer is regulated by the Police Act. If an individual believes that as a result of the police officer's act or its omission the said person's rights or freedoms have been violated, he/she may lodge an appeal to the Ministry of the Interior or the Police within 30 days from the time when the violation was discovered. The work performed in the field regarding the resolution of complaints is difficult

and responsible. The Ministry of the Interior considers findings made by appeal procedures to be a good indicator stating whether police officers perform their duties professionally and legally. On the basis of these findings it can plan and prepare educational programmes, training sessions, direct the work of the police, change and amend the law and make plans with regard to further work. The appeal procedure takes place at the Ministry of the Interior or by the Police with the participation of the external public. This may raise distrust or suspicion with regard to partiality, also because the appeal procedure does not provide for a legal remedy against the Senate's decision. The Ombudsman supports the decision of the Police to conduct a comprehensive analysis of previous experiences, weaknesses, and advantages found in the existing arrangement of appeal paths in order to establish at a system level a stronger and more coherent system regarding the resolution of complaints lodged against the work of the Police in the field of prejudicing human rights.

2.5.3 Knowledge and competence for the successful work of the Police

Knowledge and competence are important for the successful work of the Police. We are pleased that, partially influenced by the Ombudsman's recommendation, the leadership of the Police decided on additional training in the field of the protection of human rights during the implementation of police powers. Therefore police measures for the comprehensive and systematic education and training of police officers and criminal investigators in the field of domestic violence, which is carried out in co-operation with experts from other organizations and from abroad, is particularly welcomed. And it is especially encouraging that the result of such qualification is already evident with the number of discovered and investigated criminal offences in the field of domestic violence. It is believed that the activity of the Police in the field of supplementary and general training in the field of domestic violence should be an example to other state authorities which are dealing with issues regarding domestic violence.

2.5.4 Further amendments and modifications of the Police Act

The Ombudsman welcomed amendments and modifications of the Police Act (in 2009) which govern the responsibilities and powers of the Police in a more accurate and comprehensive way (for example, the content and manner of security background checks on a person, production of a person without an order and stressing the principle of proportionality (reasonableness) in the use of methods of restraint). Attention was drawn to the inadequacy of the proposed solution which envisaged that the member of a commission to provide an opinion in the event of a dismissal of the Director General of the Police would be appointed by the Ombudsman. Such a solution would interfere with the independence and impartiality of the Ombudsman, as it would involve him/her in a procedure that the Ombudsman may also be monitoring pursuant to his/her constitutional role. The Ombudsman did not identify (from the material prepared by the Ministry of the Interior) the need for the introduction of a new police power for the inspection of a person and objects. In the Ombudsman's opinion and in the absence of an explanation, the demarcation of this new power with regard to a personal inspection, which is made possible on the basis of a Court Order and under conditions provided by the law, is not clear. The manner in which a police officer would execute this power is also not clear (it is also questionable if it can be done by a person of the opposite sex). But the possibility of the use of technical means for making photos, videos and audio taping with regard to monitoring the implementation of police powers was welcomed. During its visits in Slovenia the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment urged that measures be taken which will ensure the regular use of electronic equipment for recording police interviews, which may be an important additional safeguard against maltreatment of detainees and it ensures a complete and authentic record of the procedure of the interview may also be obtained. This greatly facilitates the investigation of any allegations regarding maltreatment by police officers during the interview.

2.5.5 Amendments and modifications of the National Border Control Act

The Ministry of the Interior submitted, for our inspection and approval, the proposal for the Act Amending the National Border Control Act. Amendments were welcomed but it was pointed out that the proposal for amendments provides for the control of a vehicle and includes the external and internal inspection of the vehicle including its hidden compartments (dismantling the vehicle). Attention was drawn to the fact that such an extension of this power might be contrary to the Criminal Procedure Act which states that the provisions for home and personal inspection shall be applied, mutatis mutandis, also for the inspection of secret compartments in vehicles. The person preparing the amendments to the National Border Control Act took our recommendations into account and defined the inspection of the vehicle only as an inspection of individual parts of the vehicle. It is believed that the difference between the extent (the content) of this power and the authority for the investigation which may be allowed only on the basis of a Court Order is now stressed in a clearer manner.

2.5.6 Mandatory defence of minors during police detention

On the basis of handling individual initiatives the Ombudsman notes that the existing regulation in Slovenia does not define a mandatory defence during the deprivation of freedom of a minor conducted by the Police. The basic measures of the Police are mainly those measures needed for the successful implementation of criminal proceedings and no concern whatsoever is given in such cases to a minor's interests. The Ombudsman has already pointed this out in several annual reports. Rules on Police Powers only stipulate that a police officer should orally notify parents or a legal guardian if a detained person is a child or a minor within the shortest time possible. In the event of a conflict of interest, a social care authority has to be notified regarding the apprehension. Such an arrangement is assessed as inadequate and contrary to the commitment imposed on the State on the basis of Article 37 of the Convention on the Rights of the Child, which states that every child deprived of his or her liberty shall have prompt access to legal and other appropriate assistance. Because amendments and modifications to the Criminal Procedure Act and new regulations, with regard to criminal proceedings, which also includes deprivation of liberty, are being prepared it is believed that this is an opportunity for a renewed and more exact review of the highlighted issues. The Ministry of Justice agreed with the Ombudsman's opinion and noted that it will take the Ombudsman's recommendations and recommendations prepared by the National Assembly (adopted when reading the Ombudsman's report) into account.

2.5.7 For police intervention without undue delay

The Ombudsman found that in one of the processed cases which concerned a report regarding a threat to life or personal security police officers only came to the location mentioned in a report two hours or more after receiving a request for intervention, which cannot be assessed as an example of an efficient police intervention. Such a delay in a decision to intervene may, as a matter of fact, also be contrary to the police's job to protect peoples' lives, their personal safety and property as well as to maintain public order. In this respect, the role of the Police, when it concerns calls alleging domestic violence among close relatives and (former) life partners taking place at home or in other private premises, is particularly sensitive.

2.5.8 Notifying relatives of persons who were injured or have lost their lives

The management of social skills is very important for police officers' work to be performed successfully. Police officers are trained in this field within the framework of educational programmes prepared by the Police Academy. In 2009, the Police Academy introduced a special training course on the topic with regard to the communication of bad news. In addressing some initiatives it was found, however, that the manner of informing relatives of persons who were injured or had lost their lives, is not explicitly prescribed by the Police. As a rule police officers inform relatives about a tragic event by visiting them at their home but there are also individual cases when the Police notify relatives only by telephone. On the basis of our intervention, the Ministry of the Interior assured that it would again warn the Police about the provision of the highest standards regarding the conduct of police officers when informing relatives about tragic events.

2.5.9 Caution on rights

Pursuant to the Criminal Procedure Act, Minor Offences Act, Police Act or National Border Control Act a person deprived of liberty must be notified about the said person's rights in his/her mother tongue or in a language he/she understands immediately upon the said person's deprivation of liberty. In 2009, the Uniformed Police Directorate issued a new and amended brochure *Notice on the rights of a person deprived of liberty* (issued in 23 languages). It is a welcome manual for the work conducted by police officers and for detained persons as it contains an updated written list of individual rights and the basis upon which they are granted. Therefore the Ombudsman welcomes the issue of this manual as in this manner the recommendations of the Ombudsman and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT) posed during its visit in the Republic of Slovenia in 2006 have been realized. The Police, however, have not yet developed a special information leaflet which would take into account and define in a better manner a special situation regarding detained minors.

2.5.10 For effective police procedures

While processing one of the cases, the Ombudsman found that it took three hours for the Police at the border crossing to verify the authentification of a driver's licence, during which it was only determined that the examined "document is probably authentic". This does not demonstrate the special effectiveness of this procedure and does not provide confidence in police work. This issue was pointed out to the Ministry of the Interior and at the same time it was assessed that in some cases the time during which the border control is carried out can also be regarded as an example of actual (de facto) deprivation of liberty since the verification of a certain fact may take a long time. It is in fact believed that every situation when an individual cannot freely leave a specific location or place should be considered as a deprivation of liberty.

2.5.11 Record on blood alcohol concentration test

On the basis of guidelines for conducting police procedures in road traffic cases, a police officer completes a record where by means of a blood alcohol concentration test it is determined that a road user has more alcohol in his/her body than is allowed pursuant to the Road Traffic Safety Act. In practice, the record is usually not drawn up for a negative result. Because the alcohol concentration test by means of a breath test concerns a measure against an individual, which also interferes with his/her personal integrity, it is believed that it would be right for the Police to make a record of any such testing. Thus potential complications might be avoided which occurred in a case handled by the Ombudsman, in which the Police explained the result of a test with a reference to a failure of a device but a record on this test (the first one when the device was broken) was not filled in.

2.5.12 Direct reports regarding criminal offences reported to the Police

On the basis of the initiatives received the Ombudsman observes that a lot of individuals turn directly to the Police when reporting criminal offences committed to their detriment. If in such cases the Police find out that this is not a criminal offence prosecuted ex officio, the Police do not take any measures but only record such a report and do not report it to the State Prosecutor's Office. Initiatives submitted to the Ombudsman show that explanations which persons reporting about criminal offences receive at police stations are insufficient in many cases as some individuals expect that a procedure will be instituted in relation to their report. That is why the Ombudsman recommends explanations by the Police to be clearer and that police officers instruct the individuals who insist that a criminal offence has been committed to their detriment on the option of writing their account in a record on the receipt of the report and then forwarding such report to the responsible State Prosecutor's Office who will make a decision about the report.

2.5.13 House searches

Also in 2009 we were faced with only limited explanations with regard to issued Court Orders for house searches, mostly only with reference to individual proposals made by police stations. A proposal was submitted to the Police suggesting that after a house search, when the objects looked for are not found, the Police should apologize to an individual for the intervention performed (even if this search was based on an Order issued by the Court) and explain again what the purpose of the search was and on what grounds the house search was conducted. In this manner the affected person would receive at least an additional explanation as to why he was treated in this manner by the Police and by means of an apology at least partial satisfaction is obtained for inconveniencies suffered.

The Ombudsman conducted an investigation in relation to allegations made by initiators on irregularities while conducting a house search. The findings of the investigation did not provide the basis for the conclusion of illegal or inappropriate conduct by police officers. Some information obtained in the investigation, however, showed that the house search was conducted in such a manner that several rooms were searched simultaneously and only one witness was present on this occasion. For this reason this was pointed out to the Ministry of the Interior and the recommendation was submitted that each house search should be carried out in such a way that witnesses are allowed a constant monitoring of the investigation. If a house search is carried out simultaneously in several rooms, it is necessary to provide enough witnesses so that two witnesses are always present in each room where the investigation is carried out. The Ministry agreed with the Ombudsman's recommendation. A solution to the problem should be included in the amendments of the Criminal Procedure Act which should stipulate in addition that witnesses, who must be present during the implementation of a house search, are appointed from a list which should be held by the Court.

PROPOSALS AND RECOMMENDATIONS

- The Ombudsman recommends the preparation of a comprehensive analysis of previous experiences, weaknesses and advantages with regard to the current arrangement of appeal paths against the work conducted by the Police in cases of alleged violations of human rights or freedoms which are alleged to have taken place due to an act of a police officer or by the omission of an act. The analysis should contribute to establish a stronger and more coherent system of solving complaints against the work conducted by the Police in the field of interfering with human rights.

- The Ombudsman again recommends that the mandatory defence of suspects who are minors during the deprivation of liberty by the Police be regulated by the law.

- The Ombudsman recommends that the work of the Police be organized in such a manner that at any time the Police may respond to a call asking for police intervention without undue delay, and use powers stipulated by the law, if there is a direct threat to peoples' lives, personal safety or property.

- The Ombudsman recommends that the highest standards be ensured by the Police when informing relatives about injuries or fatal events concerning their relatives and to deliver news on death only by personal contact with them.

- The Ombudsman recommends that all information be systematically provided by the Police also to minors deprived of their liberty who must be, pursuant to the law, informed of their rights in their mother tongue or in a language they understand. Perhaps this might even be by means of a special informative leaflet designed and adapted to a specific situation regarding detained minors and written in a manner they would understand.

- The Ombudsman recommends that when verifying a driver's licence this procedure be carried out by police officers in a professional manner and respect for the personal dignity of an individual be ensured, and above all that it be ensured that the interference with an individual's rights be kept to a minimum and for the shortest possible time.

- The Ombudsman recommends that a record upon each blood alcohol concentration test performed with a breathalyser be prepared and handed over by the Police, both in an event when it is found that the road user has more alcohol in his/her body than is allowed by law and also in the event of a negative result as this is a measure against an individual, which interferes with the individual's personal integrity.

- The Ombudsman recommends that persons reporting and insisting on reporting a criminal offence to the Police are explicitly instructed by police officers about the option of writing their account on the record, and notified that on the receipt of the report know that the report is then forwarded to the responsible State Prosecutor's Office who will also decide on it.

- The Ombudsman recommends that more attention be paid by the Police in the future to the selection of witnesses present during a house search, and particularly that a person, who was employed at the Police in the past is not selected as a witness. The Ombudsman recommends that the Criminal Procedure Act be amended with an additional provision regarding the manner of selection of witnesses who need to be present during a house search, to be appointed from a specifically determined list.

- The Ombudsman recommends a strict compliance with provisions of the Minor Offences Act according to which a payment order may be issued by an authorized person of an authority dealing with offences only when such a person notices directly by herself/himself (or finds out by using appropriate technical means or devices) that an offence has been committed.

- The Ombudsman recommends additional educational programs and forms of supplementary training for police officers with regard to the importance of respecting human rights and fundamental freedoms and moral and ethical standards of the Police which are also written in the Code of Police Ethics and in the European Code of Police Ethics.

- The Ombudsman recommends appeal procedures against the Police should be implemented with greater diligence, correctness, and with the integral handling of each case of appeal, particularly in cases when statements made by appellants, witnesses and police officers are in conflict. The Ombudsman again points out that it is not only the appellant's duty to prove the substantiation of his/her allegations, the burden of proof to examine and explain all necessary matters rests not only with the appellant but also with the Police, or the Ministry of the Interior, and therefore the State.

- The Ombudsman recommends that in the event of a decision regarding the substantiation of a complaint submitted to the appellant by means of a notification, all measures taken be presented by the Police or the Ministry of the Interior, for example the instituting of a disciplinary procedure, the lodging of the information or other. In so doing Article 26 of the Constitution of the Republic of Slovenia is taken into account which entitles everyone to compensation for damage caused through unlawful actions in connection with the performance of any function by a person or authority performing such function.

- The Ombudsman recommends excessive, unnecessary or degrading public exposure of suspected persons deprived of their liberty be avoided in order not to unnecessarily interfere with constitutionally guaranteed human rights as to the presumption of innocence and to personal dignity because in many cases it is not possible to recover personal dignity in the case of persons who were wrongfully treated by the media.

- The Ombudsman recommends that upon the deprivation of liberty the affected person be given information and a caution on his/her rights by police officers as required by Article 19 of the Constitution of the Republic of Slovenia and clear explanations regarding which police powers are being exercised and what the consequences might be.

- The Ombudsman recommends that the conduct of the Police be consistent and in line with the Constitution and the law, and respect, protection of human rights and fundamental freedoms be guaranteed while performing tasks, and recommends the proportional use of instruments of constraint such as handcuffs and other mechanical restraints only in exceptional (urgent) cases when police tasks could not be carried out without the use of the instruments of restraint.

- The Ombudsman recommends that police work should be organised in such a way that it enables swift investigation of cases in which items were seized.

10. Irregularities caused by police officers while transporting and examining a detainee

An initiator against whom the police officer of the Hrastnik Police Station ordered a police detention on the basis of the Road Traffic Safety Act (this detention can last up to 12 hours) complained that before being accommodated in the room for detention he was not allowed to clean himself because during the procedure of the use of instruments of restraint he "soiled himself".

In its answer to the initiator's complaint the Ministry of the Interior noted that the police officers would obviously have noticed that during the transportation he had "soiled himself". But they did not inform the officer on duty who received the initiator into police detention at the Trbovlje Police Station about this, even though, this circumstance was undoubtedly important for further measures in relation to the police detention procedure. It was also found that the officer on duty only examined the initiator superficially prior to accommodating him in the detention room as the initiator's condition was not ascertained. Deficiencies were also found in relation to the equipment of sanitary facilities in the detention room (there was no toilet paper) and regarding the duties of a police officer on duty.

The Ministry of the Interior assured (the Ombudsman) that the Ljubljana Police Directorate has taken action in relation to these irregularities for them not to occur again in the future. Measures were taken at the Trbovlje Police Station where the initiator was detained, and in other police units with rooms for detention. Training for Sergeants at police stations and police officers was carried out. A reminder for the supervisory monitoring and maintenance of the expected state in the area of detention was prepared. The remainder mainly comprises elements where most errors or deficiencies were discovered.

Taking into consideration the answer provided by the Ministry of the Interior the initiator's complaint which refers to irregularities during the procedure conducted by police officers upon the transportation and accommodation in the room for detention was assessed as substantiated. It is expected that the activities performed by the Ljubljana Police Directorate will really ensure that such irregularities which may affect human dignity will not occur in the future. **6.1-24/2009**

11. Police officers did not return documents after the procedure performed

The initiator complained that police officers who conducted the procedure did not return the documents he had handed over to them upon the conclusion of the procedure.

Following our inquiry, the Ministry of the Interior found that in this case police officers acted improperly as they had not done everything necessary for the initiator to take back the documents handed over to them during the procedure. Only the next day, after the initiator's call was placed asking about the missing documents, did the police officers, yet again, a thorough inspection of their police vehicle and found his two documents under the front seat of the police car. The police officer on duty informed the initiator about the find and he then came to retrieve the documents. On taking the documents the police officer on duty acted improperly since he did not issue to the initiator a certificate of returned items. The police officers were warned about the irregularities discovered and after the notification submitted to the Ministry of the Interior all necessary measures were taken with the aim that such irregularities should not to occur in the future. On the basis of the above mentioned the initiative was assessed as substantiated. It is expected that the measures adopted will help to ensure that similar irregularities will not happen again. **6.1-93/2008**

2.6 ADMINISTRATIVE MATTERS

GENERAL

The number of initiatives received in the section of administrative matters in 2009 was approximately equal to that of 2008, and the contents of the received initiatives did not change either. We can report about close to an 80 per cent increase of initiatives concerning aliens. The Ombudsman's recommendations on the execution of the Constitutional Court decisions regarding the erased were carried out. In addition, the Ombudsman's recommendation to the National Assembly of the Republic of Slovenia regarding the elimination of inconsistency of the Victims of War Violence Act with the Constitution of the Republic of Slovenia was taken into consideration. Up until now the valid law acknowledged this status only to civilians who were exposed to the violent actions of the occupier, but not to those who were exposed to the violent actions of other armed forces.

2.6.1 Citizenship

Quite a number of initiatives referred to questions about which body decides on the granting of citizenship, what conditions have to be fulfilled, whether it is possible to have double citizenship, how can Slovene citizenship be acquired by a child of a Slovene citizen if the child has been living abroad since it birth, and others. The initiators were equipped with basic information and directed to the competent bodies. Some initiatives concerned the lengthy procedure for the granting of citizenship. In one of the cases, the initiator filed her application for a change of citizenship with the administrative unit as early as in 2003. It was only after the Ombudsman's intervention that the Ministry of the Interior explained to the applicant that she did not fulfil the conditions for the granting of citizenship. In one other case, the initiator's application for the granting of Slovene citizenship was rejected because a police officer once stopped him in a public area and fined him for the offence of not carrying his identity card. Till then the initiator was a never punished young adult who practically spent all his life in Slovenia. On the basis of the Citizenship Act of the Republic of Slovenia and the Decree on criteria and circumstances establishing conditions for acquiring the citizenship of the Republic of Slovenia through naturalisation, the administrative body rejected his application on the grounds that his admission to citizenship would be a threat to public order, security or defence of the state. Namely, according to the above mentioned Decree each occurrence of any fine imposed on an offender is considered a threat to public order. The Ombudsman proposed to the Government of the Republic of Slovenia to modify the Decree in order to provide for a more appropriate, more realistic and more equitable treatment of such and similar cases.

2.6.2 Aliens

The number of initiatives received in this sector considerably increased in 2009, but their subject was not essentially different from that in previous years. The Ombudsman was addressed by foreigners who wanted to get information about the regulation of their status in the Republic of Slovenia. They inquired about the conditions for the obtaining and prolongation of temporary residence permits, for granting of visas for short-term and

long-term stay in Slovenia, and others. We also received some initiatives from the erased persons and explained to the initiators that the issue was being resolved by the Ministry of the Interior.

In connection with the International Protection Act, the Ombudsman reiterates: the law has introduced an asylum system with lower standards (standards of the European Union) than those adopted in the Geneva Convention on Refugees and the Protocol on the Status of Refugees, and which our state could provide. In 2008, the Ombudsman proposed to amend the Act. In 2009, the established unconstitutionality of the International Protection Act concerning possible accommodation of applicants for international protection outside the Asylum Home was eliminated, while other Ombudsman's recommendations (e. g. the provision of free legal aid to asylum seekers at the first instance) have not yet been implemented.

2.6.3 Denationalisation

In 2009, the Ombudsman received 13 initiatives in relation to denationalisation. The Ombudsman determines that decision-making procedures are unacceptably long both when deciding on denationalisation claims and when deciding on the reimbursement of investments by individuals into the property which increased the value of such property. Despite of the adopted national action plan according to which denationalisations should have been completed, the Ombudsman finds that, statistics issued on 31 December 2009 show, 576 denationalisation procedures are pending at first instance (at administrative units in ministries): 372 cases have even not yet been dealt with, while 204 cases were in the stage of appeal, revision or administrative dispute.

2.6.4 Taxes and duties

Initiators turned to the Ombudsman with problems concerning the accounting for local voluntary tax and the lengthy and delayed resolution of appeals by the Ministry of Finance. When considering the initiatives, we found that tax offices fail to respect the time limits stipulated in the General Administrative Procedure Act (e.g. the first-instance body assigned the appeal against an issued decision to the second instance body only after two months, although this should be done no later than within 15 days after receipt). In addition, the Ombudsman considered cases concerning the taxation of subsidies in less favoured rural areas. Numerous difficulties were connected with the implementation of the Government's decision on and interpretation of the Personal Income Tax Act regarding the exemptions to the income tax. The Ombudsman was of the opinion that such decision-making failed to provide legal security. The ambiguity was eliminated with the adoption of amendments to the Personal Income Tax Act. We further received some initiatives which referred to the issued decisions on personal income tax assessment. The Tax Authority of the Republic of Slovenia explained to the Ombudsman that some difficulties occured due to the currently applied information system. The Ombudsman believes that, in respect of numerous difficulties, an efficient computerised information system shall finally be installed to allow tax offices to work without mistakes and complaints which only double the work.

2.6.5 Property law matters

We received letters from initiators who claimed that municipal authorities avoided the measuring of roads on their land, although such land had been in public use for years, and that the municipalities rejected the settlement of compensation for the intrusion into private property because they had not foreseen the necessary funds in their financial plans, and other matters. We advised the initiators and directed them to legal channels to seek justice

and exercise their rights. When considering such initiatives, the Ombudsman finds that lack of confidence in local governments (the mayors) is on the rise in some municipalities. In her communication with local authorities, the Ombudsman required respect for legal order.

2.6.6 Victims of war violence, veterans, peace-time war disabled servicemen, and persons mobilised by the German army against their will

In the past years, the Ombudsman was warning of certain deficiencies of the Victims of War Violence Act; therefore, she welcomed the adoption of amendments providing that, since 1 January 2010, administrative units shall decide on requests to have the status and rights of war violence victims recognised. This regulation extends the concept of a war violence victim and implements the decision issued by the Constitutional Court in 2006. The Court namely established non-compliance of the Victims of War Violence Act with the Constitution, as it only recognised the status to civil persons exposed to violent acts of the occupier, aggressor or their collaborators, and not equally to persons who were exposed to violent acts or coercive measures of armed forces of the other side in conflict (i. e. of partisan units). At the same time, the Ombudsman again brings forward the unrealised recommendation from previous years: the recovery of material war damage remains unregulated.

2.6.7 Social activities

In 2009, many changes were adopted in the regulation of education, but regretfully hardly any of those proposed by the Ombudsman in the annual report for the year 2008, with the exception of a transparent and uniform system of placing children into kindergartens. In continuation, we report of some problems dealt with in 2009.

Pre-school education

We received quite a number of complaints concerning the lack of vacancies in kindergartens. When inquiring about the situation with municipal authorities and with individual kindergartens we wanted to know how they intended to resolve the problem. They assured us that they were aware of the burning issue and that they were trying hard to resolve it. Among the reasons for the situation they stated an unexpected increase in the number of births in recent years, the decision of parents to place their child in a kindergarten nearer to their place of work or residence, a nontransparent system of placing children into kindergartens, and other reasons. We have explained to the initiators that the placement of children into public service programmes of pre-school education is provided for in the Kindergarten Act. This stipulates that, in cases where there is no kindergarten in the place of residence or there are no vacancies available. The local community (the municipality) is obliged to adopt a programme of measures to alleviate or eliminate the space problem and start the procedure either to ensure vacancies in a public kindergarten or to invite the relevant concession providers within 30 days. Municipalities are well aware of this obligation, but in spite of that fail to provide sufficient opportunities to place children into a quality form of pre-school education. The Ombudsman persistently warned the local authorities and the responsible Ministry of Education and Sport of this failure.

Elementary education

In addition to initiatives which were substantially similar to the initiatives from previous years and related to violence in schools, relations and communication between pupils, teachers and parents, and other issues, we dealt with two cases regarding the protection of pupils' personal data. In the Ombudsman's opinion, parents cannot be denied the right of insight into documents which refer to their child, but care shall be taken that such documents contain no records with full names of other children. In addition to the regulations governing

the education and the provisions of the Personal Data Protection Act, any action involving children shall be in compliance with the Convention of the Rights of the Child, and the main guidance in all such procedures shall be the best interest and protection of all children.
Upon the initiative of representatives of the Embassy of the Republic of Serbia, the Ombudsman considered the issue of introducing Serbian as an optional subject in those elementary schools where the number of interested pupils would be large enough. We addressed an inquiry to the National Education Institute of the Republic of Slovenia as to how the interest for such optional subject was identified among children of Serbian nationality and what could, in their opinion, be done to get realistic data about such interest among pupils. We got exhaustive explanation about the method of interviewing. In addition we turned to the Ministry of Education and Sport with the question whether this optional subject could be offered to pupils already in the school year 2009/2010, at which schools and how will the subject be taught, because we knew of the problem with the preparation of an appropriate textbook. The Minister of Education and Sport invited the interested schools to a meeting. The Ministry provided funds for the preparation of an appropriate textbook, and the Embassy of the Republic of Serbia offered support in the training of teachers. The interest for Serbian as an optional subject was identified in approximately 30 elementary schools, but only two schools met the requirements for teaching the subject in the school year 2009/2010. The Embassy of the Republic of Serbia namely informed the Ministry of Education and Sport in the beginning of July that no training for teachers of Serbian would be organised in 2009, since none of their organisations offered to participate in the project. Thus, the Ombudsman concluded the initiative with the standpoint that the activities of the Ministry for the introduction of Serbian as an optional subject were underway, but due to some objective reasons could not be carried out faster.

Secondary education

We considered the initiative of Gian Rinaldo Carli high school in Koper. At the national biology competition organised by the Association for Technical Culture of Slovenia (ZOTKS), Natural History Association of Slovenia and the Faculty of Biotechnology of the University of Ljubljana, the competition tasks were not translated into Italian language. Thereby their students were supposedly discriminated and the Rules on Co-financing School Competitions violated, because the rules provide that, in addition to the organisation costs, the costs of translation into Italian and Hungarian should also be covered. The Ombudsman addressed the inquiries to the above mentioned institutions and received explanation of the reasons for this unpleasant occurrence. The organisers apologized to the students participating in the competition immediately upon their arrival to the competition, offered them a dictionary and additional explanation, if needed. The initiator's protest was justified. Students of Italian and Hungarian nationality have the right to use their mother tongue and, therefore, the tasks at competitions had to be translated into their language. According to the Ombudsman's information, all later knowledge competitions for secondary school students were properly organised, so that students of Italian and Hungarian nationality received competition materials in their mother tongue.

We further received a complaint of a student who was prevented by her school to complete her education because she failed to fulfil the required obligations and due to her inadequate behaviour. As a prerequisite to allow the initiator to attend practical training and thereby to conclude her education, the school requested her to withdraw the complaint and to stop the procedure with the Ombudsman. The Ombudsman believes that such request is unacceptable and irresponsible. The right to complaint is a fundamental human right, specified in Article 25 of the Constitution of the Republic of Slovenia. There is no reason why students could not file a complaint to a person or body of their own choice if they believe to get help or support from them.

Higher education

The complaints referred to crediting and/or recognition of education completed in the country or abroad for the purpose of employment in the Republic of Slovenia. The procedures carried out by the Ministry of Higher Education, Science and Technology are definitely too slow. The statutory term for the decision on the recognition of education is two months. In fact, the procedures last for six, eight or more months and, thus, individuals cannot enter employment, although they often have a position already waiting for them. But not forever! On the basis of the received initiatives, and from observing different life situations, the Ombudsman identifies problems and obscurities in the area of international education. What we have in mind here, is education carried out by higher education institutions outside their state of accreditation. Such forms of cooperation are often established on the basis of a commercial contract governed by international private law. This means that legislation of both countries has to be observed, i.e. of the country in which the sending higher education institution operates, and of the country in which the education is actually carried out. The organisation carrying out such a programme has to be accredited according to the legislation of both states. The Ombudsman finds that individuals are often mislead when they decide for a foreign study programme in Slovenia. There are cases that foreign study programmes are carried out in Slovenia by institutions without appropriate accreditation, and then problems occur with the public validity of education obtained in Slovenia. The Ombudsman believes that additional information is needed to protect individuals; in addition it might be reasonable to think about an efficient system of control over the providers of international education.

In 2009 again, we considered cases of unequal treatment of students with special needs (persons with disabilities, deaf, hard of hearing, blind, partially sighted, and others) who need adjustments for their study. The Ombudsman is convinced that the amendments to the Decree on budgetary financing of higher education and other institutions provide the opportunity to guarantee additional systemic funds needed for at least minimum possible adjustment of the study process to students with special needs. We further see from the statutes of individual faculties that they have not established any measures to provide equal opportunities for all students with special needs and that only some of them contain adjustments of examinations to the special needs of students. It is unacceptable that students have to ask for each and every adjustment. Some solutions could already be included in the new Higher Education Act, and other in university statutes. It is certainly high time that the Ministry of Higher Education, Science and Technology, and the universities, seriously and responsibly approach the provision of equal possibilities for education of any individual.

Persons employed in education and science

Among the initiatives, the difficulties of university employees regarding too lengthy habilitation procedures at Slovene universities stood out. Candidates for the election to the titles of university teachers, research workers and associates appeal against the decision of the habilitation commission, and the university decides on the appeal. It normally decides in favour of the appellant, annuls the dean's decision and returns the matter for reconsideration. Repeated hearings and procedures can take several years. The Ombudsman believes that the procedures shall be shortened and, especially, that a body competent of deciding on merits shall be determined.

Culture

The Ombudsman highlighted the problems related to the allocation of funds under the tenders issued by the Ministry of Culture. Particularly disadvantaged are the organisations of minorities, i.e. the constitutionally unrecognised autochthonous minorities and the Italian and Hungarian national minority. Difficulties arise in the preparation of tender documents and in the communication of members of these communities with authorities, in the media and in educational processes. Upon the Ombudsman's intervention, the Ministry of Culture promised to have talks with these (minority) organisations and jointly to find a solution.

Sport

In 2009, too, the Ombudsman considered the circumstances concerning high compensations to be paid for the transfer of a child to another sporting club. The Ombudsman explained to the initiator that sporting clubs are voluntary associations and as such not within the Ombudsman's competence, since the relations between sportsmen and their clubs or sport associations are not regulated by law or any other regulations in force in the field of sport, but by individual contracts concluded in line with civil law and/or regulations concerning obligations. We also dealt with cases of unacceptable disciplining of children during physical training in schools and sporting clubs. The initiators claim concerned the demanding additional physical tasks to be performed by children who were late for the training course or not enough diligent and hard-working, or failed to meet the coach's expectations. According to the Ombudsman's opinion some of the cases actually contained forms of physical punishment which is unpleasant and degrading for the children who are, in addition, objects of ridicule by their peers. The Ombudsman points out that teachers of physical education and coaches are committed to the mission of teaching, which calls for appropriate communication with the young and their parents, and for sensibility, tolerance, patience, justice, adaptability and other positive characteristics. Everybody who is working with the young shall respect their dignity!

PROPOSALS AND RECOMMENDATIONS

- The Ombudsman recommends that Slovenia, as a state which acceded to the Geneva Convention on Refugees and the Protocol Relating to the Status of Refugees, ensures appropriate asylum standards in line with the requirements of the Convention.

- The Ombudsman proposes to the Ministry of the Interior to modify the Decree on criteria and circumstances establishing conditions for acquiring the citizenship of the Republic of Slovenia through naturalisation, and to determine the degree of threat to public order in relation to individual offences for which a fine is imposed under the Aliens Act and which shall or need not be taken into consideration in the procedures for the acquisition of citizenship.

- The Ombudsman proposes to the Tax Administration of the Republic of Slovenia to establish such an information system that will provide for efficient performance of tax services.

- The Ombudsman proposes more frequent use of mediation as a voluntary out-of-court procedure of dispute resolution also in case of property law disputes.

- The Ombudsman once more recommends the earliest possible legal regulation of the issue of the compensation of war material damage, suffered by exiles, parties that suffered material damage, prisoners of war, and persons mobilised by the German army against their will during World War II.

- The Ombudsman proposes the adoption of programmes and measures for the provision of sufficient vacancies for children in kindergartens and thus equal access for parents to the use of public means intended for the system of preschool education established by the state.

- The Ombudsman recommends a more appropriate regulation of habilitation procedures in Slovene universities for the election to the titles of university teachers, research workers and associates, which shall be faster than the present ones (lasting several years) and provide efficient legal remedy for the protection of rights of an individual (with a clear definition of the appeal body and the challenge procedures) when his candidacy for the title in a higher education institution has been rejected.

- The Ombudsman proposes the adoption of a systemic solution for the transfer of juvenile sportsmen from one sporting club to another, and elimination of high indemnifications that parents of juvenile sportsmen have to pay if the latter decide to enter another sporting club.

- The Ombudsman proposes the adoption of a regulatory framework (in legislation and University statutes) to guarantee additional financial resources for the minimum adjustments of educational process to students with special needs.

- The Ombudsman proposes that school authorities establish and adopt such rules for different competitions which would not condition the participation of students with the fulfilment of some other obligations of their educational institution.

- The Ombudsman proposes to the Ministry of Higher Education, Science and Technology to introduce appropriate control of providers of international education in Slovenia, especially regarding their accreditation.

- The Ombudsman proposes to local authorities to regulate minor noise issues (e.g. dog barking, lawn moving and the like) with local regulations.

12. Had the initiator not been illegally erased from the register of permanent residents, he would not have lost his permanent residence permit after the served prison sentence

The initiator asked the Ombudsman for help in the regulation of his alien status in the Republic of Slovenia. He stated to be one of the erased, married to a Slovene citizen and father of three minors. In 1999, he was sentenced to seven years imprisonment for the committed criminal offence of armed robbery, and therefore does not meet the requirements for the granting of permanent residence permit under the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia, and neither can he obtain a temporary residence permit.

We explained to the initiator that the Ombudsman was among the first to condemn the illegal erasure of the citizens of other republics of former Yugoslavia who had a registered permanent address in Slovenia on the date of the independence referendum in Slovenia (23 December 1990) and who actually lived here, but failed to apply for citizenship under Article 40 of the Citizenship Act, or their application for the admission to citizenship was rejected. For such aliens the provisions of the Aliens Act started to apply, and on 26 February 1992 they were erased from the register of permanent residents of the Republic of Slovenia. Although the Constitutional Court established that the erasure had been illegal and directed the legislation to eliminate the unconstitutionality (and the injustice done), all the erased are not in equal position. A supplementary decision on permanent residence in arrear, i.e. from the date of erasure, on the basis of the Constitutional Court decision may only be expected by those who, after the erasure, succeeded to get their permanent residence permit on the basis of the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia and the Aliens Act.
In case that permanent residence of citizens of former Yugoslavia living in the Republic of Slovenia, after the 26 February 1992 has been established, the Ministry of the Interior is obliged ex officio to issue the supplementary decisions on their established permanent residence in Slovenia after 26 February 1992.

We found the initiative justified. Had the initiator not been illegally erased from the register of permanent residents, he would not lose his permanent residence permit in spite of his conviction for criminal offence, since in the criminal procedure the court decided that the expulsion was not necessary. Thus, the principle of confidence in a state governed by the rule of law requires that his position may not retroactively worsen. The initiator's case is, which one of those that need to be regulated by amendments to the legislation. In this case we did not decide to intervene with the Ministry of the Interior in the pending procedure of the residence permit issue. We estimated that it would not be reasonable, since it could speed up the issue of a rejection decision, with adverse consequences for the initiator in the procedure of the expulsion of an alien from the state. **5.2-19/2009**

13. A minor asylum-seeker and the filing of a request at the diplomatic and consular mission of the Republic of Slovenia

We were informed of the letter addressed to the President of the Government of the Republic of Slovenia in which the Abbot of the Dharmaling Buddhist Congregation highlighted a supposed violation of the asylum procedure in the case of a minor stateless asylum seeker and her child. The pregnant minor escaped at the age of 16 from Tibet after the Chinese army arrested her several relatives because they were expressing their religious belief and desire for freedom. The abbot stated in his letter that the minor asylum-seeker applied for asylum for herself and her child with the diplomatic and consular mission of the Republic of Slovenia in New Delhi in India. After a personal interview, the minor applicant was sent unaccompanied to her place of residence in India.

Since this was our first case of an asylum application with a diplomatic and consular mission of the Republic of Slovenia, we enquired at the Ministry of the Interior to get information about the actual situation with regard to the provision of rights to this unaccompanied minor applicant, and the respect for the non-refoulement principle considering the fact that India is not a signatory of the 1951 *Geneva Convention* relating to the Status of Refugees and, thus, not bound to respect the principle of non-refoulement. In addition, we wanted to know how the asylum-seekers who file their applications

with the diplomatic and consular missions of the Republic of Slovenia are assured the rights defined in the International Protection Act. The Ministry of the Interior explained to us in their letter that, in accordance with the International Protection Act, they appointed a legal representative of the applicant and her son in the procedure and provided for the translation of all documents that the applicant produced in the procedure. In addition, the Ministry was considering the possibility of a personal interview. In continuation, the Ministry explained that, according to the International Protection Act, the non-refoulement principle means that persons may not be expelled or returned to the state where their lives or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion. This should clearly demonstrate that in this case the Republic of Slovenia cannot violate the principle of non-refoulement at all, since the applicants never entered Slovene territory. At the same time, the Ministry underlined that the principle of non-refoulement only means that the state does not return persons to the territories where their lives or freedom would be threatened, and does not include any obligation of the state to accept into its territory all the persons who apply for international protection outside its state borders. The filing of an application with a diplomatic and consular mission of the Republic of Slovenia should, in the Ministry's opinion, mean that the alien shall be allowed access to the procedure of international protection in the Republic of Slovenia including all the fundamental procedural warranties, and not all other rights that are in the Republic of Slovenia guaranteed to the applicants for international protection by law.

The Ombudsman replied to the Ministry of the Interior and warned that such a narrow interpretation of the principle of non-refoulement definitely is not in compliance with its intention and, thus, cannot stand and may even open the door to violations of human rights. The principle of non-refoulement as enshrined in the first paragraph of Article 33 of the 1951 Convention on the Status of Refugees is the cornerstone of international protection and represents an inalienable right of both asylum-seekers and refugees. The Ombudsman summed up the opinion given by the United Nations High Commissioner for Refugees (UNHCR) in 2007 on extraterritorial application of non-refoulement obligations, i.e. in cases where an asylum-seeker or a refugee is not physically present on the territory of the state whose asylum is applied for. According to the UNHCR's opinion, the principle of non-refoulement is by no means subject to territorial restrictions, but shall rather be applied anywhere within the effective control and authority of that state. Whether an asylum-seeker or refugee fall under jurisdiction of a state, then, does not depend on their physical presence on that state's territory, but rather on the possible effective control over that person. Such opinion is also clearly expressed in various cases of the European Court of Human Rights (ECHR) case law. In accordance to that, it can be concluded that any state is obliged to observe the principle of non-refoulement regardless of whether the person is on its territory or not. What counts is the effective control and authority of the state over such person, which then also includes its border crossings, international zones, diplomatic and consular missions etc. The Ombudsman further established that the same opinion is contained in the Guidelines for the Implementation of the International Protection Act, issued by the Ministry of the Interior in 2009, where we can read that the principle of non-refoulement shall be interpreted to comprise protection against persecution and protection against torture and other inhumane treatment, and that it shall apply to all aliens who are within the jurisdiction of the competent bodies of the Republic of Slovenia.

In addition, the Ombudsman pointed out that we should be aware of the purpose behind the principle of non-refoulement. The purpose of the non-refoulement principle is to assure that an asylum-seeker or refugee is not exposed to circumstances in which their lives or freedom could be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion. Disrespect for this principle may by no means be interpreted only in the sense of an active action by the state; even the passive role of the state may be sufficient proof of disrespect for this international obligation. The terms "expel" and "return" shall not be interpreted in their narrow and merely linguistic sense, but rather in teleological sense, keeping in mind the intention of the principle of non-refoulement. In the UNHCR's opinion, the purpose of the principle of non-refoulement is to prevent the state from any omission that could result in the return of the asylum-seeker or refugee on the territory where the person would be exposed to threats to life and freedom. The Ombudsman partly agreed with the position of the Ministry of the Interior regarding the principle of non-refoulement, namely in the part that the state is in no obligation to accept into the country all persons that apply for international protection. Nevertheless, the Ombudsman believes that the state has the international obligation to assure respect for the principle of non-refoulement, which means that the state shall guarantee any asylum-seeker and refugee that their lives and freedom are not threatened on the account of their race, religion, nationality, membership of a particular social group or political opinion.

This means that the state is obliged to examine whether such threat exists, and if it does, to provide the necessary protection. In the case in question two minors were sent back to a village in India after the interview without any assessment of threat. India is not a signatory of the 1951 *Geneva Convention* relating to the Status of Refugees and, thus, not bound to respect the principle of non-refoulement; therefore, the two minors could be exposed to the threat of return to the territory where their lives or freedom could be at risk.

The Ombudsman further warned the Ministry of the Interior of their incorrect interpretation of Directive 2003/9/EC, which lays down the minimum standards for the reception of asylum seekers, and stressed that the Republic of Slovenia passed its International Protection Act on the basis of this Directive, thus transposing the contents of the Directive into the legal order of Slovenia. The Ombudsman finds it unacceptable that the Ministry of the Interior referred to the Directive, since it is common knowledge that EU Directives have no direct effect and are not directly applicable as, for example, the Regulations are; Directives only oblige the states to enact compliant legislation to meet the aims of the Directive; how to achieve it depends on member states alone. The Republic of Slovenia transposed the Directive into its national law by adoption the International Protection Act in 2007; in this Act, however, Slovenia, in contrast to the Directive, did not exclude the application in cases of requests for diplomatic or territorial asylum submitted to representations of member states. Since the Directive is not directly applicable, its provision on inapplicability in cases of requests for diplomatic or territorial asylum submitted to representations of member states cannot be directly applied in the case in question. The Republic of Slovenia has not regulated this issue and therefore has no legal basis for the exclusion of a group of applicants for international protection. In its answer to the Ombudsman's dilemmas and warnings the Ministry of the Interior expressed the opinion that the Republic of Slovenia in this case does not violate the principle of non-refoulement in the passive sense, because the administrative body has taken into account that the applicants are accommodated in Dharamsala in India where about five thousands Tibetans live in exile. The Ombudsman finds it interesting that the Ministry of the Interior now brought forward new facts not stated in the first reply.

The initiative was justified, since the positions of the Ministry of the Interior contain inconsistent interpretations of the respect for the principle of non-refoulement in the asylum procedure. This might be critical from the standpoint of respect for human rights, because different interpretations of this principle could result in inequality before the law. **0.5-58/2009**

2.7 ENVIRONMENT AND SPATIAL PLANNING

GENERAL

On the basis of all of the considered initiatives and an analysis of the situation in the field of environment and spatial planning, the Ombudsman has found that the State lacks sufficient appropriate and effective legal means for the protection against the violation of the right to a healthy living environment. Similary the Ombudsman found that the states activity in providing a healthy living environment as a human and constitutionally protected right is insufficient. The Ombudsman often reported on public participation in regulatory procedures, on the status of environmental non-government organisations operating in public interest, and on other issues, and formulated recommendations, but no visible improvement has been noted in their implementation. On the basis of the presented issues and individual cases, we estimate that the Ministry of the Environment and Spatial Planning is faced with a serious lack of inspectors and, consequently, delays in inspection procedures, with systemic vagueness and mistakes, but above all with deficiencies in internal communication within the Ministry of the Environment and Spatial Planning. The Ombudsman endeavours to make the right to live and a healthy living environment one of the priorities of the Ministry of the Environment and Spatial Planning, which, however, has not yet been achieved in 2009.

2.7.1 Adoption of spatial plans

The Spatial Planning Act was amended in 2009, which resulted in considerable changes in the adoption of municipal spatial plans. Prior to the adopted amendments, the Ministry of the Environment and Spatial Planning was obliged to issue a decision on the confirmation of the municipal spatial plan or to propose to the Government to decide on confirmation within a given time limit. If the Ministry failed to do so, the drafted municipal spatial plan was deemed to be confirmed. With the expiry of the time limit, the State's possibility to interfere with the competences of the local community also expired. According to the amendments, however, no confirmation is required and only an opinion is given to the municipal spatial plan. If the opinion is not given within the set time limit, the municipality may proceed with the preparation of the municipal spatial plan. This means that municipalities will wait and ask for the opinion for several months or adopt their spatial plan without the opinion and will thereby risk a review of the document before the Constitutional Court. The Ombudsman believes that hereby the state control of municipal spatial plans has been postponed into the time after the documents have become effective. This, then, opens the possibility of withdrawal or invalidation of illegal acts, including possible liability of the State for any damages. The Ombudsman reiterates her warning of an inadequate legal regulation of this matter (lengthy and vague procedures) and of possible complications with the adoption of municipal spatial plans according to the new regulation.

2.7.2 Inspection procedures

We cannot but bring forward some complaints regarding inspection services, which were already mentioned in previous years. Our recommendations have not been observed, the situation is inadequate, and violations are similar as in previous years. We state once

again that individuals mainly complained about lengthy inspection procedures, non-responsiveness and non-action of the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning, as well as about non-implementation of inspection decisions. The Ombudsman established that the initiatives were mostly justified. In its answers, the Inspectorate explained it with the lack of human resources, which cannot serve as an excuse for non-compliance with statutory set time limits for decision-making. In 2009 again, we were dealing with cases in which inspectors waited for definitive or final decision on enforcement order, although the law is very clear: in the event of a lodged complaint the latter does not withhold the execution.

The Ombudsman further dealt with cases of non-observance of deadlines regarding the issue of enforcement decision. According to the law such enforcement decision shall be issued without delay (and within 30 days at the latest), as soon as a decision has become enforceable. Prolongation of time limits for several months is a violation of law and totally in contradiction with the very nature of any inspection procedure which shall be fast and effective.

2.7.3 Environmental pollution, environmental damage

In the last year's report, the Ombudsman recommended amendments and more appropriate rules on the acquisition of the mandate for carrying out monitoring – the monitoring and control of the environment with systematic measuring. The legislator did not follow the recommendation, and the issue remained unresolved. In 2009, too, initiators turned to the Ombudsman with complaints about several years' lead pollution of the environment, disturbing waste collection facilities, spraying of crops and plantations in the vicinity of residential settlements, exaggerated use of phytopharmaceuticals in corn production and their impact on safety and health of people and animals, bees in particular. The Ombudsman also considered some other activities leading to overpollution of the environment.

Issues of environmental damage were regulated in the amended Environmental Protection Act of 2008, which brings additional work to the Ministry of the Environment and Spatial Planning and requires acquisition of additional knowledge. According to the law, any legal entity or physical person carrying out any of the activities listed in the Act, is responsible, regardless of guilt, for causing both threat and occurrence of environmental damage, and shall, thus, adopt and carry out all the measures for the avoidance of possible occurrence of any environmental damage and/or for the rehabilitation of the environment. The Ministry of the Environment and Spatial Planning decides on environmental damage and measures for its prevention and for rehabilitation; with this in mind, the Ombudsman raises the question whether the employees at the Ministry are ready for the implementation of these legal provisions regarding the deciding on environmental damage.

2.7.4 Noise

The Ombudsman reported already about noise from the nearby restaurants, air conditioning appliances, production facilities, helicopters and other sources. Several initiators wrote to the Ombudsman complaining about excessive and disturbing dogs' barking. An operating air conditioning appliance installed on the outside wall of an apartment block is very disturbing for the nearest neighbour although the noise does not exceed the allowed limits. At first sight it looks like complaining of individuals about a trifle, but the Ombudsman finds that noise issues have not been properly regulated at the systemic level. We see the solution in the adoption of a new regulation or in amendments to the existing ones. It would be most appropriate if local communities would regulate such disturbances with their local decrees.

2.7.5 Water areas and issue of water permits

The Ombudsman highlights the problem of unregulated ownership relations in water areas. Very little has been done in this field in the seven years since the adoption of the Water Act. On the basis of the Ombudsman's initiatives to the Ministry of the Environment and Spatial Planning to adopt a strategy and determine a time schedule and priorities for the resolution of applications lodged by individuals, a plan for the resolution of these issues was adopted in 2009, and a working group was appointed to this end, which sure is a step forward. But procedures are too slow and it happens in practice that individuals are still landowners of water areas and pay taxes and fees, while they have never received any compensation for the expropriated land. The situation is not much better regarding the acquisition of water rights for drinking water and other use of water in accordance with the Water Act. Human resource difficulties of the Agency of the Republic of Slovenia for the Environment cannot serve as an excuse for the delays in deciding on and issue of water permits.

PROPOSALS AND RECOMMENDATIONS

- The Ombudsman proposes the Government and local community authorities to respect legal obligations and commitments under international conventions (the Aarhus Convention) and to allow for the participation of the public in the procedures of adopting regulations which may significantly affect the environment; any comments or proposals by the public (by non-government organisations and others) shall be adopted or rejected on the basis of arguments.

- The Ombudsman proposes the adoption of regulations which will, besides the already regulated discharges from intensive poultry and pig farming establishments, also regulate the obligation of assessing the emissions of the so-called smaller breeding of poultry and pig farming in smaller establishments.

- The Ombudsman proposes local authorities to regulate minor noise issues (e.g. dog barking, lawn moving and the like) with local regulations.

- The Ombudsman recommends amendments and more appropriate rules on the acquisition of the mandate for carrying out monitoring – the monitoring and control of the environment with systematic measuring.

- The Ombudsman proposes a prompt establishment of a system to obtain a mandate for permanent measuring (accreditation), a system of controlling the measuring, and the granting of powers for conducting and controlling the quality of measurements.

- The Ombudsman recommends that the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning is provided with the necessary conditions for performing inspection tasks in order to ensure the quality of work, timely response to initiatives, and avoidance of lengthy inspection procedures. The construction and land survey inspection services, and the inspection service for the environment and nature, must be urgently strengthened with personnel resources.

- The Ombudsman recommends to the Agency of the Republic of Slovenia for the Environment to adopt measures for efficient elimination of backlogs with regard to the water issues (water areas, water permits).

- The Minister of the Environment shall ensure appropriate communication and coordination of work between the Ministry departments and bodies.

14. Biogas plant Motvarjevci

The Ombudsman was addressed by several citizens (some of them united in a civil initiative) from the village Motvarjevci in Prekmurje because of the disturbing and hazardous effects of the new biogas plant. It was installed in the village of Motvarjevci, the nearest residential house and some social facilities are about 30 metres from the plot boundary, while the officially determined influential area of the biogas plant ends at the plot boundary. Upon our own initiative, and in accordance with our competences, we went through the administrative procedures of permits issue, we checked the procedures lead by the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning, we visited the members of the civil initiative in Motvarjevci and, together with a representative of the owner (the company Panvite – meat processing plant), we visited the biogas plant during its trial operation. We could establish that the biogas plant has acquired all the necessary permits, yet we believe that a settlement environment is not an appropriate location for such plant. In our opinion, the location of the plant is not only unsuitable, but rather wrongly selected. We could not overlook that the basis for the plant in this environment was defined by the local community in their spatial planning documents. Quality solutions in the use of land, and in environmental protection, often depend on decisions taken by the local government. When their decisions are mainly oriented towards short term interests of capital, such decisions may have long a lasting impact on the environment and are later difficult to eliminate. It is difficult to prevent or even stop an activity after it has been placed in a location, even if its operation is definitely harmful for the quality of life and living environment. Therefore the initiative was well grounded. 7.1-34/2007

15. Enforcement suspended, execution title from 1992 remains – continuation of the case from 2008

For several years, the Ombudsman has been dealing with the issue of pollution by the Ravne Ironworks and the allegedly unimplemented decision (from the year 1992) of the then Sanitary Inspectorate of the Republic of Slovenia. With this decision the Inspectorate ordered the Ravne Ironworks to stop the operation of the UPH-furnace and the accompanying dust collecting device in the time from 10 p.m. and 6 a.m. of the following day, until the provision of evidence on having reduced noise in the natural and living environment to the specified maximum allowed level. The deadline for implementing the decision was the day following the receipt of the said decision. In line with this decision the ironworks were obliged, by the end of 1992, to present to the Sanitary Inspectorate of the Republic of Slovenia the measures to achieve the maximum allowed noise level IV near the residential building of the initiator (NN).

In 1997 the Inspectorate issued an order suspending the administrative enforcement of 1993, annulling the order authorizing the enforcement and all relevant actions carried out so far, since the goal for which the decision was issued, i.e. the protection of public health, has been achieved with the decision of moving the families (all families except the initiator's NN family).

When the Ombudsman's office considered this issue in 2008, the question which remained unanswered was whether the decision from 1992 still existed, since the decision only suspended its enforcement. In addition, the Ombudsman had doubts with regard to the conditions for the issue of the decision to suspend the enforcement. The Ombudsman could not agree with the explanations and arguments given by the Health Inspectorate, who was the body responsible for the issue. The Ravne Ironworks (i.e. their legal successors) made agreements on the moving of families and/or on compensations paid to all families, with the exception of NN family who rejected such agreements. The Ombudsman found that the inspection measure was »chosen« and issued with the 1992 decision. The decision was final and enforceable, but not enforced and therefore no basis was given for the order suspending the administrative enforcement. The initiator's family namely did not move and their initiative to the Ombudsman was justified. 5.7-20/2008.

2.8 PUBLIC UTILITY SERVICES

GENERAL

2.8.1 Public utility sector

Several initiatives were received in relation to the mandatory national public utility service in the field of environment protection concerning measuring, checking and cleaning of combustion installations, flue ducts and ventilation devices for the purposes of environmental protection and efficient energy use, human health protection and fire protection. The issue of the performance of a chimney sweep service was discussed with the Ministry of Environment and Spatial Planning in January 2009.

Initiatives were produced both by the providers of the chimney sweep service and the users of their service. Initiatives were divided into two basic sections; firstly, the disagreement with the systemic arrangement in this field and secondly, the complaints of users regarding services of individual providers of chimney sweep service.

In May 2009 the Ministry of Environment and Spatial Planning established a working commission for an integrated regulation of the chimney sweep service in Slovenia. The main task of this commission is the harmonisation of opinions and proposals for the arrangement of the chimney sweep service and preparation of proposals concerning modifications of regulations in this field. The Ministry explained our repeated requests. Among other matters, the Ministry explained that the modification of the content of regulations would be implemented and proposed, if it is determined that this was necessary and if proposed modifications were supported by good arguments; that the Ministry was preparing additional measures in the field of regulations, inspection and professional control over providers of chimney sweep services, and with regard to informing the users of services provided by this public utility service. Measures are in line with our advice and recommendations in the 2008 Annual Report.

In the field of the public utility sector, cemetery and funeral services need to be highlighted. The Ombudsman has been pointing out for several years that legislation from 1984 is out of date in this field and that it needs to be modernized.

The question regarding the supply of potable water is still current – not everywhere is the supply organised as a mandatory public utility service.

Initiatives were also processed when the municipality was allegedly not responding to the applications of individuals in relation to linking-up their property to the sewage network system. Municipalities were invited to provide an answer.

2.8.2 Communications

It is observed that with regard to the field of communications mostly applications were received which did not refer directly to the alleged violations of human rights. Initiators were very poorly aware of avenues of appeal.

Equally in 2009, the Ombudsman received a lot of initiatives in relation to the repayment of investments in the public telecommunication network (*Beneficiaries for the repayment of investments made into the public telecommunication network of the Telekom Slovenija, d.d., are individual persons, organisations of individuals persons, local communities and their legal successors which, with the purpose of obtaining a telephone line for themselves or others entered into legal transactions with the legal predecessors of the company Telekom Slovenija, d.d.*). Initiators complained because they did not receive any adequate explanations from municipalities and district communities; one, for example, claimed that he lodged an application but he does not know whether it has got lost. The Ombudsman believes that procedures concerning repayment of investments made into the public telecommunication network were not transparent enough and particularly because of this many additional explanations of the local community authorities were required.

Cases were also dealt with in which the Public Institution RTV Slovenia was supposed to have unjustifiably charged the payment of the RTV charge, and also a case in which an initiator's request for a set-off of unpaid RTV charge was refused.

2.8.3 Energy sector

Also in 2009 initiatives were received which referred to the alleged inequality with regard to charging for electric energy to families with more family members. The Ombudsman's opinion which was already stated in the 2008 Ombudsman's Annual Report was explained to initiators: in compliance with the Energy Act the supply of electric energy is carried out as a market activity. A consumer may freely choose a supplier - the rules of the market apply with regard to the supply. In the Ombudsman's opinion such an arrangement by means of which the price increases disproportionately is inappropriate and inadequate.

Initiatives were also received which referred to the anticipated disconnection of the electric energy supply, as a matter of fact, in winter time. Initiators had their legal options explained to them. They were advised about the first paragraph of Article 76 of the Energy Act according to which a system operator cannot stop the supply of energy below the quantity level which considering the circumstances (season, housing conditions, place of residence, property situation, etc.) is urgently needed in order not to endanger the life and health of a consumer and persons living with the said person. All costs arising from this are incurred at the expense of the supplier and are covered from the price for the use of the network.

2.8.4 Transport

In the field of transport two initiatives were received from foreigners who complained about the method of payment for vignettes. They alleged injustice of the regulation concerning the payment for the use of highways in Slovenia, due to ill knowledge of our system and that is why they opposed the penalty because they did not apply the vignette to their vehicles. They also criticised the work of road controllers who were unpleasant to them. The handling of the initiatives was concluded with explanations.

Initiatives were also received in which individuals complained against the issued permission on a road-block. The municipality was supposed to issue the above-mentioned permission because of the construction of the sewage network and the implementation of construction

works because of which the only access to the initiators' property was inhibited. The appeal procedure in the municipality was explained to the initiators. The Ombudsman observes that in the field of municipal roads the situation is still rather poorly regulated. There are roads which are intended for public purpose but they are still in private possession because municipalities do not want to purchase them, nor measure them.

A case was also handled in which the Slovenian Roads Agency supposedly did not respond to the requests of initiators with regard to the remedy of irregularities or compensation for damage incurred because of the modernisation of a regional road. Also with the Ombudsman's intervention, in October 2009, the Slovenian Roads Agency and the initiator made an agreement and entered into a compensation agreement instead of expropriation.

PROPOSALS AND RECOMMENDATIONS

- The Ombudsman proposes that the Ministry of Environment and Spatial Planning should prepare modifications of regulations, which regulate the field of chimney sweep services in such a manner as to ensure better quality of the service.

- The Ombudsman proposes that the Government should ensure a co-ordinated preparation (together the Ministries of Economy, Environment and Spatial Planning and the Interior) of modifications of the law on cemetery and funeral services and remove a non-uniform arrangement in individual municipalities.

- The Ombudsman recommends that the state and local authorities, prior to the adoption of a change of transport regulation in a local environment, should organise a public debate and consultations with the interested public and that they should provide arguments to the proposals and the comments of citizens.

16. Deception of the Government Office of the Republic of Slovenia for Local Self-Government and Regional Policy (GOSP)

With regard to non-implementation of a control over the stationary traffic in Mengeš, which was supposed to be implemented by the Municipalities' inter-community inspectorate, and regarding the inappropriate traffic arrangement in one of the sections of the road, the initiator complained about several irregularities made by public authorities. The Government Office of the Republic of Slovenia for Local Self-Government and Regional Policy**,** on the basis of our request, submitted information on written communication between the initiator, the Mengeš municipality and the Municipalities' inter-community inspectorate. On the basis of its reply, the conduct of the Government's Office was critically assessed since the initiator also expected a defined viewpoint with regard to the cases handled. The conduct of the Government's Office was considered unacceptable when it submitted the reply to the initiator (the reply of the Mengeš municipality only was forwarded) only after his second urgent claim and almost five months after the receipt of the reply by the Mengeš municipality.

It was believed that the Government's Office should define its viewpoint, in respect of the content of the case handled, and take measures in case of irregularities observed or seek a responsible body for taking measures. The Government' Office did not follow our advice. Because this was not the only such case, it was justifiably assumed that the Government's Office, in the event of individuals who turn to it, firstly inform individuals about its competences and the extent of its powers and then, in spite of its own opinion of the office's non-competence makes inquiries with authorities which have presumably committed an offence. It is this method of conduct of the Government's Office that was the subject of our opinion. Also according to logical sequence this conduct demands a definition of the Government's viewpoint in respect of the content of the case handled which was, however, not done after receiving explanations. In this manner the Government's Office is deceiving individuals who turn to it with their problems. That is why the initiative was considered justified; the Ombudsman's opinion on the conduct of the Government Office of the Republic of Slovenia for Local Self-Government and Regional Policy was submitted for the attention of the Government of the Republic of Slovenia. **8.4-2/2009**

2.9 HOUSING MATTERS

GENERAL

In the 2008 Annual Report, the Human Rights Ombudsman of the Republic of Slovenia proposed urgent changes with regard to the Housing Act and the Rules on renting not-for-profit apartments to be implemented at system level. The majority of the Ombudsman's findings are a result of ambiguous and incomplete legislation. None of the Ombudsman's recommendations from 2008 was implemented. Also, in this report, the Ombudsman highlights some very important questions, which, it has to be said, refer to problems observed in the past which have still not been resolved to this day.

2.9.1 Expulsion from housing and dwelling units

Several initiatives were received from individuals who wished the Ombudsman to assist them in finding an apartment or any roof over their head. Because of the loss of their job and income they could not pay their accommodation expenses and they literally found themselves on the street. Aware of their own personal insolvency the initiators wrote to the Ombudsman hoping that she would succeed in postponing the forthcoming expulsion from housing or attempt to find a suitable apartment. In such circumstances not only the material and residential situation of the initiators is endangered but also their right to family life. With so very many situations such as these the Ombudsman was faced with the challenge of how to explain in a sensible manner to initiators that the principle that Slovenia is a social welfare state which is written into the Constitution is in fact a reality and not just on paper. However, where should one turn for help? And who has the responsibility to provide housing for those without any other possibilities or solutions for their housing problem? It is repeated, that, it is urgent that in the Housing Act the municipality with regard to the provision of housing units, determine the obligations and responsibilities.

The Ombudsman also notices that quite often initiators do not realize the seriousness and reality of the procedure concerning expulsion from housing and believe that by ignoring the problem (for example, by not accepting registered mail) they would succeed in obtaining an apartment. That is why the Ombudsman recommends that it might be sensible that prior to any expulsion from housing, certain non-formal and informative procedures should be introduced in order for the individuals to really understand and take into account the finality of the eviction. The Ombudsman has especially observed that many individuals still think and believe that this cannot happen to them and that is why they do not use all avenues and legal means available for the protection of their rights prior to a final eviction.

Renting not-for-profit apartments and rent subsidies

Also, in the field of renting not-for-profit apartments no progress has been made. The Housing Act still does not stipulate the time scale obligations of a municipality that in certain time periods (for example, once a year) publishes a tender, on a mandatory basis, for renting a not-for-profit apartment. Income limits with regard to awarding rent subsidies are not adapted to the costs of true every day living.

2.9.2 Lessees in de-nationalised apartments

Since 2002, when the Ombudsman prepared a special report regarding the position of lessees of de-nationalised apartments, the State adopted some amendments of the Housing Act which regulate relations with regard to apartments disposed of under the regulations on nationalisation. These measures, however, do not yet ensure the equal position of all previous holders of the housing right. This has been pointed out by the Ombudsman in all his annual reports. In the 2002 special report the Ombudsman, among other matters, proposed some concrete solutions and the adoption of such models of substitute privatisation, which might solve the problem of the majority of lessees and owners of de-nationalised apartments. The Ombudsman also pointed out an urgent need that the Housing Act provided for a firm and permanent solution with regard to the position of lessees, so that adequate mechanisms were provided for the legal protection of lessees and so that the Act should enable a realistic evaluation of investments made in de-nationalised apartments by lessees. This, however, was not regulated by the applicable Housing Act, hence some inequality still exists among former holders of the housing right. The Ombudsman sees the only solution as an immediate modification of the Housing Act.

2.9.3 Housekeeper's apartments

This issue has still not been adequately solved at a system level. It was discussed with the Minister of Environment and Spatial Planning. It was agreed that, with regard to the so called housekeeper's apartments, different conditions and circumstances are involved. In some cases housekeepers had the housing right for such apartments and they could purchase apartments in compliance with the Housing Act, 1991. Others, in their capacity as housekeepers, only had the right to use the apartment and that is why they could not purchase the apartment at a convenient price. The Ombudsman believes that all cases cannot be solved in the same manner. But at the same time it is pointed out that initiatives are still encountered, where individuals express their dissatisfaction and disappointment with regard to the unequal treatment of the users of the housekeepers' apartments and in relation to this, usually it takes several painful years to settle these cases in court proceedings.

- The Ombudsman recommends that the Ministry of Environment and Spatial Planning should modify regulations which will truly facilitate the commitment of the State as recorded in the Constitution of the Republic of Slovenia (Article 78) that the State shall create opportunities for citizens to obtain proper housing. The Ombudsman also recommends the adoption of a new national housing programme and a strategy for solving housing issues.

- The Ombudsman proposes the amendment of the Housing Act and an amendment of the definition of mechanisms with regard to stimulating and providing accessibility to suitable apartments. The Ombudsman further recommends: the determination of responsibility of individual state and local public institutions and their role in providing assistance to citizens, the definition of financial resources for the implementation of housing policy, the obligations and responsibilities of municipalities with regard to providing dwelling units, the obligation to publish public tenders for renting non-profit apartments in certain time periods and in this relation also the temporal applicability of priority lists.

- The Ombudsman proposes that the criteria for exchanging apartments should be regulated by legislation.

- The Ombudsman recommends changes to the Rules on renting non-profit apartments. Income limits need to be determined anew and a solution needs to be adopted, which will provide that when an applicant meets the criteria for the income limit he/she may be eligible for a rent subsidy, independent of the fact of whether he/she has applied to the municipal tender for non-profit apartments.

- The Ombudsman recommends that the question regarding housekeepers' apartments should be solved by being unified at the system level.

17. At the public tender for the award of non-profit apartments, a certificate signed by a specialist – psychiatrist with an indication of a diagnosis was demanded from the applicant.

At the public tender for the award of not-for-profit apartments, a certificate signed by a specialist – psychiatrist with an indication of a diagnosis was demanded ed at the public tender awarding not-for-profit municipal apartments. The tender provided for the possibility to make use of points with regard to mental illness evaluated with up to 50 points. In order to achieve the right calculation of points on the basis of the abovementioned criterion he submitted numerous medical certificates which, among other health problems, also mentioned psychic problems. The municipality was not satisfied with these documents and required the participant, at the public tender, to submit a "real" medical certificate. How unreasonable the requirements of the municipality were, was shown by the fact that the certificate of his personal doctor indicating all medical problems was refused only because it was not printed. It was written in hand and they "were not able to read it". The municipality invited the initiator to submit, in writing, a medical certificate of a specialist –psychiatrist from which the diagnosis of her ill son would be evident. The initiator advised them that this could not be demanded from her; nevertheless, she submitted the data. She informed the Ombudsman and the Information Commissioner of the Republic of Slovenia. The municipality cancelled the public tender a few days after that and prior to that informed the initiator that, with regard to questions about what documents may be taken into account as supporting documents in the public tender procedure, the municipality would refer to the Ministry of Environment and Spatial Planning.

When circumstances concerning the cancellation of the public tender were investigated a reply was received, where it was stated that this had been done due to the non-compliance of the Rules on renting not-for-profit apartments with the national Rules on renting not-for-profit apartments. The non-compliance was supposedly in a part which refers to the assessment of priority categories of an applicant. The municipality may, especially in compliance with the provisions of the Housing Act and the Rules, award some points to a certain category of applicants but this rule must be specifically defined and determined in the public tender. This possibility was not taken into consideration by the municipality because priority categories of applicants for which points were determined beforehand had already been included in the general criteria for the composition of the priority list for not-for-profit apartments.

The deficiency regarding the public tender and the reasons for its cancellation were also investigated by the Information Commissioner of the Republic of Slovenia. The requirement made by the municipality for the initiator, to submit supporting documents regarding the mental illness of her son, was assessed as ungrounded. The tender did not include an explanation for the introduction of an additional priority criterion (mental illness) nor did it determine types of supporting documents with which this criterion had to be fulfilled. On the basis of the Personal Data Protection Act an inspection was initiated against the municipality due to a violation of the protection of personal data with regard to a participant in a public tender. The Information Commissioner of the Republic of Slovenia gave a warning issued to the person responsible.This was because in the process of collecting documentation for the public tender for renting not-for-profit apartments, with regard to the fulfillment of a criterion "mental disorder", without any adequate legal basis requested the submission of supporting documents on mental illness. This included the certificate of the specialist and the indication of the diagnosis of the illness by which it violated the provisions of the Personal Data Protection Act. The Public Administration Inspectorate was also involved in the procedure with regard to determining the legality of collecting supporting documents on the mental illness of a participant in a public tender.

Although we may agree with the municipality that the Rules on renting not-for-profit apartments should be harmonised with the provisions of the Housing Act and its implementing regulations, the Ombudsman observes, considering the facts collected, that the real reasons for the decision of the municipality to cancel the public tender were responses due to doubts on the regularity of the procedure with regard to collecting supporting documents. Only two days passed from the reply of the Information Commissioner of the Republic of Slovenia to the day of the cancellation of the public tender. The Ombudsman will follow the procedure of a renewed public tender with regard to renting not-for-profit apartments which, as assured by the municipality, is expected to be implemented in January 2010. **9.2-16/2009**

2.10 EMPLOYMENT RELATIONS

GENERAL

From the initiatives referring to this field and received by the Human Rights Ombudsman of the Republic of Slovenia in 2009, it is recognised that many people are suffering great social hardship. It is especially observed that the economic conditions in some working environments are even more strained than in 2008 and even less encouraging for employees. People are in constant fear about whether they will be able to keep their job or work. Payment for the work performed is often not sufficient and does not provide a decent living. Some employees who perform work for which a lower professional qualification is required, for their correctly and completely performed work, do not earn enough money for their own subsistence, let alone the subsistence of their families. Some do not receive payments on a regular basis or they do not receive payments for work performed outside of normal working hours (overtime); workers in the construction industry are especially exposed. In environments where more workers have suddenly lost their jobs, it is observed that the State has, as a rule, taken good care to mitigate social tensions by providing information on rights with regard to unemployment. From the majority of such initiatives the hardship of people and their desperation are easy to understand because employers mostly have not informed their employees about a company's weak financial situation. Issues regarding unemployment are recorded in a special chapter within this report.

2.10.1 Issues regarding employees in corporations

Some initiatives were received in which initiators, among other matters, drew attention to an insufficient control of the State with regard to the use of funds to which, under certain conditions, corporations were eligible in order to provide continuity of work for as great a number of employees as possible. Other initiators reproached their employer for violations of rights under employment relations, in particular with regard to the allocation of working time, too much overtime, how much time is used for meals and toilet breaks during working time. One of the initiators addressed a letter to the Ombudsman in which he described events in one of the corporations and pointed out the consequences of modern capitalism in society. He particularly emphasised and presented the position of employees who had actually become workers without any rights in a once highly productive and recognised enterprise in "social ownership". Considering the competence imposed on the Ombudsman by the Constitution and the Human Rights Ombudsman Act, the Office could only explain to the initiator in such and similar cases that the Ombudsman is not responsible for the supervision of private employers. Under the abovementioned act, the Ombudsman's competence is limited to dealing with cases, which refer to the violations of human rights and fundamental freedoms for which state authorities, local administration authorities and holders of public powers are responsible. The Labour Inspectorate of the Republic of Slovenia is responsible for the supervision of employers in the private sector. The inspection body may within its powers perform an inspection of the employer's business and in the case of irregularities observed it may take the necessary measures. For this reason the initiators were advised to turn to the Labour Inspectorate or to law enforcement authorities.

2.10.2 Supervision of social enterprises which obtain monies from the Fund for the Promotion of Employment of Disabled Persons

An initiative was processed, which was addressed to the Ombudsman by the mother of a disabled girl who is employed on a part time basis for four hours per day; in addition to some other disabled persons she was employed by an owner of a company who was selected as a result of the tender by the Fund for the Republic of Slovenia for the Promotion of Employment of Disabled Persons (Fund). The employer allegedly got into liquidity problems. He was late with wage payments, he paid them in different instalments, employees received wages lower than the legally determined minimum wage and they did not receive the full annual leave bonus. Because the Institute for Pension and Invalidity Insurance of Slovenia transferred the financial allowances for two disabled persons with shorter working time to the employer even these funds never reached either of them. With regard to the events in the company, the employees submitted a complaint to the Fund which, however, did not do anything. The Fund even enabled the employer to employ two more disabled persons. The Ombudsman conducted the necessary inquiries and communicated with the Labour Inspectorate of the Republic of Slovenia and the Republic of Slovenia's Fund for the Promotion of Employment of Disabled Persons. The Inspectorate found irregularities had taken place and issued two payment orders to a corporate body and a person responsible for minor offences made under the Employment Relationship Act. Attention was drawn to the fact that the control by inspection services, over all employers, who had obtained or were obtaining funds from the Republic of Slovenia's Fund for the Promotion of Employment of Disabled Persons, needs to be tightened. Due to weak control some employers misuse funds intended for the payment of wages to the employed disabled persons in order to increase their own capital but they do not pay out the wages. It is unacceptable that disabled persons themselves should have to fight with their employers, prove the illegalities, beg for their rights and be exposed to fear and deception because the responsible state authorities have abandoned their obligation to control.

2.10.3 Remedying delays in resolving objections and requests for the protection of rights at the Ministry of Defence

An initiator turned to the Ombudsman who stated that in 2005 he addressed the Ministry of Defence of the Republic of Slovenia, the Organisation and Personnel Service a request for the protection of rights to which he never received a reply. When he sought an urgent reply by telephone he was told that the request had not yet reached the top of the pile of requests to be resolved.

An inquiry was addressed to the Ministry in which information with regard to the given case was requested and an explanation demanded as to how the Ministry intended to clear the backlog of cases. In its reply, the Ministry explained that employees file approximately 600 applications for legal remedies per each year. Particularly due to the great backlog a special project group has been formed for their clearance, a timetable has been determined and the criteria set for the priority handling of the solving of all outstanding cases in the field of cases of labour law.

The Ombudsman was not satisfied with all explanations which is why an opinion was submitted to the Ministry that the State should adopt all necessary measures to ensure suitable conditions for the regular and efficient working of state authorities. Poor organisation and unsuitable personnel should not disadvantage a worker. It was pointed out that the clearing of backlogs would be monitored in the future.

2.10.4 Consequences of a candidacy for the post of the European Member of Parliament

The Slovenian Union of Journalists addressed an initiative to the Ombudsman with regard to complications, which occurred due to the candidacy for the post of a Member of the European Parliament, which was submitted by a journalist who is also a correspondent in a neighbouring country. Her employer, a public service, Radio-Television Slovenia, prevented her from performing her work as a correspondent from the neighbouring country and from working in the news department of RTV Slovenia since she notified her superiors at RTV about her candidacy.

The Ombudsman addressed an opinion to RTV Slovenia stating that the candidacy of a journalist who runs for election on a list of a political party cannot be a reason for her position with regard to her function and her position under labour law being legally and actually impaired. The prohibition or limitation of further performance of a work of a journalist only due to a candidacy on a list of a political party signifies, in the Ombudsman's opinion, an interference in the constitutional and fundamental human rights of the freedom of assembly and equal voting right (which ensures anybody the right to vote and be voted for). Moreover it can also signify an interference in the freedom of expression that is referred to in the Media Act (prohibition of any interference in the position of journalists due to expressing opinions).

In the Ombudsman's opinion, the fact that a journalist runs for election on the list of a political party does not mean that she/he cannot operate in a politically independent and autonomous manner. In no procedure was it proved to the journalist that she would have violated the principles of political independence and impartiality, which is why the Office was of the opinion that her work was taken away from her unjustifiably and without legal basis. It was proposed to the management of the RTV Slovenia that the journalist should be enabled to work in compliance with her employment agreement and to perform work which she had performed before her candidacy. Also after the temporary injunction by the Labour and Social Court in Ljubljana, the RTV Slovenia should have provided work immediately but they did not. That is why in the Ombudsman's opinion elements of unconscionable acts or incorrect work were made with which greater damage was incurred to RTV Slovenia. A notification about this was submitted to the Director-General and the Programme Council of RTV Slovenia. When writing this report the case handled had not yet been concluded.

2.10.5 Workplace bullying

As well as in previous years, in 2009 several initiatives were received in which initiators mentioned harassment at their workplace or bullying. Initiatives varied, some initiators turned to the Ombudsman because they wanted information or explanations, others submitted a request for an intervention with the employer or inspection service, a third category asked for help in solving their living conditions linked to unbearable conditions at their workplace.

Slovenian legislation defines the terms *bullying, harassment* and *pettiness*. The legislation demands from all employers in the State to provide their employers with a working environment in which they will not be subject to harassment or bullying and to adopt measures for their prevention. When processing initiatives the Ombudsman could only verify the activities made by the Labour Inspectorate of the Republic of Slovenia which is responsible for determining if employers have adopted measures for the protection of workers against sexual and other harassment or workplace bullying.

The victims of pettiness actually have almost no efficient legal help available. Many initiators mentioned that attorneys-at-law divert them from seeking legal protection since pettiness was supposedly hard to prove and the possibilities of success rather small.

The Ombudsman believes that for the prevention of all forms of pettiness, a body should be authorised, which could specialize in all the aforementioned questions.

The Ombudsman has assessed that the status in the field of preventing, detecting and remedying the consequences of workplace bullying, pettiness and harassment is not satisfactorily regulated. Thus, victims are left with their withdrawal from the working environment as the only method of protection of their health and integrity, obviously to the detriment of their professional career and economic situation. In future the Ombudsman will champion finding and using solutions which would ensure the respect of employees' rights in a fast and efficient manner.

2.10.6 Supplement for bilingualism

Several initiatives were received and processed which referred to the payment of a supplement for bilingualism (under the Public Sector Salary System Act) which is due to employees who work in areas of municipalities where Italian and Hungarian national minorities live. This supplement is defined by the Public Sector Salary System Act. The public RTV Slovenia is also found to be among the violators of the legislative obligation, in not paying out the supplement for bilingualism to journalists, employed in an official bilingual area in the Republic of Slovenia. The Ombudsman has formed an opinion in which she draws attention to the fact that the provisions of the law could not be understood in a manner that the supplement for bilingualism should be automatically attributed to all journalists who work in the area of municipalities where the abovementioned minorities live but only to those for whom the employer is aware must use the language of a minority during their work. The RTV Slovenia (as an employer) should, as it was communicated to them, in its internal documentation determine in an appropriate manner the work posts at which a knowledge of a minority language is necessary for the performance of work and that there are no reasons to have to regulate this question by law. The Ombudsman expects that the RTV Slovenia will adopt an internal protocol in which the mentioned work posts will be determined, and will define, with regard to any such work post, the knowledge of language as a condition of taking this work post, and in this way determine the amount of the supplement for bilingualism and begin to actually pay it out.

2.10.7 Irregularities in the payment system

In 2009 several initiatives were received in which irregularities of the payment system under the Public Sector Salary System Act were mentioned. Initiators claimed that when categorising work posts in wage grades criteria with regard to the complexity of the work performed and the level of education achieved were not always central. The Ombudsman is aware of the difficulty of establishing such a complex system as that of the public employees' salary system, nevertheless the State should ensure mechanisms with which various irregularities could be remedied; the Ministry of Public Administration was given a warning on this issue.

2.10.8 Employment of officials in bilingual areas

Among initiatives received, initiatives were processed which referred to employment of officials in bilingual areas. Some initiators considered that their rights were being violated including their right to employment due to a provision of the Civil Servants Act stipulating that the condition of the knowledge of the language of national minority should be determined

at all official work posts in authorities which are bound to use the language of a national minority as an official language. They were of the opinion that due to lack of the knowledge of the minority's language they were discriminated against and that such a legislative regulation was contrary to the provisions of the Constitution of the Republic of Slovenia which stipulates that everybody is guaranteed equal human rights and fundamental freedoms regardless of circumstances among which the language and qualification are also defined. After a detailed examination of regulations regulating this field it was determined that the legislative regulation does not interfere with the abovementioned right. All candidates who apply to take up an official work post in a bilingual area are treated equally and for everybody the same requirement applies, that in addition to their mother tongue they have to be proficient in the other language. In a bilingual area the condition with regard to the knowledge of two languages is equal for everybody whose mother tongue is Slovenian or the language of a minority.

2.10.9 Issue regarding seamen who are employed at the Genshipping Corporation, a daughter company of Splošna plovba Portorož

An issue regarding seamen who are employed at the Genshipping Corporation, a daughter company of Splošna plovba Portorož, was also dealt with. The enterprise is supposed to have its registered office in Monrovia, Liberia. According to our data, the company does not have business premises at the registered office, nor any employees, nor does it perform any kind of activity. The management of the company (which is composed of the same persons as the management of Splošna plovba Portorož which owns a 100% share of Genshipping Corporation) performs its activity in the territory of the Republic of Slovenia. The corporation is in compliance with the Corporate Income Tax Act treated as a Slovenian tax resident. The Corporation has concluded a collective agreement with the Seamen's Union of Slovenia (trade union) which is drawn up in the Slovenian language. Employment agreements are also drawn up in Slovenian in which it is also defined that in disputes arising from these agreements the jurisdiction is held by the competent court in Koper. Employment agreements are concluded with seamen on ships sailing under the Liberian flag.

The Higher Labour and Social Court in Ljubljana has already taken a position in one of the proceedings that in compliance with the provisions of the Private International Law and Procedure Act, jurisdiction is given to the Slovenian court and that Slovenian law shall apply. The Labour Inspectorate of the Republic of Slovenia, however, in one of the cases dealt with, decided that disputes arising from employment agreements between seamen and Genshipping Corporation are not within its competence. It claimed that the Employment Relationships Act applies only for employment relationships among workers and employers who hold a registered office in Slovenia. It seems incomprehensible to the Ombudsman that in the same case the jurisdiction is given to the Labour Court and not also to the Labour Inspectorate although the basis for the operation of both authorities is the same – the Employment Relationships Act. It is believed that the State should ensure the clarification of all legal questions linked to peculiarities of these employment agreements since the current situation with such lack of clarity could not give the benefit of legal certainty to employees.

PROPOSALS AND RECOMMENDATIONS

- The Human Rights Ombudsman of the Republic of Slovenia proposes to the Government that, more efficient supervision of responsible authorities, over the use of funds provided by the State under certain conditions to employers, should be examined and that its consistent implementation should be imposed on responsible Ministries.

- The Ombudsman proposes that the responsible authorities should ensure adequate staffing and other conditions, which will provide the exercise of rights of employees in the legally determined extent and enable decision-making regarding complaints or objections made by employees in legally determined timescales.

- The Ombudsman once again proposes and emphasises that it should be urgent that staffing at the Labour Inspectorate of the Republic of Slovenia be reinforced and it is also the Office's hope this will also happen as soon as possible.

- The Ombudsman proposes to the Ministry of Public Administration, with regard to the anticipated modifications and amendments of the Public Sector Salary System Act (ZSPJS), that an authority should be determined which will conduct inspection over the implementation of the provisions of this Act and will have the authority to order fines on the basis of the provisions of Article 44 of the ZSPJS.

- The Ombudsman proposes a legal definition of a single national authority which will perform preventive activities, counselling, control and sanctioning in cases of workplace bullying and all forms of discrimination in a workplace, and that be done for employees in the private and public sectors.

- The Ombudsman proposes a legal definition of a fast mandatory out-of-court procedure which by means of third person intervention would seek to ensure protection of a worker against bullying and all forms of discrimination in a workplace prior to the referral to judicial means.

- The Ombudsman recommends that the Government should examine the specific position of employees employed at daughter companies of Splošna plovba Piran who are not entirely subject to any national legal order and find suitable methods of protecting their rights.

- The Ombudsman recommends that the Government should work out all of the disproportions and irregularities linked to the enforcement of the new public sector salary system and define a clear strategy with regard to solving any problems encountered.

18. Out of a job because of epilepsy

An initiator submitted the Office a copy of a complaint addressed to his employer, a major retailer. He mentioned that only some days after taking up the work of a salesman the shop manager came to him with a question asking why during the interview he did not say that he had epilepsy. She demanded that his Employment Agreement be cancelled and then she prepared an Agreement on a Termination of Employment Agreement and demanded that he sign it. The initiator took the agreement offered to an attorney-at-law and in a letter forwarded for our attention requested from the employer a transfer to another shop. He was also of the opinion that the shop manager obtained his medical data without authorisation.

It was explained to the Initiator that the Office couldn't assist him directly since the Ombudsman has no powers with regard to private employers. He was advised not to sign the agreement prepared by the shop manager. If he was not able to agree matters successfully with the employer, the Office advised him to lodge a report with the Labour Inspectorate of the Republic of Slovenia. He was advised that he could again turn to the Office if he believed that the Inspectorate did not act in compliance with its powers. With regard to the misuse of personal data from medical records he can file a report with the Information Commissioner. If the initiator's submissions were correct, then he was a victim of discrimination. That is why his initiative was considered justified but the Office could not help him otherwise than as mentioned. **4.1-48/2009**

19. The procedure to recognize rights with regard to absence from work due to occupational injury

An initiator informed us about a problem when his employer, the Ministry of Defence, did not recognize a right with regard to absence from work due to occupational injury. He attached documentation to the initiative from which it is evident that the Ministry of Defence did not recognize the right because the procedure concerning the report of the occupational injury was not implemented in compliance with internal procedures of the Ministry. It is evident from the initiative that the initiator informed his superior about the accident at work but later, due to inadequate action on the part of his superiors, the prescribed procedure for reporting occupational accidents was stopped.

The case was pointed out to the Ministry of Defence and the Office's viewpoint was communicated: that for the exercise of rights with regard to an accident at work it is important that the accident has actually taken place at work and that all that may be imposed on the initiator is the obligation of reporting that which is appropriate to the circumstances and the extent of the injury. However, it is not acceptable that the responsibility for the correct conduct of all those who, by means of internal procedures, are tasked with further reporting and other duties in relation to the report of the injury be shifted to the injured person. The Ombudsman believes that the initiator had fulfilled his obligation when he had reported the accident to his superior. Later on it was also found that it was not the case that there was supposedly no accident or that it did not happen at work. That is why the rights with regard to the accident at work should be entirely recognized in the initiator's favour.

In its reply, the Ministry of Defence explained to the Ombudsman that internal procedures are actually defined so that there is too much risk for an injured person that due to potential mistakes of third persons there can be problems in exercising the said person's right. The Ministry committed itself to improving procedures with regard to reporting occupational injuries. All problems which were encountered by the initiator were remedied after our intervention and the initiator was able to exercise his rights successfully. The initiative was justified. **4.3-4/2009**

20. Harassment or workplace bullying

The initiator asked for the help of the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman). He mentioned circumstances which indicated a potential harassment or workplace bullying. The initiator sought help at several addresses but he was refused help or no reply was provided at all (Labour Inspectorate of the Republic of Slovenia), or they declared themselves not to have the competence (Inspection for the Public Employees' System) or they referred the case to other institutions (Defence Inspectorate of the Republic of Slovenia). He did not receive any adequate help from the Advocate of the Principle of Equality either, as the said the person only informed him about powers and various legal provisions and proposed that he file an initiative for the handling of an alleged discrimination whereby the initiator should define the personal circumstances, due to which he was not being treated on an equal basis. The initiator did not submit a repeated application to the Advocate since he had reported all circumstances known to him in the first report; and he himself was not able to work out due to which personal circumstance he had been treated unequally.

Upon the Ombudsman's inquiry the Labour Inspectorate submitted an explanation. It stated, that it was discovered that, in investigating the initiator's submissions, the exclusive competence is held by the Inspection for the Public Employees' System and the Defence Inspectorate exclusively since it was not clear from the report filed that the Labour Inspector could not see how any of the violations could have been within their competence.
In a reply to the explanation it was pointed out to the Labour Inspectorate that from the initiative submitted to the Ombudsman a possibility arises that the initiator may be a victim of bullying and that his employer had not provided any measures for protection against workplace bullying. The Inspectorate again explained, in its reply, that in the given case the competence is held by the Inspection for the Public Employee's System. Subsequently a telephone conversation was held with the Labour Inspectorate, where the Office was assured that the case would be processed from the point of view of the workplace bullying claimed. When writing this report, only an oral statement was given by the representatives of the Labour Inspectorate stating that insufficiencies were found with regard to the prevention of bullying; however a written reply with regard to the case has not yet been received. The case is thus not yet concluded. It is, however, presented in the annual report with the purpose of pointing out how helpless the victims of workplace bullying are. The applicable legislation especially does not enable efficient protection for victims since various inspection services declare themselves to be non-competent or are too formalistic. **4.3-45/2009**

2.11 PENSION AND DISABILITY INSURANCE

GENERAL

In their initiatives, initiators mentioned alleged injustices in the applicable legal regulation with regard to pension and disability insurance; they either requested that the Human Rights Ombudsman of the Republic of Slovenia to propose a modification of a certain legislative regulation, for the extension of rights or they only inquired as to whether they were entitled to certain rights.

When processing an issue which referred to a widow-er's pension, it was explained to the widow, who after the death of her husband, did not receive the widow-er's pension because she was too young, that the conditions for obtaining the widow-er's pension had been tightened by the Pension and Disability Insurance Act as the age required to be eligible for the widow-er's pension had been increased. She expected the Ombudsman to help modify the law so that she would be entitled to the widow-er's pension. The Ombudsman made an assessment that the existing regulation concerning the widow-er's pensions is not discriminatory. Up until now also the Constitutional Court of the Republic of Slovenia has not cancelled or removed any provision of the law which refers to the issue dealt with.

In 2009 the Act of the Rights Stemming from the Pension and Disability Insurance of Former Military Personnel Act was modified and amended. Among other matters, the act introduced the right to a widow-er's pension. Under this act or under the Pension and Disability Insurance Act, in addition to the old-age pension or disability pension, a part of the widow-er's pension may be paid out to a widow or a widower who is entitled to the pension on the basis of the deceased holder's entitlement. Because some of the Ombudsman's proposals and recommendations recorded in the annual report for 2008 were taken into account, some reasons due to which initiators turned to the Ombudsman in 2009 relating to this field no longer existed.

2.11.1 Recipient of a partial (old-age) pension does not hold the right to an yearly bonus

An initiator informed us that due to the incorrect regulation of the Retirement and Disability Insurance Act, he cannot obtain the yearly bonus (annual leave bonus) either in the form of a decreased amount nor as a proportionate (half) amount. The initiator has been granted a right to a partial old-age pension and he remained in the employment relationship on a part-time basis. In compliance with the legislation on employment, the employer paid a proportionate amount of the annual leave bonus, that is, half of the amount. The Institute of Pensions and Invalidity Insurance of Slovenia did not pay its proportional part and refused the request of the initiator by means of its formal decision. The Ombudsman observed that there are two shortcomings in the Retirement and Disability Insurance Act: firstly, Article 58 of the Act does not regulate a partial invalidity pension at all, but only the partial (old-age) pension. Accurately it should read only "partial pensions" but it does not read this way which is an unacceptable mistake made by the legislator upon the adoption of this act (the Amending Act in 2005). But a more severe irregularity is the fact that the legislator has not remedied this irregularity for several years. In addition, the first paragraph of Article 136 (b) stipulates that the yearly bonus should also be received by the recipients of a partial invalidity pension in a lower amount.

Upon the processing of the initiative, the Ombudsman provided an opinion that in this case the request for checking the constitutionality of the Article 136 (b) of the Retirement and Disability Insurance Act cannot be lodged because after the administrative proceedings had concluded, the initiator filed a legal action before the Ljubljana Labour and Social Court against the final decision of the Institute for Pension and Invalidity Insurance. These proceedings, however, have not yet finished during the time of writing this report. The Ombudsman also believes that such a superficial arrangement of a regulation, or rather a shortcoming causes more proceedings than would be necessary if both the legislator and the responsible ministry were to immediately start the procedure for the appropriate amendment of the Retirement and Disability Insurance Act.

2.11.2 34. Article 34 of the Retirement and Disability Insurance Act (ZPIZ-1) does not guarantee all rights arising from disability insurance

Several initiators proposed that the Ombudsman file a request at the Constitutional Court of the Republic of Slovenia with regard to checking the constitutionality of the second paragraph of Article 66 of the Retirement and Disability Insurance Act. Under this provision, the holders of the insurance obtain their rights under the disability insurance only in the case of the First and Second categories of disability, but they cannot obtain them on the basis of the Third category of invalidity. This right is not conferred on them if for the most part of their mandatory total insurance they were insured under another legal basis (from an employment relationship) which was the basis for the enforcement of a broader extent of rights arising from the mandatory insurance.

The Ombudsman assessed that the following legislative regulation is not equitable: the legislation under which the insurance holder who is categorized with the Second invalidity category cannot enforce rights from disability insurance to their full extent. The Ombudsman, however, did not file a request for checking the constitutionality with regard to this regulation because from the data provided by the Constitutional Court it is evident that two requests for checking the constitutionality of Article 66 of the Retirement and Disability Insurance Act have already been lodged.

In 2009 the modernisation of the retirement insurance system began. As a rule, such activities cause extraordinary pressure on the Institute for Pension and Invalidity Insurance of Slovenia since many more insurance holders lodge requests for the enforcement of rights arising from pension and disability insurance. From previous experience it can be expected that in particular in 2010 the number of claims will rise significantly, which generally leads to the extension of deadlines for the decision-making in these cases, but consequently also the increase of the initiatives processed by the Ombudsman. It would be appropriate for the Institute for Pension and Invalidity Insurance of Slovenia to prepare itself adequately with regard to its personnel and provision of information and for an expected surge in required responses.

2.11.3 Disability insurance

In comparison to the previous year, fewer initiatives were received in this field. It is observed that this is the case because the Institute of Pension and Invalidity Insurance took account of the Ombudsman's proposals from previous years that beneficiaries should be appropriately notified in a timely manner of the reasons for changes.

The initiators addressed initiatives to the Ombudsman in which they asked for various explanations in relation to their rights or asked for the Ombudsman's intervention with authorities providing assessments on their remaining work capacity. The expert opinion of the Invalidity Commission was often the cause of submitting the initiative to the Ombudsman. A typical initiative expressed dissatisfaction with the procedure and the resulting opinion pro-

vided by the Invalidity Commission. Because the initiator disagreed with such opinion he then, in an initiative to the Ombudsman, stated everything about his illnesses due to which he was, in his opinion, unable to work. He expected the Ombudsman to help him pursue his rights. In this case it was only possible to explain to the initiator that the Ombudsman cannot influence the Invalidity Commission in its expert opinion since she does not have such competence. Neither can the Ombudsman revoke, cancel or in any way modify decisions issued by the Institute of Pension and Invalidity Insurance. Neither can she judge the correctness of the expert opinion.

More initiatives were received and dealt with in which initiators informed the Ombudsman that they did not receive the disability allowance for a period of work performed for a shorter period of time than full-time, or rather partial invalidity pension. These insurance holders are persons with work-related disabilities who have enforced the right for what is usually part-time work at another suitable work post and were not transferred to the new work post because, after the final decree on disability, they have still been unable to perform the work due to illness (another illness, not being the one that was the basis for the enforcement of rights arising from the disability insurance) and have been on sick leave. Such persons have found themselves in such a situation. Until initiators have finished their sick leave and started to work for a shorter period of time, they have not been eligible to receive allowances from the disability insurance and they only received allowances under regulations regulating health insurance which comprised only half the amount attributable to full-time work. During the handling of such initiatives the Ombudsman could only explain to initiators that, in her Opinion, the legislative regulation in the field of health insurance and disability insurance is not adequately harmonised.

In one of the initiatives handled the initiator was “deprived” because his employer omitted the legal obligation to transfer the initiator to other work posts with half-time work in compliance with a final decree of the Institute of Pension and Invalidity Insurance and conclude a new employment agreement with him. The Institute informed the employer correctly that the decree became final and executable, while at the same time the employer was invited to submit data for the calculation of the disability allowance and submit a new employment agreement. The employer did not do that, nor did he transfer the worker but the worker remained on sick leave, holding the right for an allowance from health insurance which was, however, paid out only for half-time work. Thus the Institute did not pay the disability allowance to the initiator because the said person did not even start to work at the new work post not even for a shorter period of time than full-time. The initiator was convinced that his rights had been violated by the Institute of Pension and Invalidity Insurance. It was explained to the initiator that his rights had, indeed, been violated by the employer. It was proposed that his employer’s conduct be reported to the Inspector of Labour.

When processing initiations in which initiators stated that their receipts from disability insurance are too low and do not provide an adequate standard of living, it was explained to them that receipts of a disabled worker from the disability insurance, by their very nature, are not a social right. This is also why the level of these receipts does not depend on the material status of a beneficiary or his/her family. The Ombudsman has no competence to influence the increase in the amount of the invalidity pension or the disability allowance. These rights are regulated by the Pension and Invalidity Insurance Act. Conditions for the enforcement of each of these rights and its calculation are exactly determined in this Act. The Ombudsman cannot influence the authorities in deciding on rights arising from the disability insurance in order to overlook, in the case of an individual, any of provisions of the Act and determine a higher amount than the individual is entitled to under the or by low.

PROPOSALS AND RECOMMENDATIONS

- The Government should consider the possibility of amending the Pension and Disability Insurance Act (ZPIZ-1) so that the proportionate part of the yearly bonus will be paid out to recipients of a partial (old-age) pension.
- The Government should consider the option of amending the ZPIZ-1 so that the insurance holder from Article 34 of the ZPIZ-1 is categorised into the Third category of invalidity might enforce rights from the disability insurance to their full extent even though the said person is mainly insured for all cases (a greater extent of rights) in connection with the second paragraph of Article 66 of the ZPIZ-1.
- The Government should consider the possibility of modifying the legislative regulation with regard to health and disability insurance so that the insurance holder will be able to start to exercise his/her right to a partial invalidity pension or disability allowance even if the insurance holder, due to a temporary absence from work, can only start working on a part-time basis.
- The Institute for Pension and Invalidity Insurance of Slovenia should, due to anticipated changes in the field of pension insurance, make suitable preparations in the field of personnel and PR as it is anticipated that more insurance holders than normal will lodge claims.

21. Pensions of officers of the former Yugoslav National Army

In the beginning of 2009, more officers of the former Yugoslav National Army (ex-YNA) (hereinafter referred to as initiators) have again turned to the Human Rights Ombudsman of the Republic of Slovenia with a common letter the content of which referred to alleged irregularities with their retirement. They claimed that as officers of the ex-YNA they were discriminated against and that their rights to pension and disability insurance had been violated ever since 1991 even though they were the citizens of the Republic of Slovenia (by origin or under Article 40 of the Citizenship of the Republic of Slovenia Act) and had permanent residence in the Republic of Slovenia, and none of them were punished for any criminal offence linked with their military service. They only obtained a pension after 1998, but from 1991 until the administration of a pension under Slovenian regulations they did not receive a pension nor did they hold health insurance. Simultaneously they claimed that neither the Institute of Pension and Invalidity Insurance of Slovenia nor the Ljubljana Labour and Social Court took into account the decisions of the Constitutional Court of Slovenia (U-I-155/00, Up-49/05, Up-115/05, Up-1028/05, Up-190/01). The initiators proposed to the Ombudsman that everything necessary should be done so that the Republic of Slovenia would immediately ensure the commencement of the implementation of the Agreement on Succession Issues, ratified in 2004, and which provision should, under Article 8 of the Constitution of the Republic of Slovenia, in the section which refers to the payment of military pensions to its own citizens, be implemented directly, and that out-of-court settlements should be concluded with them, whereby the following condition should be met: rights from pension and disability insurance should be granted to them on the basis of decrees issued under military regulations, taking into consideration the abovementioned decisions of the Constitutional Court. A letter with the same content was submitted by the retired officers of the ex-YNA to other state authorities (the President of the Republic of Slovenia, the National Assembly and others).

When dealing with the letter the Ombudsman found that the mentioned circumstances and the applicable legislation does not establish the right to a (renewed) action. Since the beginning of the Office's operation, the Ombudsman has dealt with the individual initiatives of previous military insurance holders among whom also, numbered the signatories to this letter. With regard to the open question raised by the initiators – how to guarantee a right to pensions for the period from 1991 to 1998 to some of them – the Ombudsman took the position that this situation was already regulated by the Act Amending the Act of the Rights Stemming from the Pension and Disability Insurance of Former Military Personnel Act from 2006. This Amending Act was founded on a decision of the Constitutional Court of the Republic of Slovenia (U-I-155/00). The amendment of the law stipulates that a beneficiary of a pension who has obtained citizenship under Article 40 of the Citizenship of the Republic of Slovenia Act, is, at his request, entitled to an old-age pension, prior pension, invalidity or widow-er's or family pension. The conditions for these are from the fourth paragraph of Article 2 of the Act of the Rights Stemming from the Pension and Disability Insurance of Former Military Personnel Act (former military insurance holders who as of 18 October 1991 lacked a maximum of five years service with regard to age or pension qualifying period to claim the pension under military regulations) or a claimant is paid out retroactively if the said person has not been insured, or from the first day of the month following the expiry of active military service, or by insurance with an institution, but at the maximum from 18 October 1991. Monthly installments of a pension, to be paid later, shall be paid out to the beneficiary in amounts, which he would have received if they had been paid out regularly for the months for which they are paid.

The initiative was not justified. The Ombudsman did not consider it within her competence to make a stand with regard to the justification of the initiators' claim. With regard to the initiative handled, the standpoint has already been adopted that in a State governed by the rule of law, misunderstandings and disputes should be solved in legal proceedings before competent authorities. The Ombudsman may only participate with regard to this within the framework of his competences determined by the law. **3.1-5/2009**

22. Termination of payment of a pension and severe hardship of an initiator due to mistakes of employees

The initiator addressed an initiative to the Ombudsman in which she mentioned several problems, among other matters, the fact that for December 2008 the payment of the invalidity pension and disability allowance (benefits) was terminated. She discovered this fact when she wished to withdraw money from her bank, from the account into which the paying authority was transferring both benefits. An employee of the Institute of the Pension and Invalidity Insurance of Slovenia, Celje Branch, explained to her that benefits were not transferred to her account because supposedly she was living abroad and she did not submit the prescribed certificate (the certificate of a livelihood). The initiator has been living in Slovenia for her entire life which is why the fact that the two benefits granted were not paid out caused her extreme distress. The initiator also mentioned that in November 2008 she received a document from the Institution which had to be certified by the Celje Administration Unit. Questions about the address of her permanent residence were observed in this document, and it was queried whether she still lives there. The certified document was submitted to the Institute by means of registered mail towards the end of November (2008).

During the processing of the initiative, two circumstances which influenced the termination of the payment of the benefit were unclear. Firstly, why did the Institution claim the submission of the certificate of the existence of livelihood although she has never lived abroad? The prescribed form, with regard to livelihood, must be submitted by the Institute to the beneficiaries of benefits stemming from pension and disability insurance who live permanently abroad. Although the initiator was not bound to submit the completed form she filled it in and submitted it to the Institution in November 2008. For this reason it was not possible to determine why the cause of the termination of the benefit was supposedly the delayed submission of the certificate required. The second unexplained circumstance was: how the data on the initiator's residence abroad was included in the relevant record?

The Ombudsman's finding that the certificate, which was correctly filled in by the initiator, was submitted to the Institute for Pension and Invalidity Insurance within the prescribed period of time, and it could not have been the cause for the termination of benefits, which was also confirmed by the Institution. A mistake was made at the Institution because the certificate was filed among certificates which were supposed to be verified only by the middle of February 2009. This incorrect act was explained by the Institution as having taken place with a great number of certificates received from abroad (there were more than 30,000 of them). Because the initiator's certificate was placed into a wrong file, in December 2008 it was considered that the initiator had not submitted the certificate and that is why the Institution determined (without a decision or a decree) that the initiator had not met the conditions for the continuing payment of benefits.

The initiative was justified. After the receipt of the Institution the Ombudsman submitted her standpoint that in spite of the great workload imposed on employees who are burdened with various documents, which is one of the reasons for the mistake, it is expected that an apology should be provided to the beneficiary in the case handled as well as in all similar cases. The Institute for Pension and Disability Insurance later informed the Ombudsman that an apology for the mistake committed had been submitted to the initiator. **3.2-1/2009**

2.12 HEALTH CARE AND HEALTH INSURANCE

GENERAL

This year the number of initiatives in the field of health care and health insurance decreased by approximately 15 percent. This might be attributed to the commencement of the functioning of patients' rights representatives established by the Patients Rights Act. A more thorough analysis of this data will be made only after the examination of their annual reports which must also, be submitted to the Human Rights Ombudsman of the Republic of Slovenia by 15 March, at the latest, in respect of the previous year.

In general, it is observed that patients are still too poorly informed about all the options and routes for enforcing their rights which is why they often try to solve the same problem with the assistance of various authorities or organizations. Because patients in particular know so little about the options, regarding the enforcement of their rights within the organization or the institution, where the violation of rights was committed that they miss relatively short appeal deadlines stipulated by the law. It has therefore been proposed to the Ministry that it should formulate a uniform notification or a poster which would be placed in visible places in all health care institutions, providing key information to patients in an understandable manner.
In spite of the several expressed, warnings in the Ombudsman's annual reports, that the procedure concerning the granting of concessions for the performance of the health care services on the basis of public tender need to be regulated, the Ministry of Health did not change the questionable granting of concessions on the basis of individual applications or requests. Applicants were only answered by means of a letter stating that until the adoption of the amending act new concessions will not be issued even though the Ministry should issue a decision regarding their applications in administrative proceedings. In procedures concerning the termination of concessions insufficient care was taken about patients who suddenly found themselves without their chosen doctor since patients were not informed about this fact in a timely and suitable manner. That is why it is high time that the procedure of granting concessions be regulated by legislation and be linked to the actually determined needs in compliance with a network of providers of health care services.

Particular attention is drawn to the fact that, while processing individual cases at the Ombudsman's Office it was observed that, the system regarding the supervision of health care services providers is inadequate. Internal professional audits only rarely detect and remedy irregularities; only seldom do they draw attention to professional errors which is why complainants understand irregularities rather in the form of a defence of conduct performed by professional colleagues than an objective assessment of the actual situation. In procedures before bodies of the Medical Chamber of Slovenia, which deal with violations of medical deontology, applicants have no active role, which is why they cannot influence the procedure at all. Neither can applicants rely on the Chamber's Prosecutor as the Prosecutor, as a rule, does not make an appeal against decisions made by the first-instance body determining violations. Applicants complaining of irregularity may only find their satisfaction in long-lasting court proceedings as the Ministry of Health by means of performing administrative control cannot determine professional violations. Thus distrust in the health care system, which should be establishing as objective and transparent a manner of processing irregularities as possible, is increasing.

Also in the field of health insurance it is observed that information for patients (insurance holders) regarding rights guaranteed by the mandatory health insurance and procedures for their enforcement should be improved. The Patients Rights Act is unfortunately not applied in this field and as a result the role of patients rights' representatives is greatly limited. It is difficult for patients to understand that representatives are authorised only to deal with "universal patient's rights" and not also with rights arising from insurance, which are greater in number, and violations of which are also more frequent. That is why it is proposed to the Ministry that the Ministry considers the procedure for enforcing all rights be unified and assistance by representatives be ensured with regard to any right that a user of health services has in the healthcare system.

2.12.1 Comments on the proposal of the Health Services Act

Within the framework of the public debate regarding the proposal of the Health Services Act the Ombudsman attempted to determine how the solutions proposed will influence the enforcement of the constitutional right to health care. It was also verified how our comments and proposals were taken into consideration by the author of the document with regard to legislative regulation which were submitted directly to the Ministry during the consideration of individual initiatives or described in the Office's annual reports.

It is believed that the proposer set a suitable deadline for the public discussion, the documentation prepared was accessible on the web pages of the Ministry of Health, and the instructions for the public debate were also prepared. The question has arisen with regard to the objectivity or the correctness of the analysis of the present situation from which it has not been possible to determine how much the situation in health care has been influenced by the applicable normative regulation and how much by the disregarding of this arrangement.

When considering the analysis and the proposed new regulation it was not possible to avoid the long-lasting irregularities which received great attention from the public, such as inefficient management of investments, irregularities concerning the paying for the doctor's work, non-recognition of medical (and other) errors and the fact that, due to the assurance of patient's protection, doctors should not perform as much work as demonstrated. In no profession, which is linked to working with people, should it be allowed for an individual to work more than 400 hours per month. The analysis should have more precisely determined the reasons for the shortage of doctors. The documentation particularly mentions the unsatisfactory work of inspection services in the field of the carrying out of health care services, but the act proposed imposes additional tasks to these particular services which are not evaluated or mentioned in the assessment of the consequences of the act.

More than 100 comments and proposals were formulated by the Ombudsman's office on individual provisions of the act proposed, and the further preparation of the legislative text will be actively followed.

2.12.2 Poor organization in health care institutions

The Health Services Act is supposed to contribute to the better organisation of providers of the healthcare services whereby the Ombudsman does not support the proposal that existing public institutions be transformed into public corporations. It is believed that the healthcare services should remain a public service which is performed without the intention to obtain profit, but it should at any rate be organized more economically and in a user-friendly way.

From the initiatives dealt with, the Ombudsman observes that poor organisation and communication are a problem at a system level and not only the problem of an individual provider of healthcare services. The Ombudsman expects that a public institution which performs tertiary healthcare, that is the most demanding healthcare service, should organise its work more adequately and in particular protect patients in an appropriate manner against the mutual disagreements of healthcare professionals.

2.12.3 Disputable implementation of public powers

The Health Services Act provides that individual chambers and associations should also implement public powers awarded by means of public tender by the minister, responsible for health. Public powers are an administrative task (or power) which may be transferred by the State, with certain conditions granted, to be implemented outside the field of functioning of state authorities, as the entity who has been entrusted with such responsibility performs it in a more effective, professional manner or more adapted to users than when implemented by state authorities. That is why for the same principles should apply for the performance of public powers and the decision-making process as for state authorities.

A non-governmental organisation informed the Ombudsman about an alleged unequal treatment of psychotherapists with regard to the payment for supplementary professional training implemented by the Chamber of Psychotherapists of Slovenia (Chamber) within the framework of a public power. Members of other associations in particular had to pay higher costs of training which is a condition for renewing their licence. The payment obligation was thus dependant only on a certain personal circumstance (the membership in the Chamber) which in the initiators' opinion discriminated against a number of psychotherapists with regard to opportunities that should be equal for everybody.

An inquiry was made at the Ministry of Health and in the Chamber. An explanation of reasons which led to various charges for services with regard to the membership was expected, and the Ministry of Health was required to provide a viewpoint regarding the question of unequal treatment of candidates for supplementary professional training.

The Ombudsman agrees with the answer of the Chamber and its submissions that joining societies to enforce common interests is everybody's constitutional right and the State also has to respect it in such a way as to leave it to the autonomous decision-making power of societies with regard to how they organise themselves internally and what benefits they offer to their members. It is without doubt that every society offers its members certain services under more convenient conditions than performed within the framework of a registered activity for external users. However, a question has been justifiably raised as to whether a society can, while performing its activity, which is not only in the interest of its members but in a broader (public) interest recognized by the State by means of a conferral of public powers, charge different prices for the services performed or rather, such different prices as are recognised in the case of providers who implement their services within the framework of the ordering party's public powers.

In the case dealt with, the Chamber itself did not implement training within the framework of public powers but in compliance with its general act, and it issued an authorisation to the organiser of supplementary professional training from which a certain number of points to renew the licence is obtained. In the application, the organiser interested in providing the training sessions also had to indicate the amount of the participant fee to be charged. When the competent body of the Chamber was making a decision regarding the granting of the authorisation it was obviously also informed that the organiser will charge less for the participation fee to the members of the Chamber. In the Ombudsman's opinion, by the

conferral of the authority to such an organiser, the Chamber did violate the principle of impartiality as the benefit offered undoubtedly influences the objectivity of decision-making. Such conduct, according to the Ombudsman's opinion, also had elements of corruption as stipulated by Article 2 of the Prevention of Corruption Act. Because of following the information obtained a similar charging of various fees for services also occurred in cases of some other holders of public powers in the field of healthcare, the Ombudsman proposed that a position regarding this question be taken by the Corruption Prevention Commission and an opinion of principle be issued. The Commission confirmed the Ombudsman's opinion concerning the corruption.

It was considered that the abovementioned violation of the principle of impartiality also means a violation of the principle of equality determined by Article 14 of the Constitution of the Republic of Slovenia as it unduly or without a justified reason confers various obligations (benefits) only on the basis of the status of a member of the Chamber.

Hence the Ombudsman proposed, to the Chamber of Psychotherapists of Slovenia, that the discriminatory practice concerning different charging of participation fees for the participation be eliminated in the form of permanent professional training. This would enable the obtaining of points for the renewal of a licence when deciding on authorised organisers of training. The Ministry of Health was also asked to verify the manner of implementing public powers in all chambers and associations in the field of health care and ensure that decision-making of competent authorities within this framework will not be discriminatory to individuals and compliant with the law.

The Chamber of Psychotherapists of Slovenia returned public powers to the Ministry before the end of the year. The case is described mainly in order to prevent such dubious acts in the future, and during the discussion of new health legislation an opportunity for additional consideration regarding these issues will be given.

2.12.4 Implementation of the Patients Rights Act

After almost two years of the enforcement of the Patients Rights Act there would have to be reports made on improvements concerning the practice that was often criticised in past annual reports.

Unfortunately the situation in this field is changing very slowly since medical professionals are still unware of the fact that something more needs to be done for the establishment of partnership relations with a patient than they were used to until now. The Ombudsman's Office is aware of a huge discrepancy between rights guaranteed and actual possibilities which are limited by the shortage of personnel, equipment and financial means but all this does not provide an excuse for an all too often demonstrated arrogant and ignorant attitude to a patient and his/her expectations. Within the network of healthcare providers, responsible leaders are missing; leaders who, by means of the organisation of procedures, will also implement the requirement for respect for a patient's time. It is, in fact, too often observed that patients do not complain much about waiting periods but rather about the fact that they are not even informed about them or that none of the persons responsible are able to explain when a healthcare treatment may be expected.

2.12.5 Implementation of the Mental Health Act

A year or so has passed from the enforcement of the Mental Health Act, to the commencement of the application. Immediately at the very outset, extraordinary problems occurred with regard to the healthcare service providers and courts which have to decide on all cases of treatment against the will of a patient. It is observed that the act has regulated certain questions in too much detail (for example, with regard to the data in the

application to the court), which causes extraordinary problems in particular to the providers of healthcare and social services. A very different practice by the courts is reported in the chapter on the administration of justice. It is believed that the Ministry of Health should make a thorough analysis regarding the implementation of the act and on its basis prepare appropriate amendments to the legislation which will obviously protect the rights of patients, but they will not make unnecessary complications with regard to procedures or even enable a (too) broad usage of personal data. In any case, the Government should, as soon as possible, prepare the national programme on mental health and all implementing regulations, which were envisaged by the act. The Government is also bound to these by the recommendations of the National Assembly which were adopted upon the examination of the 2008 Ombudsman's report.

2.12.6 Does a grille on the hospital's window violate human rights?

As an interesting matter, a question may be mentioned which was submitted to the Ombudsman's Office by one of the hospitals. The hospital was interested in whether by installing protection or grilles at the hospital's windows human rights and fundamental freedoms might be violated. They applied to the Ombudsman because none of the institutions, from which they were seeking an answer, knew if there was a justified legal basis and how to assist them. Due to the fact that the replies of other institutions were not given we attempted to formulate an answer of principle.

The Initiators' attention was drawn to the fact that the task of the Ombudsman is not to explain regulations which is why, with regard to the suitability of the protection of patients, they should, according to the Ombudsman's opinion, turn to the Ministry of Health. The Ministry is also the founder of all public healthcare institutions at secondary level in the Republic of Slovenia. The grilles on the windows of buildings, in which people reside, usually raise negative feelings that people are deprived of or restricted from freedom of movement in a certain manner. They are only suitable in cases when protection cannot possibly be ensured in another manner (by means of special protection devices which achieve the same purpose and which do not raise unpleasant feelings of captivity and restriction of rights or freedoms). The Ombudsman believes that the installation of grilles on windows is appropriate only when other methods of protection are not possible to ensure safety. The installation of grilles on windows does not mean a violation of human rights or freedoms but a professional answer should be obtained as to whether such protection contributes to the more successful treatment or rehabilitation of patients.

PROPOSALS AND RECOMMENDATIONS

- The Ombudsman recommends that the Government should prepare all implementing regulations envisaged by the Mental Health Act and the National Programme on Mental Health as soon as possible. The Ombudsman recommends the preparation and adoption of amendments to the Healthcare Services Act which should regulate the question regarding granting of concessions in a more adequate manner. Until the adoption of the Act, she recommends the decision-making, regarding applications for granting concessions, be made under the General Administrative Procedure Act.

- The Ombudsman recommends that the Ministry of Health should regulate professional and administrative control over the implementation of healthcare services and implementation of public powers held by chambers and associations in the field of health care in a more appropriate and efficient manner.

- The Ombudsman recommends that the Institution of Public Health of Slovenia should ensure adequate information to insurance holders regarding peculiarities which occur each time there are changes of rights arising from mandatory health insurance.

- The Ombudsman recommends that the Ministry of Health should dedicate more attention to the promotion of patients' rights and procedures concerning their enforcement and determines the method of informing patients on their rights.

- The Ombudsman proposes that healthcare regulations should determine an obligation on the issue of a special form which will clearly determine instructions for conduct in a period of sick leave to every patient, in particular with regard to the options for movement outside the place of residence.

- The Ombudsman recommends that all educational institutions, which provide education for professions in health care, should include more contents from the field of communication with a patient and his/her close relatives and friends, in their programmes.

23. Reimbursement of costs of medicines purchased abroad

A very sick patient, the initiator, expected the Ombudsman to convince the Health Insurance Institute of Slovenia that on the basis of the mandatory health insurance the costs of a medicine product which he receives from abroad should be reimbursed. The chosen doctor, upon a proposal made by a doctor specialist – rheumatologist, prescribed him a medicine product which is not capable of being obtained by prescription in Slovenia but it is possible to purchase abroad. There is no other suitable medicine product available for the initiator. Because the medicine product mentioned, according to the assurance provided by the Health Insurance Institute of Slovenia, does not have a marketing authorisation in the Republic of Slovenia and hence is not enlisted in any of the prescribed lists of medicine products, the initiator has to cover the costs of the medicine product for himself. The initiator cannot cover these costs.

During the processing of the initiative the Ombudsman has observed, among other matters, that the rules regarding mandatory health insurance stipulate that an insurance holder is guaranteed medicine products which are listed by the Institution and prescribed on a prescription by a doctor. This right refers to medicine products which have marketing authorisation in the Republic of Slovenia, or rather to medicine products which do not have marketing authorisation but they have a special import authorisation.

An inquiry was made to the Agency for Medical Products and Medical Devices of the Republic of Slovenia. In its reply the Agency explained that the medicine product did not have marketing authorisation in the Republic of Slovenia, neither has the procedure to obtain this permission been initiated; that other medicine products for the treatment of the illness are available, and it draws attention to the legislative option that a medicine product may be marketed also, among other matters, if, on the basis of a request submitted by a doctor treating the patient, the body competent for medicine products allows so for the needs of an individual patient.

The Ombudsman believes that initiator was not limited in the right to a medicine product from the mandatory healthcare insurance because in the Republic of Slovenia other suitable medicine products are available for his illness. In a given case it would be correct that the doctor treating the patient – initiator would take advantage of the abovementioned provision of the law and lodge a request by the competent body for the issue of a marketing authorisation for a medical product which he/she has prescribed to the initiator. It is obviously easier for the doctor to justify with his/her knowledge the need for a specific medicine product for a given patient and this should not be transferred on to the lay patient Hence the initiator was advised to discuss this matter with his doctor. **3.3-8/2009**

24. Instruction regarding the behaviour of an insured person during the period of sick leave due to an illness

Initiators submit to the Ombudsman, increasingly frequently, that they do not know how to behave in the period when they are absent from work due to an illness or an injury (they are on sick leave). A disregard of doctor's instructions regarding the behaviour of a patient during sick leave due to illness (or injury) may have severe consequences for an individual and in certain cases it is also a reason for the termination of their employment agreement.

The Health Care and Health Insurance Act does not directly regulate the obligation of an insurance holder that in the period of sick leave due to illness he/she should follow the doctor's instructions (personal doctor, appointed doctor or the health commission), neither does it provide for the obligation of a doctor that the insured person be given instructions for their conduct during their absence from work due to sickness. In Article 35 the Act stipulates that the insurance holder is not eligible for compensation during a temporary absence from work due to illness if, in this time, the said person performs any profitable work (which, however, is not defined in the continuation of the text). This Article also regulates the withholding of a right to the payment of compensation "if the authorised doctor, medical commission or a supervisory body discovers that the insurance holder does not follow the doctor's instructions or if without the permission of a doctor he travels away from the place of

residence", whereby the payment of the compensation is withheld for the time period until the insured person starts to follow the doctor's instructions. The compensation withheld is paid out for all the time of the permitted absence from work.

It is only the Rules regarding mandatory health insurance (Rules) that regulate, in detail, the obligations of the insured person to follow the doctor's instruction and the obligation of a doctor to issue instructions to the patient regarding behaviour in the period of absence from work. And in particular Article 233 of the Rules regulates the obligation of the insured person in the period of absence from work due to illness who is treated at home, that during all the time of absence from work he/she should stay at home unless the permission of a doctor is obtained for a departure from the place of residence.

The Ombudsman observes that this regulation is insufficient and in some places also unclear. It is insufficient because the law does not define the right of the insured person to obtain instructions regarding his/her behaviour during the absence from work due to illness. That is why it would be appropriate that, in the period of modifying the law, this insufficiency be eliminated. The provision of Article 233 of the Rules is also unclear when the terms "home" and "place of residence" are to be used if under these terms the place of permanent residence is meant as it is determined in the third indent of Article 147 of the Rules. A more clear arrangement of these terms would, in the Ombudsman's opinion, remove many inconveniences in the implementation of these regulations.

Hence, the Ombudsman proposed to the Health Insurance Institute of Slovenia (Institute) to examine the possibility that by means of a general act it prescribes one or more forms on which a doctor could write instructions regarding the insurance holder's behaviour in the period of absence from work due to illness regardless of the fact who the payer of the compensation is (the employer, or the Institute). The prescribed forms might include all the necessary instructions in advance, and the doctor would only mark which ones are applicable for an individual patient. One issue of the form would be served on the insurance holder and the other in the medical documentation of the insured person. In the Ombudsman's opinion such a procedure would eliminate the doubts of insured persons on how to behave during the period of an illness and all excuses made by individual insurance holders, who justify their work or activity during the time of illness by pointing insufficient instructions to their doctor's.

The Institute replied to the Ombudsman that the proposal given is welcome and it will be submitted for discussion and the group preparing the changes on the Rules will be informed about it. The Institute forwarded our proposal also to the Ministry of Health where the new act is being prepared.
3.3-41/2008

25. Inappropriate communication of doctors with the relatives of a deceased patient

The parents of a twelve-year-old boy who died in the University Medical Centre (UMC) Ljubljana, after being transferred there from the University Medical Centre Maribor, turned to the Ombudsman. In their initiative it was written "an integral examination of all procedures of the treatment of our B. is requested". The parents, who were grief stricken, searched for an institution which would assist them to explain the circumstances during the period when the boy B was under treatment in the UMC Maribor.

Inquiries regarding the circumstances of the case were made in both public institutions where the deceased boy was treated. Two months after the receipt of the initiative all documentation requested was received and with the consent of the initiators it was referred to the Medical Chamber of Slovenia for examination. From the letter by the UMC Maribor it is evident, that an internal professional control was made on the "basis of the letter of the Human Rights Ombudsman", and from the opinion of a commission for internal control no irregularities, in the medical treatment of the deceased boy, were observed.

The case received a lot of media attention. Among other matters the parents also mentioned the inappropriate communication of doctors in the UMC Maribor during the boy's treatment. The unfortunate event, mainly to the credit of the parents of the deceased boy and their lawyer, pointed out the issue

of inappropriate communication among healthcare professionals and patients or their relatives. As the case is not yet finished it is the Office's wish to point out the communication aspect, which was followed both through amendments of initiatives and by the media. It was observed that after the unfortunate event the UMC Maribor and the Medical Chamber of Slovenia did not establish appropriate communication with the relatives of the deceased child and they did not offer all of the requested or expected information in due course.

In compliances with the Ombudsman's findings it was recommended:
1. to the University Medical Centre Maribor that it regulates all procedures in compliance with the Patients Rights Act and draws special attention to timely information and appropriate informativeness;
2. to the Medical Chamber of Slovenia that in addition to formal paths of providing information of particularly difficult events it establishes informal communication which will take into consideration the specific circumstances of an individual event and its participants;
3. to the Ministry of Health that within its competences it ensures that educational programmes for medical professions will also adequately include knowledge from the field of communication or that such knowledge will be a part of post-graduate training and that administrative control be performed in the Paediatric Department of the UMC Maribor.

The UMC Maribor, Medical Chamber of Slovenia and Ministry of Health informed us about the measures adopted. Also the Ministry of Health informed the Ombudsman's Office that they fully agree with the recommendations submitted. The need for additional knowledge in the field of communication skills of medical professionals and their collaborators has been observed and that was highlighted at meetings discussing the topic of safety incidents which were organised for the management personnel in Slovenian hospitals. Additional training will be started in the shortest possible time.

The initiative was considered justified and the Ombudsman's intervention successful since all addressees accepted our recommendations and started to take measures for their implementation. However the activities in this field will continue to be followed by the Ombudsman. **4.3-20/2008**

2.13 SOCIAL AFFAIRS

GENERAL

2.13.1 Social assistance

While dealing with violations of rights in the field of social assistance, this being undoubtedly the most sensitive area, which should protect individuals, families or social groups at times when they are found to be in social hardship or facing problems, we were particularly disappointed with regard to the progress of the State. In spite of pointing out the same or similar violations for several years, matters are not improving, on the contrary, they are worsening. Out of 18 proposals and recommendations from the field of social assistance, which were recorded by the Human Rights Ombudsman of the Republic of Slovenia in the 2008 Annual Report, not a single one was taken up in 2009. The extraordinary slowness of the State to make urgent changes at systems level, which have been pointed out for several years, has to be criticised. Regulations governing the level of social transfers and the rights which arise from them have not yet been modified, and neither have measures been adopted which would ensure conditions for the maintenance or raising of standards concerning services in the field of social care in public institutions. Measures have not been adopted which would provide for the more efficient operation of centres for social work (less administrative tasks, more professional work with clients) and the shortage of personnel in centres for social work has not been eliminated. Measures regarding assistance and care for elderly persons, who wish to remain in their homes have not yet been initiated to any sufficient extent. The only that has occurred, is a new assessment of a minimum cost of living in Slovenia was made, which currently amounts to 562.07 EUR. It is urgent that data regarding the realistic level of poverty in Slovenia is obtained and that a national strategy for the abolishment of poverty and all its forms and effects be formulated and adopted.

In December 2008, at the meeting with the Minister of Labour, Family and Social Affairs, attention was drawn to the aforementioned programmes and the non-executed Ombudsman's recommendations; the method of co-operation between the Minster and the Ombudsman was agreed. It is observed that this co-operation has not taken place in the way that was agreed.

Conditions for the functioning of centres for social work are not good

In the 2008 Annual Report the Ombudsman had already recommended the rationalisation of the tasks of centres for social work, the provision of sufficient financial funds and the immediate elimination of the personnel shortage. The adoption of measures for the improvement of employees' professional skills including more accurate knowledge of legislation in particular in the field of administrative proceedings was also recommended. No progress has been seen in these fields. Because the rationalization of the tasks of professionals was not carried out and because the 30-percent shortage of personnel has not been remedied, professionals cannot offer more counselling work for their clients because they have no time for supplementary training. It is observed that professionals

at centres for social work, due to the current organization of work, are out in the field far too little, which is why the most vulnerable individuals may be left outside the assistance system because they themselves do not know how, or are not able to draw attention to their problems.

Social assistance in cash

With regard to social assistance in cash, the criticisms made in previous annual reports may only be repeated. Social assistance in cash in the amount of 226.80 € does not provide for a reasonable standard of living, in particular, when received over a long period of time. People in this situation do not see a way out of this hardship, they cannot work or they commit an offence and risk losing what little they do receive. It is particularly difficult in families with minimum income in which one of the family members is completely dependent on the other. In the 2008 Ombudsman's Annual Report the ambiguity of the procedure in which an authority initiates, ex officio, a procedure for assessing the eligibility for social assistance in cash was criticised. It was proposed to the Ministry of Labour, Family and Social Affairs that they should prepare instructions (Protocol) for the conduct of professionals at centres for social work when determining the living circumstances of an individual, or the statement of affairs as soon as possible. But such a protocol has not been prepared.

Emergency social assistance in cash

In previous reports it had already been pointed out that centres for social work should, within the framework of the first application for social aid, provide their clients with information which is as full as possible in regard to what their rights and opportunities are, when and where these can be enforced and what their obligations are with regard to these rights. The Ombudsman's Office again draws attention to more irregularities which need to be remedied as soon as possible. Among other matters, on decisions on emergency social assistance in cash, it is still occurring that the date when the cash for social assistance will be paid out is still not being indicated. Centres for social work are not bound to notify applicants when they should submit supporting documents; however, the Ombudsman does not see any reason why a helpful warning could not be submitted before the possible loss of the awarded social assistance. In certain cases, the Ministry of Labour, Family and Social Affairs behaves very bureaucratically and "instructs" the Ombudsman about all the tasks that counselling professionals at centres for social work are not obliged to do instead of focusing on all that could have been done.

Inclusion of income from student work into the family income

Several initiatives included criticism of the applicable legislative regulation that the taking into consideration of income of children from student work when calculating income per family member is not fair, in particular when such work is urgent because of the economic situation in the family. Many children from the socially weakest families could not even study without performing the abovementioned work. Unfortunately only the provisions of the Social Assistance Act could have been explained to initiators; the Act stipulates that only the child benefit and scholarship are not included in the one's own income. All other income, however, is defined as one's own income by the Act. This is contrary to the Marriage and Family Relations Act under which parents must maintain their children until they attain the age of 18, or, if they study (full or part-time study) up to the end of their 26th year. It is unacceptable that children, who work through student agencies in order to study, must maintain their parents or potentially, brothers or sisters with the money earned. That is why, the Ombudsman champions an immediate modification of the regulation in order

to prevent such an unjust and inefficient solution. Students from poorer families who work through a student agency should be able to use their money for studying.

Poverty and accommodation crises

Material problems, particularly unemployment and poverty, are increasingly becoming the reason for the inability to pay bills, the result of which is an enforcement order or eviction from the apartment in which an individual or a family lives. The Ombudsman observes that, many times, institutions are informed about cases within their competence too late or they respond to them too late. It is not a rarity that large families get into crisis when they simply cannot pay the rent and other costs (electricity, water, mortgage instalments, etc.). The Ombudsman has pointed out several times the tasks of professionals of all those authorities who come into contact with initiators, who might be threatened with eviction (centres for social work, administration units, municipalities, housing funds). These institutions should approach and address questions with the greatest seriousness and empathy, inform the initiators with regard to non-payment and refer them to relevant institutions which can assist and advise them in their difficult situation. The Ombudsman also points out the legislative obligation of municipalities to provide urgent dwelling units in which people who are found homeless may be accommodated at least temporarily. The problems and hardship of individuals, even though they are partly responsible for them, will not be solved by means of evictions. If institutions did more at the right time, they might have prevented the hopelessness of such individuals.

Unacceptability of lengthy decision-making regarding complaints

Equally for 2009, it has to be critically observed that the timeline for the resolution of complaints at the Ministry of Labour, Family and Social Affairs did not decrease. This is particularly unacceptable when it relates to the eligibility for financial transfers which are intended for the subsistence of an individual or his/her family. Often it takes several months, sometimes even one year, for the Ministry to make a decision with regard to a complaint. By way of excuse the Ministry refers to the increase in the number of complaints and shortage of personnel, but these reasons, in the Ombudsman's opinion, could not and should not influence the enforcement of a right to transfers which would provide people's subsistence.

2.13.2 Institutional care

In 2009, the Ombudsman did not receive any initiatives which might refer to long waiting times for acceptance into institutional care. The data is encouraging but it does not signify that there are no problems in seeking free places in care homes for the elderly. In particular it can not be ignored that there are increasingly more older people who cannot afford to be accommodated in homes for the elderly. Moreover, even their children cannot assist in paying for the service as in many cases they might have lost their employment or do not receive a salary. We have been informed about cases when institutional care is terminated (even against the will of a resident) because unemployed relatives consider the pension which was being used to pay for the institutional care as the only source of money for the survival of the family.

The majority of initiatives from the field of institutional care referred to dissatisfaction with the quality of services; there were also several complaints with regard to the charging for services. When planning standards of services in institutional care the Ombudsman recommends the formulating of a price for the service in such a way that it will be accessible to the majority of the elderly. The need for departments for persons suffering from dementia

is becoming ever greater; these departments may be protected or of an open type with an adequate number of personnel. Personnel standards do not provide for a sufficient number of elderly care personnel. Many complaints were checked and it was determined that they are undoubtedly true. That is why it is proposed that founders of care homes for the elderly should respect the proposals and advice given by the providers of the service governing institutional care for the elderly and a more adequate agreement with the Health Insurance Institute of Slovenia be concluded.

In 2009 the Ombudsman visited and inspected the operation of some care homes for the elderly. This was carried out within the framework of the Ombudsman's regular annual visits of homes for the elderly and as an institution authorised the implementation of tasks and powers conferred by the National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The findings are delivered in a special printed publication which is also accessible on the Ombudsman's web pages: www.varuh-rs.si.

2.13.3 The right of elderly people to a free decision about themselves

The wish of the elderly people to continue to live at home for as long as possible

From initiatives addressed to the Ombudsman by elderly people, their wish to stay in their own domestic environment as long as possible is often evident. In the existing arrangement this poses a problem, in particular if these individuals do not have relatives who live in the vicinity and with whom they have regular contacts. It sometimes happens that not even the centre for social work knows about such an elderly person since the said person does not wish to attract attention and wishes to live as independently as possible. However problems appear if this person becomes sick or hurts himself/herself.

In Slovenia, there is a lack of a well organised system with more systematic care, including a follow-up service, for elderly people, who live alone. It is imperative that various kinds of communication is offered and kept open with these people. The first of these is more work in the field performed by professionals of the centre for social work, the second is the inclusion of the unemployed in the form of public work in visiting elderly people, and the third is that the assistance of volunteers be brought into effect more quickly. These helpers may find such individuals, talk to them and ensure assistance or help them organise domestic assistance. Forms of active and organised volunteerism would definitely bring benefits and satisfaction for everybody involved, while the State and the local community would be relieved of the burden, care and financial obligations. In this manner several questions would be simultaneously resolved – elderly people could take care of themselves in a safe and satisfactory manner for a longer period of time, some unemployed persons would get a job, while others at least would gain the feeling that they are being beneficial. In society the awareness of the urgency for mutual assistance and solidarity would build, some stereotypes would be broken, ties among people would be strengthened regardless of age or social position. The elderly would be less concerned with the fear that they will be a burden to somebody upon whom they are dependent. The care for a fellow human being, particularly an elderly person, would thus gradually become a part of every-day life.

Free decision for institutional care

Some initiatives were received from relatives of an elderly person in which the common problem was the accommodation of the elderly person into institutional care. With regard to their elderly person, relatives noticed signs of dementia, insufficient care for personal hygiene, physical weakness and reduced independence. These persons needed assistance when feeding, maintaining personal hygiene, getting up, and moving around. Relatives believed that even certain forms of help (for example, domestic help to the family,

distribution of meals) were not enough for the life of the elderly person at home and that is why they needed institutional care. Relatives usually perceive the needs of the elderly people differently to the way elderly people see their own needs. That is why their wishes with regard to accommodation in institutional care are often not the same; sometimes such an accommodation is refused by the elderly person, other times it is the other way around. The right to free decision-making of the elderly with regard to institutional care and the possibility of obtaining the accommodation without their consent often cause problems to relatives, but also to doctors and centres for social work. The Mental Health Act, in particular, regulates the accommodation on the basis of a court decision only in the case of secure departments but not for others, for example, nursing departments where quite often immobile persons with dementia are accommodated; or places where there is no danger that persons might leave the department of the home without supervision. A big problem is thus the question of how to care, in a fast and effective manner, for persons, formally holding contractual capacity, who refuse the accommodation in institutional care even though they need a greater extent of assistance for everyday activities and a more demanding health care which cannot be offered at home. The need for a solution to this problem is urgent, although it is obviously a great challenge for the profession and for the legislator.

Web information and operation as a violation of rights of elderly persons

Initiatives were received in which elderly people complain that with mass information, applications and publications available only via electronic media make them feel discriminated against and wronged. In these it is stated that they are not familiar with computers and many have no money to buy them. Nevertheless state authorities often inform them to settle their problem via the Internet, for example. State and municipal public employees should provide information to elderly people by conventional post, in the usual manner, without the use of information technology.

2.13.4 Custody

The number of initiatives which refer to custody in proceedings for the withdrawal of contractual capacity and to custody with regard to the withdrawn contractual capacity has increased. Initiators turned to the Ombudsman who disagreed with the work of the custodian. Some (particularly relatives) thought that the custodian does not represent the needs and does not protect the interests of a given person's ward. Complaints refer particularly to the use of funds and the sale of the ward's assets (complainants would probably be the heirs of these assets after the death of the ward). Complaints were submitted with regard to the fact that centres do not carry out sufficient control over custody and that the decision-making concerning the objection is unreasonably long. The Ombudsman observed that professionals at centres sometimes lack knowledge, are overloaded with work or there is an absence of a more measured consideration of a case. Individual cases that have been processed raised a suspicion whether the handling of a report with regard to the carrying out of the custody was diligent enough. The Ombudsman therefore recommends that the centres for social work should prepare a detailed assessment of whether all rights and interests of a person in custody have truly been adequately protected prior to adopting the custodian's report.

2.13.5 Home care assistant

Regulations governing the right of a disabled person to have a home care assistant and the rights and obligations of home care assistants remain unchanged in spite of numerous proposals and protests aimed at improving the situation. The Ombudsman is still receiving initiatives in which initiators point out the unregulated status of a home care assistant.

That is why, it is again emphasised that, the status of the home care assistant should be arranged in such a manner that both the assistant and the disabled person will be guaranteed adequate social security. In the case of the home care assistant, the law should take into account events such as illness or an operation and a substitute carer should be envisaged for this period of time so that the right of the disabled person to the home care assistant would not lapse.

2.13.6 Family violence

The Ombudsman increasingly often encounters complaints of a deeply moving content which show the difficult conditions in which some individuals have to survive and with such a large degree of violence. Individuals turn to various institutions but too often they are left with a feeling that their problems are not understood or employees working there do not want to understand them. The equivocation from professionals from various institutions that they did not know, could not do anything or that they did not have adequate possibilities for concrete aid is unacceptable. The remedy of an exclusion order (stand-away order) is not sufficient. Factors leading to violence need to be eliminated. The victim needs to be protected and programmes to assist people causing violence need to be developed. Attention is also drawn to the problems arising in families in which parents are addicted to alcohol. In a case of refusing treatment, relatives, but also centres for social work, doctors and others have no real options for taking measures. The Ombudsman points out that our society is too tolerant of the consequences of drinking alcohol and alcoholism. The State should have responded with an accelerated preventive activity in this field which, however, was not addressed in 2009.

Violence against elderly people

Quite often, violence linked to material deprivation is directed at elderly people. Such violence is difficult to identify, be it material, physical or psychological violence since an older person often hides it and does not wish to admit it in public, or even to report the violent person. As a consequence, big problems arise when dealing with and preventing these phenomena. Initiatives were handled from which it was evident that children opposed the acceptance of their parents into institutional care because they would become eligible to pay; and there were initiatives in which it is clear that children oppose their parents returning to the domestic environment because they represented a burden. Both cases may amount to a form of violence against parents. The Ombudsman again emphasises that it is necessary to introduce advocacy for the elderly, similarly as for children. Also, elderly people need a trustworthy person to whom they can turn to in hardship or when in doubt. The Ombudsman supports the idea that an Office for Senior Citizens would be established in the very near future; the office might prepare the necessary guidelines and documents, needed for the assurance of a safe old age and for the development of forms of aid, consultation and advocacy for elderly people.

2.13.7 Urgency with regard to the adoption of the Volunteerism Act

According to an unofficial estimation there are from 200,000 to 300,000 volunteers working in Slovenia which is why it is urgent that appropriate regulations be adopted, in particular the Volunteerism Act which would regulate this field. The act should determine common and general minimum conditions with regard to organised volunteerism, define the role of the State, regional and local communities, non-governmental and other organisations operating in the field of volunteerism and determine guidelines for the promotion and development of volunteerism. The current crisis demands increasingly more co-operation between the Government and civil society, and the lack of regulation of the field of volunteerism raises numerous ambiguities and problems. The Government has again promised the adoption of the law in 2010 which will be actively followed by the Ombudsman.

PROPOSALS AND RECOMMENDATIONS

In the section which refers to social assistance, all recommendations recorded already in the 2008 Annual Report are repeated. Only the analysis of the minimum cost of living was made, but none of the recommendations and subsequent decisions of the National Assembly were realised in 2009.

- The Ombudsman recommends that Slovenia should respect the ratified international treaties, in particular the European Social Charter, with which the State is bound to strive to create conditions, in which it will be possible to effectively implement the rights and principles stated in the Charter.

- The Ombudsman recommends a more efficient integration and co-ordinated operation of state, governmental and other institutions, at both regional and local levels, in order to enable integrated and timely interdepartmental, co-ordinated and professionally founded social and other aid to every individual who needs it or requests it.

- The Ombudsman proposes the adoption of measures for the provision of conditions aimed at the maintenance and raising of standards of social care services and thus the improvement of the quality of operation of public institutions in the field of social care.

- The Ombudsman recommends the rationalization of tasks of centres for social work; the provision of sufficient financial funds and an immediate remedy to the shortage of personnel. The adoption of measures for employees' better professional skills including more accurate knowledge of legislation in particular in the field of administrative proceedings is also recommended.

- The Ombudsman proposes that the advisory role of centres for social work should be strongly enhanced since it is very often equally important to or even more important than the financial assistance.

- The Ombudsman recommends the adoption of measures for the provision of a quality and timely control over the carrying out of public powers in the field of social care services, also by means of increasing the number of inspectors.

- The Ombudsman recommends the increase of the minimum income and thus the level of all transfers, which are based on this amount; these transfers need to be high enough to enable an individual and his/her family a decent standard of living, social integration and the preservation of their dignity.

- The Ombudsman recommends the formation of a more uniform and transparent record regarding the actual number of unemployed persons in Slovenia, which will simultaneously show groups of hard-to-place persons who are de-registered from records and included in the training organised by the Employment Service and similar.

- The Ombudsman recommends the adoption of the Long-Term Care and Long-term Care Insurance Act as soon as possible; the act will signify a new form of mandatory and supplementary social insurance.

- The Ombudsman recommends that the State should provide for enough nursing departments in hospitals and respect for instructions regarding the provision of treatment in respect of health and social care in cases of discharges from hospitals.

- The Ombudsman recommends that the State should provide for decent and satisfactory living opportunities for young disabled persons in the environment which will be suitable and adapted to their personal circumstances, and ensure more forms of institutional care for them.

- The Ombudsman recommends that the Ministry of Labour, Family and Social Affairs should make its decisions on objections within deadlines imposed by legislation and in this manner ensure for the implementation of the right to efficient legal protection.

- The Ombudsman proposes the simplification of procedures for the obtaining of emergency social assistance in cash, the elimination of humiliating forms of proving the intended use of funds allocated and the shortening of the existing 18-month period in which the applicant is not eligible to receive the emergency social assistance in cash if proof regarding its use has not been submitted.

- The Ombudsman proposes the use of such methods of determining circumstances in which the applicants for social aid live which will not violate their fundamental rights and freedoms. She also proposes the preparation of protocols which may be used by professionals of all centres for social work in determining facts and when preparing and making decisions.

- The Ombudsman champions the immediate modification of regulations which will enable students from poorer families who work through a student agency to use the money so earned for their study in such a way that their entire earnings will not be included in the family's income.

- The Ombudsman proposes that descriptions of status, notifications and elsewhere not only the term "a retired person" is used in all registers but consistently as well as the education level or the profession which was performed by an individual prior to the retirement (e.g., retired teacher).

- The Ombudsman proposes that the State should ensure enough beds in homes for the elderly in the whole of Slovenia and at the same time support all measures which will enable elderly people (with adequate forms of assistance) to live as long as possible in their own domestic environment.

- The Ombudsman proposes that persons in institutional care should be provided with adequate standards of medical, sanitary, orthopaedic and other devices which are an urgent and integral part of good care which needs to be guaranteed to the residents of public institutions by the State.

- The Ombudsman once more proposes the immediate execution of two decisions of the Constitutional Court, and the elimination of the non-compliances observed: the modification of the Rules on standards and norms regarding social care services, and the arrangement of personnel standards for the performance of care of adult persons with mental disorders, and the arrangement of the obligations of the state with regard to social care of disabled persons for which the law has abolished the obligation of parents to maintain their adult disabled children while it has not simultaneously regulated the obligation of the State.

- The Ombudsman recommends that the right of a disabled person to a home care assistant and the status of the home care assistant be regulated in such a manner that the right of the disabled person shall not lapse when the home care assistant is ill or having an operation. For this period of time a form of substitute care should be envisaged.

- The Ombudsman recommends that as soon as possible the responsible ministries should prepare all implementing regulations and protocols needed for the implementation of the provisions of the Family Violence Act.

- The Ombudsman proposes an arrangement whereby upon the initiation of proceedings for the withdrawal of the contractual capacity, an advocate (attorney-at- law) shall always be appointed ex officio, if there is a reasonable doubt whether a person in the proceedings is always able to understand and enforce his/her rights (similar as, for example, an advocate appointed ex officio in the proceedings regarding the detention in a psychiatric hospital).

- The Ombudsman proposes the establishment of the Office for Senior Citizens which will prepare guidelines and documents needed for the assurance of a safer old age. In this manner numerous forms of help, consultation and advocacy for elderly people may come to life.

26. Submission of supporting documents out of time regarding the intended use of emergency social assistance in cash due to not-knowing the date of the payment

An initiator turned to the Ombudsman of the Republic of Slovenia with a request to intervene with the Ministry of Labour, Family and Social Affairs. The initiator's request for emergency social assistance in cash was denied with an explanation that he was not eligible to receive it for 18 months because, after the last receipt, he did not submit the supporting documents for its intended use in time. The initiator referred to the fact that he did not know that the aid would be transferred immediately after the receipt of the decision because usually payments were made on the 21st of the month and the social worker, at the centre for social work, did not specifically mention when the transfer would be made. Because the initiator did not check the transfer maturity, he missed the 15-day period for the submission of supporting documents about the intended use of funds. He brought supporting documents to the centre for social work two days too late. The initiator complained against the decision of the centre to the Ministry of Labour, Family and Social Affairs.

The Ombudsman believes that the initiator's grounds are justified which is why an inquiry was addressed to the Ministry as we were interested in the following questions: what was the opinion of the Ministry regarding the abovementioned case, and what should have been the reasons to justify a renewed payment of the emergency social assistance in cash? The Ministry avoided giving a direct reply to the Ombudsman's question and referred to the fact that in every decisions it is stated that the deadline to submit supporting documents is 15 days after the receipt of the money. The Ministry believed that professional workers do not need to especially notify clients with regard to the obligation to submit exhibits. Neither is it their duty to warn them about the date of the payment since every individual should verify the day of the payment at the bank or ATM. The Ministry's findings that, a renewed payment of emergency social cash assistance was not justified, was founded on an explanation that in the past the initiator had received the assistance at the beginning of the month and therefore he should have known that there was also the option of the payment prior to the 21st day of the month.

The Office disagrees with the explanations provided by the Ministry of Labour, Family and Social Affairs, which is why the Ombudsman's standpoint was communicated to them. In this case it was not about the fact that the initiator would not know that he had to bring supporting documents regarding the intended use of the emergency social assistance in cash but that he did not know (because he was not informed about it) that the financial aid would be transferred on the 4th instead of the 21st day of the month. An individual cannot determine at the bank or ATM when a transaction will be executed, he/she can only ask about the already executed transfer. Data regarding the fact of when a transfer will be executed is held only by the person who executes it (in the case of the initiator this was the centre for social work). The Ombudsman cannot change the decision of the Ministry but in the Ministry's reply not enough arguments were found which would substantiate their decision. It was even more disturbing that the Ministry obviously thought that the initiator acted differently on purpose although all indications demonstrated otherwise. The Ministry responded to the Ombudsman's opinion so that the decision was adopted that when decisions are issued to beneficiaries only the anticipated payment dates will be recorded; with this it is considered that the Ombudsman's intervention was successful even though it did not conclude favourably for the initiator. **3.5-21/2009**

27. Conditions in the Special Social Security Institution Prizma Ponikve raises concerns

Some residents of the Prizma Ponikve Institution (Institution) turned to the Human Rights Ombudsman of the Republic of Slovenia stating that insufficient care is provided in the institution. This problem was also indicated afterwards by some employees, which also highlighted conflicting relations among the institution's workers. All this resulted in a lower quality of services rendered and created tension and dissatisfaction in the working collective.

Considering the allegations it was decided to perform an unannounced visit to the institution and conduct interviews with persons responsible and some residents. During the visit it was noticed that relations among employees were conflicting and that there are communication problems, particularly

between employees in social care and those performing health care. Residents with whom interviews were conducted were not satisfied with the care service rendered. During our visit the social inspection carried out an extraordinary professional supervision and, among other matters, it was determined that there are not enough personnel in the social care department, that the approach to work with residents is not sufficiently individualised and that a social model for carrying out the service of institutional care should be introduced. A decision on measures was issued and that is why the institute was executing measures during our visit.

The introduction of extraordinary professional supervision was also proposed to the Chamber of Health and Midwifery of Slovenia. Also the Chamber found out that communication between two services, social care and health care, was not appropriate and insufficient and that the number of personnel in health care was inadequate. But according to the assurances given by the Health Insurance Institute of Slovenia the number and the structure of personnel in the institution was in compliance with current standards and norms.

An insufficient number of personnel both in the case of social care and health care, an inappropriate allocation of personnel and poor management and communication greatly influenced the level of quality and resulted in lowering the quality of the social care service. Residents who needed more help in every day activities and were dependent on employees with regard to the meeting of basic living needs justifiably felt humiliated and inhumanly treated in the given circumstances.

The Office's opinion was submitted to the Institution that it should make all efforts to solve the conflicting situation since residents' rights to personal dignity and safety were being violated. It is also expected that conditions in the institution will improve by the implementation of measures imposed in the inspection procedures. The case will be followed and action will be taken if conditions do not improve within a reasonable time. **3.7-10/2009, 3.7-11/2009, 3.7-13/2009**

2.14 UNEMPLOYMENT

GENERAL

The number of initiatives which refer to unemployment significantly increased in 2009 (index 144). Because of generally known events (mass dismissals) this was expected but even without this last wave, unemployment is a great problem in our society. The number of unemployed persons is one of the key factors in the assessment of the level of social security in any country. It is observed that the Ministry of Labour, Family and Social Affairs does not take into account the Ombudsman's comments, recommendations and criticism. Since some problems remain unsolved the findings and recommendations of the Ombudsman remain the same. It is the Office's hope that the planned changes will really bring innovations which will ensure the unemployed the best possible opportunities for their renewed integration into the labour market at system level.

A special part of the Ombudsman's attention is dedicated to solving the problem of unemployment with the public work programme. Initiatives for a modification of regulations which currently disable the extension of agreements for the performance of work within the public work programme were processed. The Ombudsman strives to make it possible to conclude an extension to the employment agreement for the performance of work on the public work programme, or that after the expiry of one year it would be possible to extend the agreement or renew it for the time when the need for certain public work arises.

One of the Ombudsman's continuing criticisms is also placed on the method of statistical demonstration of the number of unemployed persons. It is true that the Employment Service of Slovenia keeps various statistical records in compliance with the Rules on the content and the method of keeping official records from the field of employment, and it is also known that various data bases assist experts in finding new solutions, but for the Office it is still questionable that the number of people who are indeed unemployed is not added up from various registers in order to form a new or rather an aggregated record which would also be publicly accessible and would show the actual number of unemployed persons, that is, also those who are not registered in the records any more due to de-registration or for other reasons.

2.14.1 Problems during the unemployment period for self-employed persons after the cessation of activity

The Ombudsman dealt with problems of unemployed persons, who had previously been self-employed, and these persons ceased to perform any independent activity; their problems were related to the enforcement of the right to the unemployment allowance and to the enforcement of the right to social assistance in cash. They decided to cease and de-register their activity because not enough income was created to suffice for living expenses and the continuation of their business. Before the cessation of the performance of independent activity all taxes and contributions were paid. Pursuant to the Employment and Insurance Against Unemployment Act, unemployed persons are also self-employed persons generating a profit from their activity – established without reductions and tax relief in accordance with regulations governing income tax and increased by the calculated

compulsory social security contributions – did not exceed the amount of guaranteed salary compensations in the calendar year prior to unemployment. In compliance with this Article a self-employed person could not obtain the status of an unemployed person and thus rights arising from this status (the right to unemployment allowance is also considered here) if this income exceeds the amount of guaranteed salary compensations on an annual basis which in the Republic of Slovenia in 2008 amounted to 2,282.21 EUR. If a sole entrepreneur concluded the year above this amount, even if only by a few euro, and could settle all his obligations to the state this, (pursuant to the law) means that he/she did not fulfill the conditions to obtain the right to unemployment allowance.

The Ombudsman's Office attempted to find out from the Ministry of Labour, Family and Social Affairs the purpose of the legislative provision which forces an individual into a position without resources since he/she is not able to enforce the right to unemployment allowance even though throughout the period of self-employment he/she diligently covered all taxes and contributions. Equally the decision of the competent centre for social work found that initiators are not endangered from a material point of view even though since the cessation of the performance of independent activity they have been without income is not logical, no matter how compliant with the legislation. Persons of competence at the Ministry wrote in their reply to the Ombudsman that the responsibility for such a position of independent entrepreneurs who ceased their activity because the profit generated did not provide for their survival and continuation of their activity lies in the applicable legislation. At the same time it was written that the Ministry is aware of the fact that the existing regulation is not suitable and does not correspond to the needs and the actual situation. The Ombudsman believes that the provision which refers to the rights of self-employed persons who decide to cease their activity because the profit generated did not enable their survival be amended immediately and adapted to new conditions.

2.14.2 Too big a wish for de-registration from records

The eagerness has again been observed with which Offices of the Employment Service of Slovenia and Labour Offices wish to note as little registered unemployment as possible. Initiators were encountered who mostly diligently fulfilled obligations imposed but a one time absence without an apology or only one time unavailability at home was sufficient for them to lose all rights arising from their unemployment status. Such waiting at home is a complete nonsense as it causes passivity and social exclusion and decreases the motivation of people without employment. It would be far more efficient if such a person would be accessible via telephone and be allowed to report on his/her current location upon the call from the employment service office and enable the supervisor's verification. The bureaucratic and impractical perseverance of some officials of the Employment Service of Slovenia appears to be morally questionable, when these officials demand from a person, who lacks only a few months for the fulfilment of the requirement for retirement and who until then will receive their unemployment allowance, to be accessible at a home address every day for three hours even though it is clear that with the age achieved and almost full pension qualifying period the said person is not attractive to employers in the last months before his/her retirement. The only result of such a demand is the abolishment of unemployment allowance.

2.14.3 Student work as work experience

Initiatives were processed in which it is stated by initiators that they are discriminated against when applying for work posts for which they do not have a formally recognised work experience even though they have a lot of experience obtained through student work which was performed sometimes also at more demanding work posts. Regardless of the

education achieved or their qualification they are in a worse position than other candidates since when applying for a work post they are automatically eliminated if they do not fulfil the condition regarding the required work experience. Quite often employers do not even invite them for interviews. Since it was believed that this is another aspect of deficiencies noticed at system level with regard to the regulation of the student work an inquiry was made at the Ministry of Labour, Family and Social Affairs and the Ministry of Public Administration and their viewpoint concerning this issue was requested. The Ministry of Labour, Family and Social Affairs is aware of the fact that the regulation of student work as it is known today has greatly exceeded the original purpose for which it was established and that many times it is damaging precisely for young seekers of first employment. During the time of the preparation of this report several amendments of the legislative basis are being prepared which directly and indirectly influence the regulation of student work. The Ministry wishes to approach student work reform in a co-ordinated and systematic manner that is why it was decided that student work and similar forms of temporary and occasional work be regulated simultaneously in one place, in a special act on mini jobs. It is wished that the regulation of student work be reformed mainly with the purpose of enabling young people to enter the labour market as soon as possible while at the same time establishing a system which will protect the rights of young people in a more efficient manner. One of the key changes will be, as it was stated, most definitely the inclusion of student work into the system of social insurance which is a condition the student work be included in the years of service and the pension qualifying period of an individual.

The Ministry of Public Administration believed that initiators are not discriminated against when applying for work posts published by bodies governed by public law or state bodies and administrations of local communities for which the first part of the law regulating employment relations for public employees applies. Their opinion was founded on an adopted standpoint concerning the implementation of the Public Employees Act in compliance of which the work performed (outside work relation) at the same level as the work post for which the person is applying is considered as work experience. Such work in particular enables students to obtain work experience which they may thus adequately put forward, and with it the material conditions for study are improved. The Ombudsman proposes that students, when applying for work posts published by bodies governed by public law or state bodies and administrations of local communities, draw the attention of the potential employer to the position of the Ministry of Public Administration as it is clear that authorities are too little informed about it.

Also the Ministry should emphasise its viewpoint more, as it is beneficial for students, also by means of public notices and in the media.

2.14.4 Long waiting period for inclusion into the employment rehabilitation programme

Initiators turned to the Ombudsman because of a long waiting time for their inclusion into the employment rehabilitation programme. An inquiry was made at the University Rehabilitation Institute of the Republic of Slovenia which explained that reasons for long waiting queues lie in the too large a number of referrals of unemployed disabled persons for employment rehabilitation by the Employment Service of the Republic of Slovenia.

It was also explained that in compliance with the network of providers and personnel standards within the framework of the Centre for Professional Rehabilitation approximately one hundred persons are dealt with per year. Due to the pressure posed by waiting lists this volume was exceeded in 2007, 2008, and in 2008 by as much as 40 percent. On the basis of the explanations mentioned an inquiry was also made at the Ministry of Labour, Family

and Social Affairs. The Office's concern was to learn the facts of what has been done by the Ministry or is intended to be done to shorten waiting lists. In its reply the Ministry explained that the employment rehabilitation of disabled persons is implemented within the framework of a network of providers of employment rehabilitation which was adopted in August 2005. During the implementation of employment rehabilitation since 2006 the number of unemployed disabled persons increased significantly. The Employment Service of Slovenia notified the Ministry in writing about the increase of the number of unemployed disabled persons and the above-average number of referrals for employment rehabilitation. The most pressing problem of solving the issue of disabled persons in the area of Murska Sobota and Ptuj was highlighted on this occasion and the increase of the handling capacity was simultaneously proposed. With regard to the initiative of the Institute concerning the increase of volume in the Maribor and Ptuj branch offices the Ministry responded that in the areas mentioned the rehabilitation will be performed to a greater extent than envisaged by the network. The Ministry also prepares for a new network of providers of employment rehabilitation in the framework of which in 2009 public tender for new providers will be fully realised since concessions were granted until 2009. Considering the above mentioned the Ombudsman justifiably expects that with the formation of the new network, waiting lists for employment rehabilitation will be shortened.

PROPOSALS AND RECOMMENDATIONS

Among the Ombudsman's proposals and recommendations in the section which refers to unemployment, recommendations which were already mentioned in the 2008 Annual Report and were not yet realised need to be highlighted again, and some new ones added.

- The Ombudsman proposes the modification of the Employment and Insurance Against Employment Act in such a manner that students and participants in adult education will not be de-registered from the unemployed persons record only because they have enrolled into forms of further education without the consent of the Employment Service.

- The Ombudsman proposes a renewed examination regarding the adequacy of the unemployment allowance in particular with regard to its adequacy of determining the lowest financial allowance which is determined as a share from the minimum wage and is not sufficient to permit an adequate living.

- The Ombudsman proposes the adoption of measures for the opening of new work posts, additional possibilities for retraining and education, adaptation of working conditions, flexibility of working time, additional motivation for employers and unemployed persons and renewed employment of older people.

- The Ombudsman recommends the adoption of measures at a system level for the stimulation of individuals who with their study actively seek for better employment possibilities.

- The Ombudsman recommends the adoption of measures which will shorten long waiting lists for inclusion into the employment rehabilitation programmes.

- The Ombudsman proposed that the opinion of the Ministry of Public Administration should be consistently respected; the opinion states that when applying for published work posts in public administration, work experience obtained outside work relations, if it concerns equally demanding jobs, be taken into consideration as adequate work experience (MPA's standpoint regarding the implementation of item 13 of Article 6 of the Civil Servants Act).

- The Ombudsman believes that student work needs to be urgently regulated so that abuses will not be possible. Such work specifically enables students to obtain work experience which they may then refer to for their benefit, and with it the material conditions for study are improved.

- The Ombudsman expects that in a short period of time the following regulations will be improved: the regulations regulating the right to entry in the register of unemployed persons, the right to unemployment allowance and the right to social assistance in cash for self-employed persons after the cessation of activity.

- The Ombudsman strives to make it possible to conclude an extended employment agreement for the performance of work on public work programmes, or that after the expiry of one year it would be possible to extend the agreement or renew it for the time when the need for certain public work arises.

- The Ombudsman recommends the amendment of the provision of the Employment and Insurance against Unemployment Act regarding the "accessibility at home" which due to rigidity and impracticality may cause reverse effects for those at whom it is aimed.

28. De-registration from the record of unemployed persons due to inaccessibility at a home address

The initiator in his initiation submitted to the Ombudsman stated that when he should have been available an authorised person of the Employment Service of Slovenia (Employment Service) looked for him at home. Because he was not at home the first-instance body of the Employment Service issued a decision by means of which he was de-registered from the unemployed persons register. During the control visit he was visiting his daughter who had given birth just recently and lives close to him. He was accessible on a mobile phone but the supervisor did not even attempt to call him. He stressed that as "being accessible" he also understood that he is accessible on the telephone since he submitted to the adviser the number of his mobile phone. He did not complain about advisers at the Labour Office but he stated that it was not explained to him that the accessibility means that he has to be at home. Previously he always reported his potential absence to the Employment Service and he was always ready for co-operation regarding the seeking of employment. The supervisor talked with his wife who explained that he was not far away and she offered to fetch him but the supervisor was not even willing to listen. In April 2010 the initiator will fulfil the requirements for retirement and until then he would receive unemployment allowance. Because of the loss of the unemployment allowance the social security of his family is endangered.

An inquiry was made at the Employment Service of Slovenia. In their reply it was stated that the Rules regarding more exact regulations for the fulfilment of the obligation of unemployed persons and the determination of the time of the termination and the reduction of the right for unemployment allowance stipulates that an unemployed person is available for employment and work if every working day he is uninterruptedly available for three hours for the Employment Service at the said person's residence address or at an address in the Republic of Slovenia which is agreed upon with the Employment Service. In an agreement with the unemployed person the time of his/her availability is entered in the file and in the employment plan. It was emphasised that the Rules regarding the method and procedure of implementing supervision of the fulfilling of obligations by unemployed persons stipulate that the supervision may be carried out without prior notice directly at the address of the unemployed person where he/she is available. Submissions that it was not explained to the initiator that »accessibility« means to be at home were rejected. The Employment Service, upon registration, informs the unemployed person on rights and obligations which the said person obtains with the status of an unemployed person and on the consequences of non-fulfilling obligations. The unemployed person is, in addition, orally informed of the rights, the fulfilment of his/her obligations and consequences in case of non-fulfilment of obligations at the informal motivational seminar which the unemployed person has to attend and which is organised by the Employment Service. Obligations of the unemployed person are precisely determined and written in the employment plan which is prepared by the employment adviser together with the unemployed person. Unemployed persons may always turn to the employment advisers and other advisers who have to provide explanations to their clients regarding rights and obligations which they have pursuant to the law, and about the consequences which follow after the loss of the status of an unemployed person. The Employment Service also explained that the procedure concerning the control of the presence of the initiator at the place of residence was introduced due to a reasonable cause for suspicion that he was working in the »black economy«.

The Employment Service, in our opinion, was already advised of the inadequate arrangements when it is considering whether an unemployed person is available for employment. Equally in the 2008 Ombudsman's Annual Report it was pointed out that the obligation concerning availability at the residence address may lead to a reverse effect from the one aimed at – namely, to almost complete passivity of those who during this time would seek a job and be really active. The urgency and the wish for the prevention of moonlighting is understandable but methods that are more adequate to the current time and to modern technologies should be found in order to motivate people to seek employment and simultaneously prevent abuses. The provision of the first paragraph of Article 5 of the Rules is in the Ombudsman's opinion completely out of touch with modern life. It is believed that the supervisor should call the initiator on his mobile phone. All the above mentioned was already mentioned in the inquiry but this did not influence the decision of the Employment Service of Slovenia. The initiative was thus considered justified. For this reason it is again proposed that the Ministry of Labour, Family and Social Affairs prepares modifications of rules in the method proposed.
4.2-34/2009

2.15 PROTECTION OF CHILDREN'S RIGHTS

GENERAL

The number of initiatives dealt with in the field of children's rights was almost the same as in 2008, but the structure of cases changed significantly; in particular, the number of family-violence related initiatives is greater. It is believed that this is a result of the implementation of the Family Violence Act which increased the sensitivity of society and individuals to all forms of violence.

Unfortunately in 2009 the Family Code was not adopted; the Code was supposed to regulate certain issues that were pointed out in previous annual reports (child's contacts with both parents and other people close to the child, decision-making in judicial proceedings, decision-making with regard to issues of essential importance for *a child's development and other matters*).

Equally in this year it is observed that children's rights are generally adequately regulated at the legislative level, but their implementation is especially dubious. It is again observed that some issues which fall within the working area of various ministries as regards content are not being duly solved or are not solved at all. The minister who fails to alert other ministries to the solution of a certain question should notify the Government about the issue and the latter should take steps to ensure their mutual co-ordination. Thus it has been pointed out for some time, but without success, that in Slovenia there are no suitable premises for children with severe problems with mental health since none of the children's hospitals has a special closed department for such patients. Mentally ill children are thus accommodated together with adult patients in closed departments of psychiatric hospitals which is absolutely unsuitable. Hence the Ombudsman of the Republic of Slovenia submitted an initiative to the responsible ministries to approach this pressing question together.

An important part of our activities in the field of children's rights also takes place in direct contact with children. Thus more than 25 schools of various levels were visited in 2009, we participated at the Children's Parliament and various workshops and round tables aimed at discussing children's rights. The co-organisation of an international conference has to be especially mentioned; the conference was carried out with the National Assembly and the Ministry of Foreign Affairs upon the 20th anniversary of the adoption of the UN Convention on the Rights of the Child. The conference demonstrated how it is possible to actively include in various manners young people in the presentations and discussions which are planned to be improved and extended in the future.

In the continuation of the text some fields with regard to the implementation of children's rights are presented in detail.

2.15.1 Long-term parental contact under supervision

Contacts under supervision are a special form of contacts between a child and a parent when due to protection of the child's interests it is urgent that these contacts be supervised by a third person, usually an expert.

In the previous annual reports the issue regarding contacts under supervision which last for several years has already been pointed out. The proposal of the Family Code stipulates that it will be possible for contacts under supervision to be implemented on the basis of a temporary injunction issued by the court. Now the question arises: what will occur with judgements in which contacts under supervision are determined in a final judgement without an indication of the duration of such contacts? The proposal of the Family Code explicitly stipulates that contacts under supervision may be exclusively determined by means of a temporary injunction and for a period of six months as a maximum. Maybe the legislator might define that with regard to all court decisions (temporary injunctions or judgements) in which contacts under supervision are determined without the definition of a duration, it is not possible to implement contacts under supervision after the expiry of six months from the start of the application of the law. It is believed that due to the principle of equality before the law it is inadmissible that contacts between parents and a child should take place for an indefinite and long period of time only because they were determined prior to the enforcement of the Family Code.

Contacts of children and third parties in relation to parental contact under supervision

During the processing of initiatives, various cases were encountered when a child was entrusted into the custody of one parent and contacts were determined between a child and the other parent. When the best interests of a child are concerned, contacts may be determined to take place under supervision – usually of an expert of a social work centre. Cases were recorded in which contacts of a child with third persons were curtailed because of such contacts. Grandparents, a potential new partner, half-brothers or half-sisters and other persons from the environment of that parent whose contacts had been determined to take place under supervision, usually do not have the possibility to attend such contacts, and in the event of a lack of consent between both parents, they have no options to have contacts with a child. Professionals who implement supervision over contacts enable the presence of third parties from time to time, but many times they do not. Considering the fact that professionals have no authority for such decision-making (which, as a matter of fact, amounts to an de facto changing of court decisions) it is believed that the resolution of this question should not depend on their preparedness or discretion. The Marriage and Family Relations Act gives an opportunity also to third persons to propose to the Court how to define contacts.

In cases when a child is entrusted into the custody of one parent and contacts with the other parent are determined without limitation it is undeniable that the other parent may freely decide who will also be present during the time when the contact with a child takes place. The first of the parents cannot interfere with this right. If the other parent is determined to have contacts under supervision this is mainly due to the personal reasons of the other parent (in practice, such contacts have mostly been observed to be in cases of a suspicion of sexual violence). It is believed that it is not in a child's best interests that a restriction of contacts between a child and the other parent may automatically mean also the limitation of contacts with a rather broader circle of people whose presence the other parent believes is important in a child's life. The fact that third persons may always propose court determination of contacts with a child is not in the child's best interests since such proceedings may be long-lasting, inefficient, and by means of the potential involvement of court experts mean an additional burden for a child. It is believed that it would be in the child's best interests if the Courts, always, when ruling that contacts with one of the parents be implemented under supervision, would verify whether there are any conflicts between parents with regard to contacts with third persons, and at the same time also decide upon the scope and the manner of contacts of these persons with the child.

With regard to the best interests of a child it is within the competence of the parents especially to decide

A case was encountered in which the Court prohibited a detained person from receiving a visit by a juvenile grandchild in a place of detention. This was justified by the explanation that a place of detention is not a suitable environment for a three-year old child. We agree that a place detention is not the most suitable place for visits of the three-year old child, but the decision regarding what is appropriate for a child and what is not, is, pursuant to the provision of Article 54 of the Constitution of the Republic of Slovenia, within the competence of the parents. This right and duty of parents may be revoked or restricted but only explicitly after the proceedings and to the extent prescribed by the law. If the Court that treated the abovementioned case judged that parents' conduct of this kind may be endangering a child, the Court should inform the responsible centre for social work which would proceed in accordance with its powers. Otherwise the Court which conducts the criminal proceedings must not interfere with family relations. With a decision that the child's visit be prohibited the Court thus interfered also with the right to respect for his private and family life as safeguarded by the provisions of Article 8 of the European Convention on Human Rights and Fundamental Freedoms.

2.15.2 Children's rights in kindergartens and schools

In the past year many initiatives and complaints were received with regard to the acceptance of children into kindergartens as it turned out that the capacities of public institutions are not adapted to the greater number of children whose parents would wish to have them involved in organised pre-school education. From initiatives it is evident that kindergartens have too little capacity to accept children and this is the cause of numerous irregularities, disregard of regulations and even violations of human rights, or rather children's rights.

The provision of a sufficient number of available places in kindergartens and thus the access to a kindergarten to everybody is a fundamental task of a municipality. Unfortunately many municipalities have only followed changes to regulations superficially and have not given enough attention to the growth in the number of births. Hence the responsible municipal authorities have not realized in time the consequences of such negligence. When last year the latest amendment to the Kindergarten Act was adopted under which families with more pre-school children are granted free kindergarten service for all children except for the first born, the problem was additionally heightened. It turned out that the field of pre-school education is poorly regulated, that regulations are not well thought through, that criteria with regard to the acceptance of children differ from municipality to municipality which causes uncertainty among people, provokes mistrust in the justice of an individual arrangement and it gives rise to a belief of their discriminatory nature.

The provision of the inclusion of children into the programmes provided by public service within the framework of pre-school education is determined by the Kindergarten Act. Article 10 of this Act stipulates that "when in the place of residence there is no kindergarten which implements the public service or there are no free places in the kindergarten and the parents have expressed their interest to enrol in the kindergarten such a number of children that in compliance with standards and norms would form one class, the local community is then bound to initiate a procedure for the provision of additional free places in a public kindergarten or open an invitation to concession within a period of 30 days at the latest". This means that every municipality must take action upon each greater interest demonstrated by parents with regard to the inclusion of children into the kindergarten. But the inclusion of a child into a public kindergarten is not a right which may always be enforced or this claim be enforced in Court. By establishing kindergartens the State and local communities only offer a possibility for the inclusion of children into a form of quality education and protection

in the pre-school period. This means that they undertake to establish a certain active policy in this field but the nature of that policy is not determined in advance.

On the basis of initiatives made by parents the applicable regulations for the field of pre-school education were checked, as well as several Rules regarding the acceptance of children coming to kindergartens from other municipalities. It is observed that Article 20 of the Act provides for the legal basis with regard to the adoption of rules on the acceptance of children in kindergartens and the establishment of special commissions to decide on the acceptance. Mandatory criteria which are determined by the law, and which each municipality must take into consideration when preparing the rules, are the special needs of a child and the poor social situation of a family. All other criteria may be decided on an autonomous basis by municipalities; this includes also the number of points for the individual criterion.

The question regarding the discrimination of younger children compared to older children was particularly pointed out since the rules awarded more points to older children. The question has arisen whether such a case might concern a violation of the prohibition of discrimination with regard to access to public services, which enables greater opportunity to obtain suitable education or easier co-ordination between business and family obligations. Discrimination is caused by conduct (commission or its omission) which enables or may enable different (mostly worsened) treatment and is founded on any personal circumstances (for example, age) that are not relevant for such treatment. In the case dealt with, in the Ombudsman's Office opinion, no such differentiation is concerned. It is believed that the measure attempts to ensure priority to those children who, due to their age, are closer to being included in the mandatory educational model provided by the primary school. This is a sensible measure, intended mostly to be part of the educational policy which attempts to ensure greater preparedness of children for an efficient inclusion into education. These needs are not so much expressed by younger children; however, greater support concerning childcare should be given to their parents in order to better harmonise their family life and working obligations.

It had already been proposed by the Ombudsman in the 2008 Annual Report that it was urgent to adopt programmes and measures for the assurance of a sufficient number of free places for children in kindergartens, and thus, for the provision of equal accessibility of parents to the use of public services intended for the pre-school education system established by the State. The Ombudsman also championed the establishment of a transparent and uniform system concerning the enrolling of children in kindergartens. The recommendations proposed were approved by the National Assembly of the Republic of Slovenia.

Head lice: who should take care of this unpleasant nuisance – parents or health care system or school

A parents' complaint was received that in a school where lice occurred a professional examination of a child's scalp had to be separately paid for. The head teacher of the school specifically decided that the examination of pupils' scalps was entrusted to the community nursing service which, nevertheless, does not perform this service within the framework of the public health care service, and that is why this service was to be performed at the cost of parents.

The school was requested to provide an additional explanation, because the appropriateness of additional charging of the community nursing service in relation to the health care of children was doubtful. Therefore we also wished to clarify how the issue concerning lice was resolved in the past. A copy of a written reply from the community nursing service

about performing the service was also requested. In his reply the principal explained that professionals at schools are not qualified to diagnose and treat contagious diseases which also include head lice, that they must not examine pupils since they are not medical professionals and that they must notify parents that their child has lice. When the school observes that lice have appeared it has two options for taking measures: to have the scalps of children in school examined by an adequately trained person who is paid for this service, or the school requests a certificate from parents of all pupils that their child does not have lice. This certificate, issued by a doctor, also needs to be paid for. In a given case the school decided on the first option because it saved parents time and made the process concerning the detection of lice cheaper.

With relation to this problem, the Office turned to the National Institute of Public Health where an explanation was provided that under the Contagious Diseases Act, de-lousing is the obligation and responsibility of parents. In a case of an omission to treat lice, parents commit a minor offence which renders them liable to a fine or penalty. However this answer did not explain how schools should deal with this problem and that is why an inquiry was also addressed to the Ministry of Education and Sport. In its reply the Ministry explained that with regard to this issue no circular mail or instructions have been submitted to schools regarding how to proceed. The taking of measures is left to an individual school. If the school turns to the Ministry, they refer them to the responsible Institute for Public Health to obtain information there or to the National Institute of Public Health. The Ministry believes that school professionals have no legal basis for the examination of children's scalps. But since the National Institute for Public Health or the Institute for Public Health recommend that *teachers or educators* examine children' scalps at least twice a week the head teacher of the school must notify parents and for the examination of scalps obtain their permission. The answers obtained were not satisfactory as it is believed that the Ministry should provide schools with clear and unambiguous instructions as to how the school should deal with the lice issue, where to turn for assistance, and who should find out whether and which children have lice. It was proposed that appropriate instructions be issued to schools with regard to the treatment and a consistent policy be also agreed concerning this issue with the Ministry of Health. Only in this manner will the handling of this issue by all schools be unified and the unnecessary anger and dissatisfaction of parents be prevented. The Ministry of Education and Sport accepted the Ombudsman's proposals and agreed with the Ministry of Health that with regard to the lice issue from the point of view of health adequate instructions or proposals for measures will be prepared.

2.15.3 Children with special needs

On the basis of numerous initiatives it is observed that children with special needs who are included in primary schools together with their peers (regular primary schools) often encounter numerous problems due to their own shortcomings, disabilities and disorders. Additional problems arise because of poor knowledge and sometimes also due to the misunderstanding of adults who deal with these children. If problems are also present in a family – relations between parents and relations between parents and children – sometimes, the best of all possible solutions is that a child is included in an institutional education and care centre. In regular schools some teachers and other professionals are afraid of taking responsibility for treating children with special needs. We have been informed about cases where they wish children to be preferably included in institutions or adequate specialized institutions. In the Ombudsman's opinion this issue is dealt with in too formal a manner and regulations which try to regulate and stipulate all procedures, and try to apply to all cases and situations are given too much emphasis, while there is too little empathy, understanding and compassion for the hardships of children and their families. In some cases the opinions and wishes of children in particular are too little taken into consideration, and sometimes also the wishes of parents, especially when their wishes are realistic and well grounded. In these cases procedures should be speeded up. The Ombudsman supports the decision

that children should not be accommodated or transferred to an institution when this is not professionally justified and urgent or if this is not in the best interests of children. The Ombudsman also believes that upon the exclusion of a child from the family all service providers and experts should co-operate as best as possible and strive actively for a child to return to the original family. In all cases of a removal or exclusion of children from a family, parents need to be made as familiar as possible on all options and conditions for their return and also about all ways and procedures in which this may be achieved.

2.15.4 Children in sport

The Ombudsman's work in the field of sport is described in detail under the chapter "Social Services", and especially those phenomena which may mean violations of children's rights guaranteed by the UN Convention are particularly dealt with. The situation itself and potential violations of children's rights in the area of sport was not much dealt with until now. However, in the past year, some initiatives were received which point to the fact that more attention will have to be dedicated by the State to this field in the future. Because sport is an activity which is largely left to the free choice of individuals it would not be appropriate to regulate the field in full and in this manner restrict choice, but certain questions do need to be regulated in a transparent manner and ensure an appropriate level of control.

It is observed that the internal regulation of relations in sport societies lacks external supervision since it is left to the internal autonomy of members which may lead to irregularities and abuses. At least at the level of national branch associations, uniform elements with regard to internal relations in societies should be regulated. Parents or children's representatives should be informed in advance regarding the rights and duties of their children, in particular in the case of a cessation of membership when some sport societies require inadequately high indemnities as if children were professional sportsmen/women.

Among the cases, a problem is being dealt with when some trainers abused their position and literally tortured children by forcing them to do hard physical training. We are aware of the fact that there are no top sport results without hard work but this should not mean that a child is not protected against physical and mental violence and that his right to rest and leisure time, play, and entertainment is restricted.

2.15.5 Violence

Initiatives from this field are increasing whereby it is determined that the awareness of violence as a violation of human rights is deepening since particularly schools dedicate more and more time to this question. In spite of the commitment of the Government that in Slovenia the legislative prohibition of the physical punishment of children will also be adopted this has not yet taken place; however, this norm is envisaged in the proposal of the Family Code. The Ombudsman supports the arrangement that the prohibition of the physical punishment of children would not be sanctioned as a minor offence but it would signify a clear declaration by the State that it does not support such treatment since it means a violation of children's rights.

The Ombudsman participates as an external partner also in a project led by the Institute of Criminology of the Faculty of Law at the University of Ljubljana and examines the emotional aspects in identifying, treating and preventing violent treatment in schools. The first findings of the project draw attention to the fact that violence in schools is linked to emotions and the level of emotional intelligence of everybody involved. As much as 74 percent of children involved in the project have already experienced violence in school, whereby 46 percent of children experienced violence in the forms of teasing, scolding, insults or humiliation, and 30 percent as physical violence.

2.15.6 Advocate – Voice of the Child Project

With regard to the fact that basic characteristics of the project were already presented in the 2007 and 2008 Annual Reports it is the wish of the Office to highlight the continuation of the course of advocacy which unfortunately still takes place only within the framework of this project. The preparation of the Advocacy Act is specifically linked with the adoption of the Family Code and two procedural acts (on litigious and non-litigious civil proceedings).

Because of a great interest for the appointment and functioning of advocates across the whole of Slovenia, in 2009 a training course for candidates from the whole of Slovenia was implemented. Up until now, the training has been successfully performed by 71 advocates. Advocates were appointed for approximately 70 children (almost in all cases with the consent of parents). Their experience, both with regard to co-operation with the parents, but particularly with the children, is mostly extremely positive. During his/her work, an advocate has also the opportunity to contact the project manager, coordinators and other experts involved in the project which highly increases their efficiency.

It is observed that the idea of an advocate was also well accepted by professional services, in particular some social work centres, since through the advocate the co-operation of a child in finding a solution for the true interests of a child is increased.

2.15.7 Children in media

Equally in 2009, some cases of inappropriate writing or reporting of the media were dealt with. These cases concerned the media which, in their search for scandalous news which increase the readers' interest and thus their sales, published, in an ill-prejudiced and immoral manner, personal data or data on children on the basis of which these children were easily identified. Until the legislation on media provides serious criminal sanctions for these violations, these cases will only be dealt with from the point of view of violations of the Code of Ethics of Slovenian Journalists which, unfortunately, obviously have no meaning for some editors and journalists. That is why some cases were reported to the State Prosecutor's Office and it was proposed that elements of a criminal offence under Article 287 of the Criminal Code be identified. It is especially the Office's wish that case-law be established which will determine the boundary between the interests of the public and the right to a child's privacy. Unfortunately, according to our data, no criminal proceedings under the Article mentioned have been completed, not even at first instance. More with regard to this issue is written in the chapter on constitutional rights and administration of justice.

PROPOSALS AND RECOMMENDATIONS

- The Government and the responsible ministries should implement all recommendations adopted by the National Assembly of the Republic of Slovenia with regard to the 2008 Ombudsman's Annual Report whereby priority be given to legislative regulation concerning the advocacy of children; this, by means of the establishment of an independent institution with a network of trained advocates across the whole of Slovenia, will enable access to every child who wishes to express his/her demands, needs and wishes and strengthen his/her own voice.
- The Government or the responsible ministries should provide for a suitable option concerning the hospitalisation of children with a severely expressed problem with mental health until the end of 2010.
- The Ministry of Education and Sport should prepare an integral assessment and analysis of the field of pre-school education and ensure that the inclusion of children in kindergartens will become a right equally accessible to everyone.
- The Ministry of Education and Sport should prepare an analysis concerning the implementation of children's rights in societies and non-governmental organisations from the field of sport, and prepare appropriate measures against ungrounded indemnities upon children's transition to another sport club. Appropriate measure should also be ensured which would prevent punishment of children during training.
- The Government should do everything to have the Family Code be adopted as soon as possible.
- The Ombudsman proposes the preparation of an integral analysis and assessment of the entire system of foster placement, a suitable discussion with the professional public and all interested parties, and on this basis the preparation of the necessary amendments to legislation.
- The Ombudsman recommends the adoption of measures for the elimination of the unacceptable practice of long proceedings before courts with regard to the award for upbringing and care of children.
- The Ombudsman recommends the formation of special teams of experts who would deal with the child and his position in the family in an integral manner, prevent repeated examination of the child and shorten the procedure. The Ombudsman also recommends that an expert be appointed immediately when the actual need occurs without delay regarding the appointment due to exclusively monetary reasons.
- The Ombudsman recommends the adoption of measures for the improvement of the quality of work of court experts, the elimination of unnecessary delays in the preparation of expert reports and unnecessary postponement of making a decision (by requesting additional and new expert opinions), and the establishment of an efficient supervision of their work which should be overseen by professional organisations and the Ministry of Justice.
- The Ombudsman recommends a more efficient organisation of the work of commissions for the placement of children with special needs which will enable the handling of the cases of children in a timely and qualitative manner.
- The Ombudsman recommends the adoption and the implementation of programmes for the development of the culture of non-violence and peaceful and tolerant dispute settlement, the prevention of peer violence and the adoption of measures to increase the safety of children and young persons as well as protection and assistance to those who are affected due to violence.

29. The option of the appointment of an advocate as an assistance in settling contacts between children and divorced parents

The initiator is a mother of two children who have been entrusted to their father by means of temporary injunction, and by which injunction frequent contacts with her were determined. The initiator claims that the father imposes severe psychological violence on the children (makes various threats, also, that he will do something to himself) which is why the children are supposedly very frightened. This was particularly evident during the last attempted contact. She turned to the Ombudsman with a request to appoint an advocate for her six-year daughter while for her son she was advised not to request an advocate, as he had been already involved in therapy.

The initiator states that her daughter was very happy after a visit of a few days at her home and wished to stay with her. Unfortunately she could not accede to her wish which she also explained to her. The son, however, has been behaving in a very negative manner towards her, kicking and insulting her. There had been no contact meetings for almost a month. The father claims that he prepares the children for the contact meetings but they are both unwilling to have contact.

The initiator believes that the children with the help of an advocate might express their real opinion. She adds that she has proposed the appointment of an expert but the father strongly refuses to accept this proposal and refers again to the fact that the son is already included in therapy.

In co-operation with the centre for social work the father was informed about the expressed need to appoint an advocate and proposed that he provides his consent. He firstly agreed with this, but he later proposed that the parents should attempt to come to an agreement by themselves before that. At the same time he also agreed to the appointment of an expert. Contacts started to occur as agreed but the boy continued to be negative in relation to his mother. Upon the parents' request the procedure concerning the appointment of the advocate was temporarily suspended. Because after approximately two months problems with regard to contacts reappeared, the mother of the children requested that the advocate appointment procedure continue. The father opposed this request. The centre for social work informed him of the fact that if it is determined that the appointment of an advocate would be in the interests of the children, the advocate may be appointed by means of a legal decision. The father again promised to sign his consent but he delayed in signing the document. He started to agree with the children's mother, contacts improved and after a visit to the expert, the son's relationship towards his mother changed. The initiator informed the Office that she was withdrawing the request to appoint the advocate and thanked us for our intervention, as she believed the situation had improved due to that intervention.

In this case no violation of children's rights by the State has been observed but a positive experience from the Advocate – Voice of the Child Project - taking place under the auspices of the Ombudsman is described. From the case mentioned it is observed how urgent the option of the appointment of the child's advocate is immediately after the parents' divorce when the child still has his/her own opinion and when each of the parents is aware that with the help of the advocate the child's manipulation would be revealed. In the presented case the procedure to appoint the advocate contributed to the fact that the father's irresponsible behaviour stopped and the building of a more responsible parenthood started. **11.1-12/2009**

30. The right to the reunion of a family in a case when one of the parents is a Slovenian citizen

The affected person in his complaint submitted that his right to apply for child benefit and to the reunion of his family was being violated. He mentioned that he is a Slovenian citizen and that he lives in Ljubljana where he has his own apartment. He wished that his wife and children who live in Bosnia and are Bosnian citizens should move to join him. At the responsible centre for social work he inquired about the enforcement of his right to child benefit, and at the Aliens' Department about the conditions for the move of the remaining members of the family. He received information that neither of the rights could be enforced and that is why he also wished to obtain the opinion of the Ombudsman of the Republic of Slovenia (the Ombudsman).

Although the Ombudsman is not competent to explain the regulations the initiator was nevertheless informed that the right to child's benefit is stipulated by the Parental Protection and Family Benefit Act. In Article 67 the Act stipulates that the right to child benefit is held by one of the parents of a child with a registered residence in the Republic of Slovenia. This means that the child needs to reside in Slovenia so that parents may enforce the child benefit right which is an additional income for the maintenance, education and care of children. The second problem is linked to the provision of sufficient funds for the maintenance of a family in Slovenia. The residence of aliens in Slovenia is specifically regulated by the Aliens Act which in Article 93 (I) stipulates that a provisional residence permit for a family member may be issued if sufficient funds for maintenance are provided for, on a monthly basis, at least in the amount of the basic minimum income in Slovenia, which amounts to 221.70 EURO.

With regard to this, the initiator was advised that in the situation where he has certain assets on the basis of which he may pay out to his family members a specific amount intended for maintenance, he should conclude an agreement with his wife in the form of a directly executable notarial record. This option is specifically provided for by the second indent of Article 93 (l) of the Aliens Act. It was explained that the agreement must be concluded in the Republic of Slovenia which will be used as the proof by family members that sufficient means of subsistence is ensured. In this case his wife will be issued a temporary residence permit for five years, and his children a permit until they reach 21 years of age.

During the processing of this initiative a problem was noticed in the legislative regulation concerning the right to the reunion of a family which limits it in an unreasonably strict manner to Slovenian citizens whose family members are aliens and not citizens of the European Union. Hence a more suitable solution is proposed. **11.2-5/2009**

31. Disciplining of children in sports

The Office's attention was drawn to questionable conduct of individual teachers of sport and trainers of children in sport clubs or associations. This regards additional physical tasks of a demanding nature which children need to accomplish as a punishment if they have come late to training, if they were not good and strenuous enough, if they failed to accomplish something in accordance with the trainer's expectations and similar. Individual given cases of such disciplining actually mean physical punishment which is very unpleasant and humiliating for children and at the same time making children a target of mockery by their peers. The Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) believes that the issue concerns cases of unacceptable treatment of young people since some of the methods described and performed by sports teachers and trainers are inappropriate and questionable both from an ethical and moral viewpoint and the point of view of the children's dignity.

It is right that parents should have concerns about how sport teachers deal with young people. Namely, parents trust their children to them on a voluntary basis that is why an appropriate attitude to children is reasonably expected – at least such an attitude that adults would expect to have for themselves. Sports teachers and trainers are therefore advised by the Ombudsman that they also are committed to the mission of the teaching profession which requires from the teacher appropriate communication with young people and parents, sensitivity, tolerance, patience, fairness, ability to adapt, tactfulness and many more other positive characteristics. That is why she appeals to everybody who works with young people to respect children's dignity and to formulate their assessment criteria in such a manner for the criteria to be as just as possible and so that children will not see a bad result as an injustice and a punishment for something they have not achieved or they are not good at. And parents should be particularly attentive and respond immediately in each case: demand a conversation with a trainer or the management of the club or inform the competent Inspectorate for Education and Sport. **11.0-48/2009**

2.16 OPCAT— National Preventive Mechanism

Report of the Human rights Ombudsman of the Republic of Slovenia on the implementation of the tasks of the National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the year 2009

is available on the Ombudsman's website **www.varuh-rs.si** and in a special publication in English. We can send you - free of charge - after receiving your order on **info@varuh-rs.si**.

Information on the ombudsman’s work

3. INFORMATION ON THE OMBUDSMAN'S WORK

3.1 General

The Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) has been established with the aim to protect human rights and fundamental freedoms in relation to state authorities, local administration authorities and holders of public powers. The Ombudsman's task is to discover and prevent violations of human rights and other irregularities, and remedy their consequences. It is not within the Ombudsman's jurisdiction to make authoritative decisions and has no mandate to take legally binding decisions which might be sanctioned by means of legal restraint. His action and acts are not of an authoritative nature and with them he does not exercise power. The Ombudsman is an additional instrument outside the judicial protection of the rights of individuals. Pursuant to the Act ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (MOPPM) (Official Gazette of the Republic of Slovenia, International Agreements No 20/2006; Official Gazette of the Republic of Slovenia, No. 114/2006), since spring 2008, the Ombudsman has performed the tasks within the national prevention mechanisms against torture and other cruel, inhuman or degrading treatment or punishment. The Ombudsman has been performing the tasks under the national prevention mechanisms in co-operation with non-governmental organisations selected on the basis of public tender. Since 2007, the pilot project Advocate – Voice of the child has been carried out by the Ombudsman. Within the framework of the group for the implementation of the pilot project (SIPP) – Advocate – Voice of the Child, in 2009, the Ombudsman began to implement the organisation of children's advocates throughout the whole of Slovenia. Within the framework of the Ombudsman's operation, tasks of promotion and prevention are also performed.

The fundamental legislation for the operation of the Ombudsman is the Constitution of the Republic of Slovenia (Article 159) and the Human Rights Ombudsman Act (ZVarCP). The Human Rights Ombudsman Act, in the second paragraph of Article 10, stipulates that the Ombudsman shall regulate the organizational scheme and work of his Office under the Rules of Procedure and other general acts. Rules of Procedures, adopted by the Ombudsman (an official) following a prior opinion given by a responsible working body of the National Assembly of the Republic of Slovenia (NA RS), that is the Commission for Petition, Human Rights and Equal Opportunities, specifically determines the distribution of fields, the organisation of work and the procedure concerning complaints. The legal framework for the Ombudsman's work also comprises other legislation: Articles 23(a) and 50 of the Constitutional Court Act, Article 55 of the Patients Right Act, Article 52 of the Defence Act, Article 65 of the Consumer Protection Act, the second paragraph of Article 14 of the Environment Protection Act, Articles 59 and 60 of the Personal Data Protection Act, Articles 213(b) and 213(c) of the Criminal Procedure Act.

The Ombudsman carries out his tasks by solving individual initiatives which are addressed to him by initiators and in which violations of human rights, fundamental freedoms or other irregularities made by state authorities, local administration authorities or holders of public powers are alleged. In an individual case the Ombudsman may initiate a procedure on his own initiative (for the initiation of the procedure only the consent of the affected party is needed). He may also deal with broader questions which are important for the protection

of human rights and fundamental freedoms as well as for legal certainty in the Republic of Slovenia. The Ombudsman holds powers determined in the Human Rights Ombudsman Act in relation to all state authorities, local administration authorities and holders of public powers. He does not process cases about which judicial or other legal proceedings are in progress unless it concerns an unjustified delay in proceedings or an obvious misuse of power. He may submit his opinion from the point of view of human rights and fundamental freedoms to any authority in respect of the case being dealt with regardless of the type or the stage of the procedure which is taking place within these authorities.

State authorities, local administration authorities and holders of public powers must furnish the Ombudsman, when he requires it, with all the information and data falling within their competence, irrespective of their level of confidentiality, and enable the Ombudsman to carry out the investigation (Article 6 of the Human Rights Ombudsman Act). In compliance with Article 34 of the Human Rights Ombudsman Act all state authorities must assist the Ombudsman in conducting an investigation and render him adequate assistance when required by him to do so. The procedure before the Ombudsman is confidential, the Ombudsman reports about his findings and measures to the public and the National Assembly of the Republic of Slovenia. The procedure before the Ombudsman is informal and free of charge for the applicants. In order to lodge a complaint the formality of an initiative or the assistance of an attorney-at-law is not necessary. However, the application should be lodged in a written form, it should be signed and the personal data of the initiator should be included. In the initiative it is necessary to mention circumstances, facts and proofs upon which the initiative is founded in order to initiate a procedure. The initiator must also mention if legal remedies have been used in this case and if they have been used, which ones have they been. Prior to lodging a complaint before the Ombudsman an individual has to use all legal remedies available. It especially applies that an individual must firstly seek to solve the case with the authority which he/she believes has violated his/her rights. The Ombudsman must conduct the procedure in an impartial manner and in each case obtain the viewpoint of the affected persons or parties involved. The Ombudsman may, with regard to his work, inspect all data and documents falling within the competence of state authorities. Regulations regarding protection of confidentiality of data are binding both for the Ombudsman, his Deputies and his staff.

By solving complaints the Ombudsman influences the elimination of given violations, and in this manner also the prevention of future violations. Quite often both are intertwined. It is vital for the Ombudsman that he is accessible to anybody who wishes to turn to him. It is most important for an individual that his problem is solved quickly and in an efficient manner. This is the precept for the Ombudsman's work and this principle is followed by a set of solutions concerning the method of work. The most important are also mentioned in the continuation of the text:

- Complaints may be lodged in writing by post, they may be submitted during a personal interview (at the Ombudsman's head office or when operating outside the registered office) or submitted via e-mail. Some complaints derive from interviews held with confined persons during the Ombudsman's visits in prisons and detention premises, or with persons confined in hospitals, social security institutions and other institutions where freedom of movement is limited.
- It is possible to call a free-of-charge telephone number during the Ombudsman's business hours in order to obtain explanations, advice or information on submitted initiatives, or make an inquiry via e-mail.
- The Ombudsman also operates outside its head office. In this manner he tries to achieve better accessibility throughout the whole of Slovenia. This method of operation enables individuals who reside far away from Ljubljana easier and cheaper personal conversation with the Ombudsman and Deputy Ombudsmen. The individuals may present their

problem in more detail in a personal conversation and hand the necessary documentation to the Ombudsman; and some problems may be removed by means of an immediate intervention taking place during the meeting in the town visited. The visit also has a prevention influence to the work of state and local administration authorities operating in the town visited. At the conclusion of the out-of-office operation, a press conference is held at which the Ombudsman and his colleagues present the content of problems reported by initiators, and answer other questions raised by journalists. In 2009 the Ombudsman and her colleagues, within the framework of the out-of-office operation, visited Črna na Koroškem, Črnomelj, Idrija, Izola, Murska Sobota, Nova Gorica, Ptuj, Tržič and Žalec. Within the framework of these visits conversations were held with 156 persons.

- With regard to the methods of Ombudsman's work it is necessary to also mention telephone conversations which are held by the Ombudsman, as a rule, every Tuesday from 1 to 2 p.m.
- Personal conversations with initiators held at the Ombudsman's head office in Ljubljana are possible every working day from 8 a.m. to 4 p.m. Conversations with initiators are conducted by advisers on duty. Initiators whose complaints are already being processed may agree a meeting with the adviser who processes his/her case.
- The Ombudsman represents its activity at the renewed web page www.varuh-rs.si where links to various international documents and institutions dealing with human rights and fundamental freedoms are available.

The Ombudsman also carries out tasks and powers imposed under the national prevention mechanism (NPM). In an agreement with the Ombudsman these tasks are also implemented by selected non-governmental organisations in the Republic of Slovenia and organisations which have obtained the status of a humanitarian organisation in the Republic of Slovenia and deal with the protection of human rights or fundamental freedoms. On the basis of a public tender published in the Official Gazette of the Republic of Slovenia the following organisations have been selected for co-operation in 2009 and 2010: Legal Information Centre for NGOs (PIC), the Slovenian Red Cross (RKS) and the Primus Institute. The Ombudsman's work carried out within the national prevention mechanism is presented in more detail in chapter 2.16 of this report.

3.2 Openness of the work

The Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) has no authoritative or executive competence, his work is based on the power of argument which may be strengthened by various forms of co-operation with the public. The power of the Ombudsman thus lies in an adequate status in the hierarchy of state authorities and in the arguments contained in his proposals. The Ombudsman respects the right of people to information and the openness of his work is ensured with submitting timely, complete and true information on questions from his area of work. In this regard he operates in compliance with the Human Rights Ombudsman Act, Media Act and Act on the Access to Information of Public Character. Public relations with the Ombudsman are carried out in various ways: with communication in procedures regarding the resolving of initiatives, personal meetings with representatives of various members of the public and with the active participation of the Ombudsman, Deputy Ombudsmen and other colleagues in events with a symbolic message. The openness of the Ombudsman's work is guaranteed by the Ombudsman. Information, explanations, notifications and messages are, in addition to the Ombudsman, also delivered by her four Deputy Ombudsmen (three male Deputies and one Lady Deputy); under the authorisation of the above mentioned persons and the Secretary-General, and also by the PR Adviser and exceptionally also employees.
The Ombudsman, by informing the public about his work, on the one hand, submits information to the public on the status of the protection of human rights in Slovenia, and on the other hand, his information promotes awareness since the recipients of information

may understand how they may exercise their rights in relation to state authorities, local administration authorities and holders of public powers. The Ombudsman publicly responds when it is assessed that this is necessary from the point of view of the Ombudsman's role and powers. It is also taken into account that the frequency of statements does not contribute to their effectiveness. The Ombudsman, as a rule, responds to individual cases only when relevant information from the responsible authorities is obtained.

3.3 Relations with the media

These are only one area of the Ombudsman's public relations. Journalists and editors are one of the Ombudsman's targets within the public sphere and at the same time form a bridge to the target general public of the media. Public relations demand a planned, cared for, positive and long-term relationship. The Human Rights Ombudsman held 12 press conferences in 2009, mostly when on out-of-the-office operations, and 3 conferences were held at the head office. The formulated direction with regard to attention placed on local media has proved to be effective and it is achieving its goal, that is a greater number of violations being noticed in the field, and an increase regarding direct contact with the local population. The Ombudsman carried out 15 longer interviews for various media and she was available, together with the Deputy Ombudsmen, for numerous questions raised by the media with regard to topics which concern the Ombudsman's operation or the protection of human rights and fundamental freedoms.

3.4 Other communication tools

The Ombudsman has produced in a renewed form a brochure for initiators in Slovenian, English, Hungarian and Italian; all are accessible in e-form on web pages. In the beginning of 2009, a promotional video was launched on the video-social network You Tube; the video was intended for the potential users of the Ombudsman's services and it conveys basic information on the work of the institution. The video can also be viewed on the Ombudsman's web page www.varuh-rs.si. The public is informed of the Ombudsman's work and cases linked to the protection of human rights in relation to state authorities, holders of public powers and local administration authorities through the web pages www.varuh-rs.si. These enable direct address of target groups, or they are a source of information for the media. Such communication is a part of the PR programme. Information published only on web pages would often remain only in the knowledge of a narrow circle of interested parties unless each change of a piece of information on pages also reached subscribers through e-news; there are approximately 700 subscribers. On the Ombudsman's web page there is also a media centre which enables the media fast access to key pieces of information. Audio information published as a whole enables the contents of the Ombudsman's work to be picked up without a necessary presence at press conferences. Journalists may thus verify pieces of information several times, archive them, and sum them up in an exact manner when it suits them. Journalists are included in the recipients of electronic news through which the Office informs them about projects, tenders, out-of-office operations, visits or the inspection of institutions, international relations, new material; in short, about all forms of the Ombudsman's work.

The renewal of web pages which had been planned in 2008 and implemented in 2009 has proved to be a good move. A user-friendly navigation through pages enables faster learning about key information and it contributes to a rational use of time. Web pages enable the use of audio and video content, and the interactive use of individual thematic units is planned; this would lead users through the forest of information in an easier manner. Web pages are a source of information about the Ombudsman and his work. It is also noticed that they are a source of secondary information on human rights and that through requests for contents the need is shown for a broader base of information about human rights (international

documents, general state, good practice, etc.). The Ombudsman is aware of the possibilities of new forms of communication and seeks to access various target segments of the public also through social networks. In November 2009 the Ombudsman became a member of the web community Facebook and in this manner it has extended its circle of recipients of the Ombudsman's information.

3.5 Publishing activity

In 2009 the Ombudsman published several publications. These are:
- 2008 Annual Report,
- 2008 Annual Report – Abbreviated version in English,
- Collection of essays from the international conference held in Ljubljana on 10 December 2008 upon the 60th anniversary of the adoption by the UN of the Universal Declaration on Human Rights, and upon the 15th anniversary of the adoption of the Human Rights Ombudsman Act,
- Report of the Human Rights Ombudsman of the Republic of Slovenia on the implementation of the tasks of the National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the year 2008,
- A free-of-charge bulletin on the 20th anniversary of the Convention on the Rights of the Child.

As in the case of the previous bulletins, this bulletin was also thematic (in 2007 on environment and human rights, in 2008 on poverty, in 2009 on rights of the child) and was aimed at specifically determined groups which are connected to this topic, contrary to the concept in the past when groups lacking information were aimed at by way of the various contents of a bulletin.

3.6 Projects

The Ombudsman's project work is intended to obtain an integrated insight into a certain issue, with co-operation with government and non-government organisations and the representatives of civil society. The aims of the projects are to bring proposals for a more efficient processing or prevention of violations of human rights. Some projects are a result of independent efforts of the Ombudsman (Advocate – Voice of the Child, assistance for the victims of workplace bullying and harassment), and the Ombudsman actively participates in several projects (research on violence in schools, research on equal opportunities in the Slovenian diplomatic service). The Ombudsman independently implements a project regarding education on human rights in elementary and secondary schools and she participates in the education process of higher education institutions and universities.

3.7 International relations

The international co-operation between the Human Rights Ombudsman of the Republic of Slovenia and similar institutions abroad was as intensive in 2009 as in the year before. At international conferences and by participating in international networks (ENOC, Peer to Peer, CRONSEE, etc.) the Ombudsman conveys her experience and knowledge and learns about cases of good practice of similar institutions. In 2009 the Ombudsman met representatives of international organisations, she held several working meetings with ambassadors of foreign countries who in this manner obtain additional information about individual questions regarding the exercise of human rights in Slovenia.

In the 2009 Ombudsman Annual Report some events linked to the Ombudsman's operation were produced in a table; however this table of events is not published in English in an abbreviated version. The overview is accessible only as a part of a longer report in Slovenian.

3.8 Employees

As of 31 December 2009 there were 42 employees employed at the Office of the Human Right's Ombudsman of the Republic of Slovenia. Among these employees, there were 6 high officials (the Ombudsman, four Deputy Ombudsmen and one Secretary-General), 22 officials, nine members of professional-technical staff, four employees with fixed-term employment and one trainee.

There are 29 employees holding a university degree (two of them hold a Doctor of Science degree, there are six employees with a Master of Science degree and one specialist), five employees hold a degree in vocational higher education (two of them hold a specialisation degree), four employees hold a higher education degree and four hold a secondary education diploma. In 2009 three employments terminated, five officials had fixed-term contracts concluded (among these a trainee, three employees due to a replacement of workers on parental leave, one due to an official's part-time employment and one due to a temporary replacement of an employee with a suspension of rights).

3.9 Finance 2009

The Ombudsman of the Republic of Slovenia is an independent budget user and as such an independent proposer for financial funds intended for his work. This position is an integral part of the Ombudsman's autonomy and independence which has to be respected by the executive branch of power. In 2009, upon the proposal made by the Ombudsman, the National Assembly of the Republic of Slovenia earmarked 2,306,766 EUR from the state budget for the work of the institution.

1,135 EUR were received from the disposal of property, and 46 EUR were received from compensations (funds were transferred from the disposal of state property and compensations from previous budget periods). For the elimination of wage disparities in 2009, 27,335 EUR were received on the basis of the Government of the Republic of Slovenia's decision. For the implementation of a conference of a network of Children's Rights Ombudsmen, funds which were intended to cover the costs of the conference were transferred from 2008 to 2009. These funds were received as a donation from Save the Children Norway in the amount of 2,720.88 EUR of which 2,303.64 EUR were spent and 417.24 EUR were returned to the provider of funds.

Thus in 2009, the Ombudsman had at her disposal budget funds in the total amount of 2,337,586 EUR.

Funds were distributed across to three sub-programmes, namely:

- **to the sub-programme: Protection of human rights and fundamental freedoms**
  Financial funds in the total amount of 2,107,319 EUR were earmarked, of which the total amount of 1,532,342 EUR was fixed for salaries (total salaries, contributions, other personal remunerations and the payroll tax), 442,567 EUR for material costs and 132,410 EUR for investment expenditure.

- **to the sub- programme: Optional Protocol implementation**
  Financial resources in a total amount of 123,104 EUR were fixed. Of this amount, 102,279 EUR were fixed for salaries, 12,203 EUR for material costs and 8,662 EUR for the co-operation with non-governmental organizations.

- **to the sub-programme: Children's Rights Ombudsman**
  Financial resources in the total amount of 76,343 EUR were fixed. During the year, taking into account a legal option and actual needs of the Ombudsman, several reallocations among individual budget items were made. The actual expenditure under individual budget items and sub programmes is shown in the continuation of the text.

- **Expenditure within the framework of the sub programme: Protection of human rights and fundamental freedoms**
  In 2009, 1,467,875 EUR were spent for salaries and other employee's expenditures.

  In 2009 the total of 440,152 EUR were spent on material costs together with reallocations from other budget items of the Ombudsman.

  Together with reallocations, 133,658 EUR were spent on investment expenditures.

- **Expenditure in the scope of the sub-programme: Optional Protocol implementation**
  In 2009, of the total allocated funds in the amount of 102,279 EUR, 100,561 EUR were spent on salaries and other expenditures for employees.

  With regard to the item "Optional Protocol" material costs of the total allocated funds in the amount of 12,203 EUR, 7,403 EUR were spent.

  From the budget item "assets intended for cooperation with non-governmental organizations" out of the earmarked 8,622 EUR, 6,403 EUR were spent; of this amount 2,998 EUR were spent on other operational expenditures and 3,405 EUR for current transfers to non-profit organizations and foundations. The remainder of the funds, according to the established budget totalling 8,622 EUR, amounts to 2,219 EUR.

- **Expenditure in the scope of the sub-programme: Children's Rights Ombudsman**
  In 2009, with regard to the item Children's Rights Ombudsman Office, 73,941 EUR were spent from the total earmarked funds in the amount of 76,343 EUR.

- **Expenditure in the framework of the Conference of a Network of Children's Rights Ombudsmen**
  Under the heading: Conference of a network of Human Right's Ombudsmen, 2,303.64 EUR were spent from the donated funds in the amount of 2,720.88 EUR. In 2009, the unused amount of 417.24 EUR was returned to the donor – the organization Save the Children Norway.

3.10 Statistics

The subchapter presents statistical data regarding the handling of cases by the Ombudsman of the Republic of Slovenia (Ombudsman) between 1 January and 31 December 2009.

1. Open cases in 2009: Open cases are initiatives received by the Ombudsman between 1 January and 31 December 2009.

2. Cases being dealt with in 2009: Besides open cases dealt with in 2009, these include also: cases carried over – unfinished cases from 2008 that were dealt with in 2009, reopened cases - cases in which consideration by the Ombudsman was concluded as of 31 December 2008 but was then continued in 2009 due to new substantive facts and circumstances. Since this concerned new procedures in the same cases new files were not opened in such situations. Because of this the reopened cases are not included among open cases in 2008 but only among cases being dealt with in 2009.

3. Closed cases: This includes all cases being dealt with in 2009 and concluded by 31 December 2009.

Open cases

In the period from 1 January to 31 December 2009, 2,623 cases were opened which means an 8.9 % decrease relative to 2008. The most new initiatives were submitted directly by initiators, mostly in a written form (2,342 or 89.3 percent), 74 initiatives were submitted while on-the- road-operations were taking place outside the head office, 17 by telephone, 18 by means of official notices, and 2 initiative were referred to the Ombudsman by other state authorities. 133 cases (5 percent) were own-initiative cases opened by the Ombudsman and the Ombudsman also received 33 anonymous initiatives.

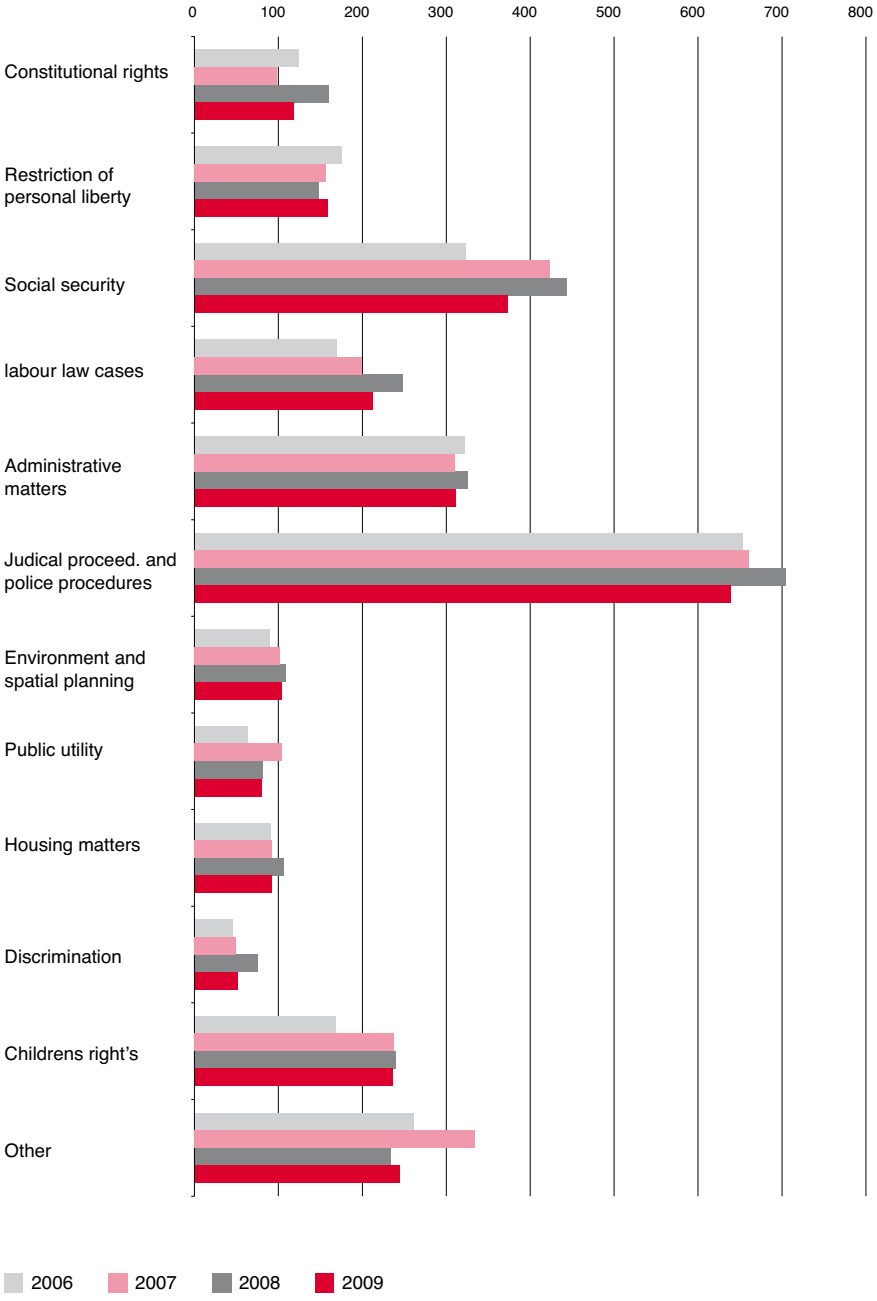
Table 3.10.1: The number of cases opened by the Ombudsman of the Republic of Slovenia in the period 2006-2009 by individual fields of work

AREA OF WORK	OPEN CASES								Index (09/08)
	2006		2007		2008		2009		
	Number	Share	Number	Share	Number	Share	Number	Share	
1. Constitutional rights	125	5.0 %	98	3.5 %	160	5.6 %	119	4.9 %	74.4
2. Restriction of personal liberty	176	7.1 %	157	5.7 %	148	5.1 %	159	5.9 %	107.4
3. Social security	324	13.0 %	424	15.3 %	444	15.4 %	373	14.1 %	84.0
4. Labour law cases	170	6.8 %	200	7.2 %	248	8.6 %	213	8.0 %	85.9
5. Administrative matters	322	12.9 %	310	11.2 %	326	11.3 %	311	12.3 %	95.4
6. Judicial proceedings and police procedures	654	26.2 %	661	23.9 %	705	24.5 %	639	23.8 %	90.6
7. Environment and spatial planning	90	3.6 %	102	3.7 %	109	3.8 %	104	4.2 %	95.4
8. Public utility services	64	2.6 %	104	3.8 %	81	2.8 %	80	3.2 %	98.8
9. Housing matters	91	3.7 %	92	3.3 %	107	3.7 %	92	3.4 %	86.0
10. Discrimination	46	1.8 %	49	1.8 %	76	2.6 %	52	2.2 %	68.4
11. Children's rights	168	6.7 %	238	8.6 %	240	8.3 %	236	9.1 %	98.3
12. Other	262	10.5 %	334	12.1 %	234	8.1 %	245	8.9 %	104.7
TOTAL	**2,492**	**100 %**	**2,769**	**100 %**	**2,878**	**100 %**	**2,623**	**100 %**	**91.1**

Equally in 2009 the most cases were opened in the field regarding judicial proceedings and police procedures (639 or 23.8 percent), social security (373 or 14.1 percent) and administrative matters (311 or 12.3 percent of all open cases).

Table 3.10.1. and figure 3.10.1 show that the number of open cases in 2009 in comparison to 2008 increased in the field of work "Restriction of personal liberty" (from 148 to 159 or 7.4 percent) and in the area of work "Other" (from 234 to 245 or 4.7 percent). The highest reduction of open cases in 2009 relative to 2008 is found in the area of work "Discrimination" (by 31.6 percent) and "Constitutional rights"(by 25.6 percent).

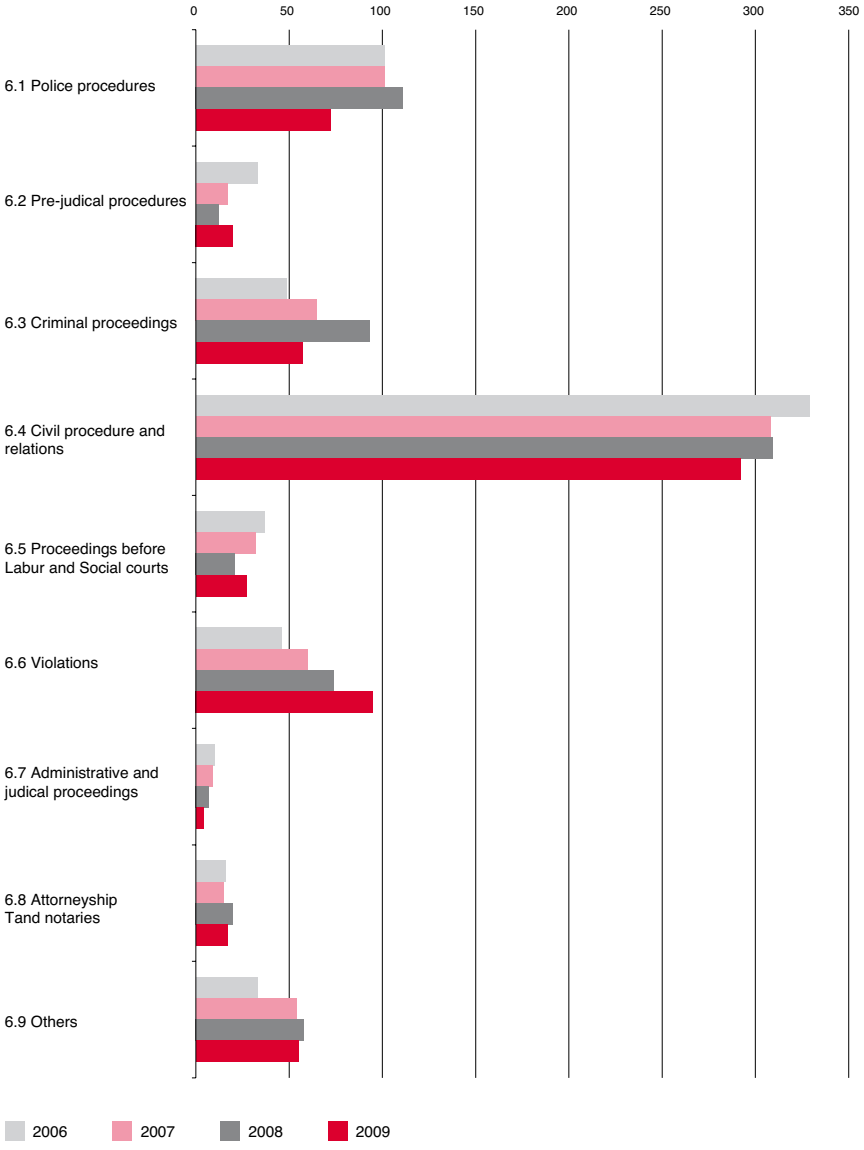
Figure 3.10.1: Comparisons of the number of open cases by individual areas of work of the Human Rights Ombudsman of the Republic of Slovenia in the period 2006-2009



For a clearer illustration of the field of work: "Judicial proceedings and police procedures" it was decided, following the request by Deputies submitted on the occasion of reviewing the Ombudsman's previous year's report, to present this area in greater detail. Figure 3.10.2 shows the structure of classification and changes regarding open cases in the period from 2006 to 2009 according to individual sub-areas comprising judicial proceedings and police procedures, where the largest part covers the sub-area "Civil proceedings and relations" (with 249 cases out of total 545 or 45.7 percent). The reason for such a large number of

cases is on the one hand a larger number of proceedings being classified within this sub-area (civil, non-civil, probate, execution proceedings), and on the other hand the fact that in most of these proceedings at least one side is not satisfied with the decision and often sees it as infringement of its rights. Attention should be drawn to the reduction of these cases in the displayed period which is probably a reflection of the reduction with regard to backlogs of court cases at lower-level courts. A growing number of cases in the sub-area "Minor offences proceedings" should be noted. This is a result of a new legislation according to which the proceedings are concluded before courts and there is no possibility of appeal or retrial. Because people cannot find the appropriate legal remedy they turn to the Ombudsman.

Figure 3.10.2: Comparisons in the number of open cases in the area: "Judicial proceedings and police procedures" being dealt with by the Human Rights Ombudsman of the Republic of Slovenia in the period 2006-2009



Open cases by region

Figure 3.10.2 shows open cases according to statistical regions and administrative units. Equally in 2009, with regard to the classification of cases according to regions and administrative units the same basis for geographic classification of the Republic of Slovenia (Ivan Gams: *Geografske značilnosti Slovenije* (Geographical Characteristics of Slovenia), Ljubljana, Mladinska knjiga, 1992) was taken into account as in previous Ombudsman's annual reports.
As a criterion for a classification of cases according to individual administrative units the initiator's place of residence was taken into account, and with regard to persons serving prison sentences or being treated in psychiatric hospitals the place of their temporary place of residence (the place where a prison sentence is being served or the place of treatment).

Among 2,623 open cases in 2009, there were 53 cases which related to residents from other countries (mostly from Bosnia and Herzegovina, Serbia and Montenegro). There were 143 anonymous complaints or general complaints. General complaints are opened when it is a matter of addressing wider issues and not only dealing with an individual problem. Dealing with general complaints may be begun on the Ombudsman's initiative or on the basis of one or more cases connected from the point of view of the content which indicate a wider problem. Initiatives received by email must be highlighted. In 2009 221 initiatives were received in this manner.

In 2009 the largest number of cases were opened in the *Osrednjeslovenska* (Central Slovenia) region (699 or 26.6 percent of all open cases), of which 539 cases were from the Ljubljana Administrative Unit; 345 cases or 12.2 percent from the *Podravska* (Drava) region, of which 195 cases were from the Maribor Administrative Unit, and 248 cases from the *Savinjska* (Savinja) region (9.5 percent of all open cases). In 2009, compared to 2008, the largest increases in the number of cases were noted in the *Pomurska* (Mura) region: from 122 to 159 cases (30.3 percent increase) and in the *Obalno-kraška* (Coastal-Karst) region: from 137 to 155 cases (13.1 percent increase).
The largest reductions in the number of cases in 2009 with regard to 2008 were noticed in the *Goriška* (Gorizia) region, namely from 105 to 79 cases (24.8 percent), and *Dolenjska* region, namely from 170 to 142 (16.6 percent).

Table 3.10.2 also shows data on the number of cases per thousand inhabitants in individual administrative units and regions. As a source of the number of population per administrative units the data of the Statistical Office of the Republic of Slovenia were taken into account, which were published in the brochure Statistical information, no. 42/2009, more precisely in *Table 4*: *Population by some groups, and sex, Administrative Units, Slovenia, 30. June 2009,* page 10. The most cases per thousand inhabitants were opened in the *Obalno-kraška* region: 1.41 cases and in the *Pomurska* region: 1.33 cases. The smallest number of cases per thousand inhabitants was opened in the *Goriška* region: 0.66 cases. These figures would need additional analysis in order to determine whether these are regions where inhabitants notice the most alleged violations or whether these are regions where people are the most familiar with the functioning of the Ombudsman.

Comparing cases per Administrative Units it can be observed that in 2009 the Ombudsman opened the most cases per thousand inhabitants in the Trebnje Administrative Unit (3.44), Murska Sobota Administrative Unit (1.75), Ljubljana Administrative Unit and Šentjur pri Celju Administrative Unit (1.57), and the least in the Metlika Administrative Unit (0.24) and Tolmin (0.31). With regard to the data for the Trebnje Administrative Unit (3.44) it needs to be mentioned that open cases from this Administrative Unit include cases concerning persons serving prison sentence in Dob pri Mirni Prison.

Figure 3.10.3: Cases dealt with by the Human Rights Ombudsman of the Republic of Slovenia in 2009 according to statistical regions and type of case when cases cannot be defined by region

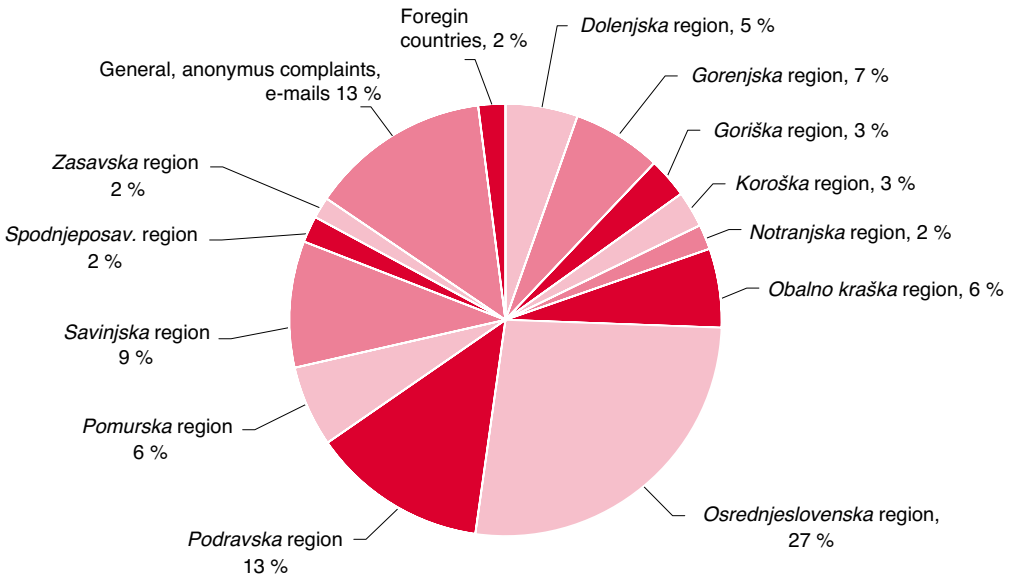


Table 3.10.2: Open cases dealt with by the Human Rights Ombudsman of the Republic of Slovenia in 2009 according to the statistical regions and administrative units

REGION	2008	2009	Index (09/08)	No. of cases/ 1000 inhabitants
Dolenjska region	**170**	**142**	**83.5**	**1.29**
Črnomelj	26	19	73.1	1.03
Metlika	2	2	100.0	0.24
Novo mesto	81	51	63.0	0.81
Trebnje	61	70	114.8	3.44
Gorenjska region	**184**	**175**	**95.1**	**0.86**
Jesenice	33	26	78.8	0.83
Kranj	78	65	83.3	0.82
Radovljica	38	35	92.1	1.00
Škofja Loka	23	25	108.7	0.60
Tržič	12	24	200.0	1.56
Goriška region	**105**	**79**	**75.2**	**0.66**
Ajdovščina	25	20	80.0	0.83
Idrija	7	8	114.3	0.48
Nova Gorica	57	45	78.9	0.76
Tolmin	16	6	37.5	0.31
Koroška region	**63**	**71**	**112.7**	**0.97**
Dravograd	9	6	66.7	0.66
Radlje ob Dravi	11	14	127.3	0.85
Ravne na Koroškem	25	32	128.0	1.24
Slovenj Gradec	18	19	105.6	0.88
Notranjska region	**55**	**49**	**89.1**	**0.94**
Cerknica	12	9	75.0	0.54
Ilirska Bistrica	18	15	83.3	1.08
Postojna	25	25	100.0	1.16
Obalno-kraška region	**137**	**155**	**113.1**	**1.41**
Izola	19	23	121.1	1.43
Koper	68	79	116.2	1.52
Piran	32	25	78.1	1.42
Sežana	18	28	155.6	1.15
Osrednjeslovenska region	**816**	**699**	**85.7**	**1.25**
Domžale	64	46	71.9	0.84
Grosuplje	32	24	75.0	0.64
Kamnik	30	29	96.7	0.85
Kočevje	19	12	63.2	0.68
Litija	28	9	32.1	0.44
Ljubljana	594	539	90.7	1.57
Logatec	18	14	77.8	1.08
Ribnica	10	12	120.0	0.89
Vrhnika	21	14	66.7	0.60
Podravska region	**370**	**345**	**93.2**	**1.07**
Lenart	15	8	53.3	0.42
Maribor	224	195	87.1	1.31
Ormož	14	10	71.4	0.59
Pesnica	8	11	137.5	0.57
Ptuj	59	81	137.3	1.17
Ruše	13	12	92.3	0,80
Slovenska Bistrica	37	28	75.7	0.80
Pomurska region	**122**	**159**	**130.3**	**1.33**
Gornja Radgona	10	25	250.0	1.23
Lendava	25	23	92.0	0.97
Ljutomer	21	11	52.4	0.60
Murska Sobota	66	100	151.5	1.75
Savinjska region	**289**	**248**	**85.8**	**0.95**
Celje	112	82	73.2	1.28
Laško	15	20	133.3	1.10
Mozirje	14	12	85.7	0.74
Slovenske Konjice	23	13	56.5	0.56
Šentjur pri Celju	21	31	147.6	1.57
Šmarje pri Jelšah	27	18	66.7	0.56
Velenje	40	27	67.5	0.60
Žalec	37	45	121.6	1.09
Spodnjeposavska region	**61**	**52**	**85.2**	**0.74**
Brežice	24	18	75.0	0.74
Krško	24	26	108.3	0.92
Sevnica	13	8	61.5	0.44
Zasavska region	47	42	89.4	0.94
Hrastnik	14	8	57.1	0.79
Trbovlje	20	20	100.0	1.14
Zagorje ob Savi	13	14	107.7	0.82
Foreign countries	**77**	**53**	**68.8**	**/**
General, anonymous complaints	69	143	207.2	/
E-mail:	313	211	67.4	/
TOTAL	**2,878**	**2,623**	**91.1**	
SLOVENIA				**1.23**

Cases being processed

Table 3.10.3: Cases being dealt with by the Human Rights Ombudsman of the Republic of Slovenia in 2009

AREA OF WORK	NUMBER OF CASES BEING PROCESSED				Share according to areas of work
	Open cases in 2009	Cases carried from 2008	Reopened cases in 2009	Total cases being dealt with (processed?)	
1. Constitutional rights	119	32	4	155	4.92 %
2. Restriction of personal liberty	159	25	3	187	5.93 %
3. Social security	373	55	15	443	14.06 %
4. Labour matters	213	33	7	253	8.03 %
5. Administrative matters	311	69	7	387	12.28 %
6. Judicial proceedings and police procedures	639	96	16	751	23.83 %
7. Environment and spatial planning	104	27	2	133	4.22 %
8. Public utility services	80	12	8	100	3.17 %
9. Housing matters	92	11	3	106	3.36 %
10. Discrimination	52	15	2	69	2.19 %
11. Children's rights	236	45	7	288	9.14 %
12. Other	245	28	6	279	8.85 %
TOTAL	**2,623**	**448**	**80**	**3,151**	**100.00 %**

Table 3.10.3. shows that **3,151 cases were dealt with** in 2009, from which 2,623 cases were opened in 2009 (83.2 percent), 448 cases were carried over from 2008 (14.2 percent), and 80 cases were reopened (2.6. percent) in 2009. Table 3.10.4 shows that in 2009 compared to 2008 **cases being dealt with were fewer by 6.9 percent**.

In 2009 most of the cases dealt with concerned the area of work: Judicial proceedings and police procedures (751 cases or 23.8 percent), Social security (443 cases or 14.1 percent) and Administrative matters (387 cases or 12.3 percent). Compared to 2008, the number of cases being dealt with increased in the area of work: Restriction of personal liberty (from 175 to 187 cases or 6.9 percent increase) and Children's rights (from 279 to 288 cases or 3.2 percent increase). This is significant data which can be attributed to the Ombudsman's activity. In 2009, in the area of work: Restriction of personal freedom tasks of the National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment were implemented and some initiatives were received during field visits. But mostly visits increased the awareness regarding the possibility of submitting initiatives to the Ombudsman. In the area of work: Children's rights, we co-operated in numerous promotional activities in the field (in schools, at professional meetings, international consultations) and on all occasions the concept -children's advocacy - was promoted which is reported in a special chapter of this report. An increase of complaints was also noticed in the area of work regarding environment and spatial planning which is presumably also a result of the Ombudsman's greater activity and co-operation with non-governmental organizations and civil society.

Table 3.10.4: Comparison in the number of cases being processed by the Human Rights Ombudsman of the Republic of Slovenia according to individual areas of work in the period 2006-2009

AREA OF WORK	CASES BEING PROCESSED								Index (09/08)
	2006		2007		2008		2009		
	No.	Share	No.	Share	No.	Share	No.	Share	
1. Constitutional rights	139	5.0 %	105	3.4 %	183	5.4 %	155	4.9 %	84.7
2. Restriction of personal liberty	201	7.3 %	180	5.8 %	175	5.2 %	187	5.9 %	106.9
3. Social security	354	12.9 %	472	15.3 %	523	15.4 %	443	14.1 %	84.7
4. Labour law cases	184	6.7 %	220	7.1 %	292	8.6 %	253	8.0 %	86.6
5. Administrative matters	367	13.3 %	353	11.4 %	388	11.5 %	387	12.3 %	99.7
6. Judicial proceedings and police procedures	719	26.1 %	734	23.8 %	810	23.9 %	751	23.8 %	92.7
7. Environment and spatial planning	102	3.7 %	123	4.0 %	132	3.9 %	133	4.2 %	100.8
8. Public utility services	69	2.5 %	107	3.5 %	100	3.0 %	100	3.2 %	100.0
9. Housing matters	108	3.9 %	100	3.2 %	125	3.7 %	106	3.4 %	84.8
10. Discrimination	49	1.8 %	57	1.8 %	104	3.1 %	69	2.2 %	66.3
11. Children's rights	191	6.9 %	274	8.9 %	279	8.2 %	288	9.1 %	103.2
12. Other	271	9.8 %	360	11.7 %	275	8.1 %	279	8.9 %	101.5
TOTAL	**2,754**	**100 %**	**3,085**	**100 %**	**3,386**	**100 %**	**3,151**	**100 %**	**93.1**

Status of cases being processed

Closed cases: Cases which consideration was completed on 31 December 2009.

Cases being processed: Cases which on 31 December 2009 were in the process of being dealt with.

In 2009, 3,151 cases were processed and **2,775 or 88.1 percent** of all cases were **completed** as of 31 December 2009. 376 cases (11.9 percent) remain to be processed.

Table 3.10.5: Comparison of the number of cases processed by the Human Rights Ombudsman of the Republic of Slovenia according to the status of process in the period from 2006 to 2009 (at the end of calendar year)

STATUS OF CASES BEING PROCESSED	2006 (status 31. 12. 2006)		2007 (status 31. 12. 2007)		2008 (status 31. 12. 2008)		2009 (status 31. 12. 2009)		Index (09/08)
	No.	Share	No.	Share	No.	Share	No.	Share	
Closed	2,521	91.5 %	2,652	86.0 %	2,938	86.8 %	2,775	88.1 %	94.5
Being processed	233	8.5 %	433	14.0 %	448	13.3 %	376	11.9 %	83.9
TOTAL	**2,754**	**100 %**	**3,085**	**100 %**	**3,386**	**100 %**	**3,151**	**100 %**	**93.4**

Detailed review of the handling of cases according to areas of work is shown in table 3.10.6.

With regard to the area of work: **1. Constitutional rights**, 155 cases were processed in 2009 which is *15.3 percent* less compared to 2008. Cases concerning constitutional rights comprise *4.9 percent* of all cases processed. According to the number of cases processed the subcategories: Ethics of public expression with 40 cases (despite *29.8 percent* reduction) and Protection of personal data with 31 cases registered in 2009 (with 31.1 percent reduction compared to previous year) stand out.

The number of cases processed in the field of work: **2. Restriction of personal liberty,** increased in 2009 by *6.9 percent* as compared to 2008 (from 175 to 187). The increase in the number of cases processed concerning detainees (from 26 to 34), prisoners (from 97 to 112) and psychiatric patients (from 22 to 24) was observed.

In the area of work: **3. Social security,** the number of cases processed in 2009 reduced by *15.3 percent* (from 523 to 443) compared to 2008. The largest share among these cases, despite a decrease in comparison to the previous year (from 99 to 73), is held by cases concerning disability insurance (*16.5 percent*) and pension insurance (68 cases or *15.3 percent*). A reduction in the number of processed cases as compared to the previous period is observed with regard to health care (from 81 to 64) and health insurance (from 62 to 52) which is presumably a result of activities performed by patients' rights representatives.

Regarding the area of work: **4. Labour law matters,** the number of cases processed in 2009 (253) was reduced by *13.7 percent* compared to 2008 (292). Compared to the previous period a reduction of cases concerning scholarship (from 29 to 15) and work relations (from 112 to 72) is observed. An increase is noticeable in the area of work regarding unemployment where 48 percent more initiatives were submitted (in the previous year, 27, whereas in 2009, 40 complaints were submitted).

The area of work: **5. Administrative matters,** saw almost no changes as regards the number of cases processed in 2009 (387 cases) compared to 2008 (388 cases). With 387 cases processed this area is the third greatest complete set of cases, so far as content is concerned, processed by the Ombudsman in 2009. An increase in the number of cases is observed with cases concerning aliens (from 26 to 42), administrative procedures (from 108 to 115) and taxes (from 58 to 62), while a reduction is noticed with regard to cases concerning social services, property-related cases and cases regarding citizenship.

Equally in 2009, the majority of cases processed by the Ombudsman referred to the area of work: **6. Judicial proceedings and police procedures,** (751 cases or *23.8 percent*) among which cases regarding police procedures, pre-trail procedures, criminal and civil proceedings, proceedings regarding labour and social disputes, proceedings regarding minor offences, administrative court proceedings, cases relating to attorneyship and notaries and others are classified. According to the index showing the trend of the number of cases processed in 2009 as compared to 2008 (*92.7*) it is evident that the number of cases in this area of work decreased as compared to 2008, precisely, from 810 to 751. With regard to sub-areas showing an increase in the number of cases processed the following need to be pointed out: pre-trial procedures (from 16 to 25 – *56.3 percent* increase), proceedings before the Labour and Social Court (from 23 to 32 – *39.1 percent* increase) and proceedings regarding minor offences (from 82 to 103 – *25.6 percent* increase). Administrative court proceedings with 54.5 percent reduction, criminal proceedings with *37.3 percent* reduction and police procedures with *25.6 percent* reduction need to be highlighted. The largest share of all cases processed, taking into account a *3.4 percent* reduction compared to the previous period (from 356 to 344), belongs to civil proceedings.

In the field of work: **7. Environment and spatial planning,** the number of cases processed in 2009 did not change in comparison to 2008. In spite of the increase in the number of cases processed in the sub-area interventions in the environment (from 38 to 58), the number of cases processed in the sub-area spatial planning significantly decreased, namely from 54 to 25 (*53.7 percent* increase.

The number of cases processed in 2009 as compared to 2008 remained unchanged in the area of work: **8. Public utility services** (100 cases in 2009 and 2008). In the framework of this area of work, a greater increase of cases is noticed in the energy sector (from 16 to 25) while the number of cases concerning the public utility sector decreased (from 31 to 25).

In the field of work: **9. Housing matters,** the number of cases processed decreased by *15.2 percent* in 2009 as compared to 2008 (from 125 to 106). A reduction in the number of cases is observed both with regard to housing relations (from 83 to 67) and regarding the housing services sector (from 25 to 18).

The number of cases processed within the framework of the area of work: **10. Discrimination,** reduced (from 104 to 69) in 2009 as compared to 2008, according to the percentage share it decreased the most in the sub-area concerning employment discrimination, namely from 12 cases processed in 2008 to 7 cases processed in 2009. A reduction of cases falling under the sub-area concerning national and ethnic minorities also needs to be highlighted (from 27 to 20 - *25.9 percent* reduction). These numbers should be of concern as it is without doubt that they do not reflect an absence of discriminatory treatment in these areas but the fact that the persons affected, i.e. individuals discriminated against, are not aware of the appeal procedures or are dissuaded from using them for various reasons.

Since 2004 the area of work: **11. Children's rights,** is treated as an independent classification area. In 2005, in order to provide better transparency it was divided into various sub-areas determined on the basis of experiences. The number of cases referring to children increased in the periods analysed (from 279 in 2008 to 288 in 2009). The largest share of cases falling in this area of work is still held by cases with regard to contacts with parents. In 2009, 60 such cases (*15.5 percent reducti*on) were processed but the number of cases processed because of family violence against children (from 12 to 21) increased.

The area of work: 12. **Other** includes those cases which cannot be classified into any of the areas defined. In 2009, 279 such cases were processed which is *1.5 percent* more than the year before.

Table 3.10.6: Review of cases processed by the Human Rights Ombudsman of the Republic of Slovenia in 2009 according to Ombudsman's areas of work

AREA/SUBAREA OF OMBUDSMAN'S WORK	Cases processed in		Index (09/08)
	2008	2009	
1. Constitutional rights	183	155	84.7
1.1 Freedom of conscience	16	13	81.3
1.2 Ethics of public expression	57	40	70.2
1.3 Assembly and association	9	14	155.6
1.4 Security services	1	1	100.0
1.5 Voting right	11	7	63.6
1.6 Personal data protection	45	31	68.9
1.7 Access to public information	7	2	28.6
1.8 Other	37	47	127.0
2. Restriction of personal liberty	175	187	106.9
2.1 Detainees	26	34	130.8
2.2 Prisoners	97	112	115.5
2.3 Psychiatric patients	22	24	109.1
2.4 Persons in social security institutions	5	4	80.0
2.5 Youth Hostels	6	1	16.7
2.6 Illegal aliens and asylum seekers	12	2	16.7
2.7 Persons in police custody	2	2	100.0
2.8 Other	5	8	160.0
3. Social security	523	443	84.7
3.1 Pension insurance	69	68	98.6
3.2 Disability insurance	99	73	73.7
3.3 Health insurance	62	52	83.9
3.4 Health care	81	64	79.0
3.5 Social benefits and relief	58	53	91.4
3.6 Social services	25	23	92.0
3.7 Institutional care	34	31	91.2
3.8 Poverty - general	13	0	–
3.9 Violence - anywhere	25	15	60.0
3.10 Other	57	64	112.3
4. Labour law matters	292	253	86.6
4.1 Labour relationship	112	72	64.3
4.2 Unemployment	27	40	148.1
4.3 Workers in state authorities	92	88	95.7
4.4 Scholarships	29	15	51.7
4.5 Other	32	38	118.8
5. Administrative matters	388	387	99.7
5.1 Citizenship	20	18	90.0
5.2 Aliens	26	42	161.5
5.3 Denationalisation	18	18	100.0
5.4 Property law matters	43	36	83.7
5.5 Taxes	58	62	106.9
5.6 Customs	0	1	-
5.7 Administrative procedures	108	115	106.5
5.8 Social services	82	51	62.2
5.9 Other	33	44	133.3
6. Judicial proceedings and police procedures	810	751	92.7
6.1. Police procedures	125	93	74.4
6.2 Pre-trial procedures (proceedings?)	16	25	156.3
6.3 Criminal proceedings	102	64	62.7
6.4. Civil procedures and relationships	356	344	96.6
6.5 Proceedings before Labour and Social Courts	23	32	139.1
6.6 Minor offence procedures (or proceedings?)	82	103	125.6
6.7 Administrative court proceedings	11	5	45.5
6.8 Attorneyship and notaries	23	20	87.0
6.9 Other	72	65	90.3
7. Environment and spatial planning	132	133	100.8
7.1 Interventions in the environment	38	58	152.6
7.2 Spatial planning	54	25	46.3
7.3 Other	40	50	125.0
8. Public utility services	100	100	100.0
8.1 Public utility service sector	31	25	80.6
8.2 Communications	22	22	100.0
8.3 Energy sector	16	25	156.3
8.4 Transport	24	24	100.0
8.5 Concessions	1	2	200.0
8.6 Other	6	2	33.3
9. Housing matters	125	106	84.8
9.1 Housing relations	83	67	80.7
9.2 Housing service sector	25	18	72.0
9.3 Other	17	21	123.5
10. Discrimination	104	69	66.3
10.1 National and ethnic minorities	27	20	74.1
10.2 Equal possibilities by gender	2	2	100.0
10.3 Equal possibilities in employment	12	7	58.3
10.4 Other	63	40	63.5
11. Children's rights	279	288	103.2
11.1 Contacts with parents	71	60	84.5
11.2 Child support, child allowances, child's property management	26	24	92.3
11.3 Foster care, guardianship, institutional care	28	28	100.0
11.4 Children with special needs	16	21	131.3
11.5 Children of minorities and threatened groups	2	2	100.0
11.6 Family violence against children	12	21	175.0
11.7 Violence against children outside family	11	11	100.0
11.8 Other	113	121	107.1
12. Other	275	279	101.5
12. 1 Legislative initiatives	15	13	86.7
12.2 Remedy of injustice	9	8	88.9
12.3 Personal problems	51	28	54.9
12.4 Explanations	111	120	108.1
12.5 For information	65	70	107.7
12.6 Anonymous complaints	23	39	169.6
12.7 Ombudsman	1	1	100.0
TOTAL	3,386	3,151	93.1

Closed cases

In 2009 2,775 cases were completed which is a 5.5 percent reduction in the number of closed cases compared to 2008. In comparing the number of these cases (2,775) with the number of open cases in 2009, (2,623), it is observed that 5.8 percent more cases were completed than opened in 2009.

Table 3.10.7: Comparison of the number of closed cases processed, classified according to the areas of work of the Human Rights Ombudsman in the Republic of Slovenia in the period 2006-2009

OMBUDSMAN'S AREA OF WORK	2006	2007	2008	2009	Index (09/08)
1. Constitutional rights	136	85	151	136	90.1
2. Restriction of personal liberty	181	157	150	166	110.7
3. Social security	329	413	468	415	88.7
4. Labour law matters	168	182	259	230	88.8
5. Administrative matters	329	293	319	321	100.6
6. Judicial proceedings and police procedures	665	636	714	657	92.0
7. Environment and spatial planning	82	101	105	101	96.2
8. Public utility services	68	94	88	91	103.4
9. Housing matters	107	91	114	100	87,7
10. Discrimination	42	30	89	56	62.9
11. Children's rights	160	241	234	249	106.4
12. Other	254	329	247	253	102.4
TOTAL	**2,766**	**2,652**	**2,938**	**2,775**	**94.5**

Closed cases according to substantiation

A substantiated case: The case concerns a violation of rights or other maladministration with regard to all submissions expressed in the initiative.

A partially substantiated case: Violations and maladministration is found with regard to some submitted or non-submitted elements of the procedure, whereas in other submissions these are not found.

An unsubstantiated case: With regard to all submissions stated in the initiatives it is observed that there is no case of a violation or maladministration.

No conditions for processing the case: With regard to the case, certain legal proceedings are in place in which no delay is noticeable or no major maladministration is found. The initiator is provided with information, explanations and instructions for executing his/her rights in an open procedure. This group also includes unaccepted initiatives (too late, anonymous, offensive) and termination of procedure due to an initiator's failure to cooperate or because of a withdrawal of the initiative.

Ombudsman's non-competence (extra vires): Subject matter of the initiative does not fall within the scope of the institution. The initiator is advised on other options he/she has on disposal for exercising the said person's rights.

Table 3.10.8: Classification of closed cases by substantiation

SUBSTANTIATION OF CASES	CLOSED CASES				Number index (09/08)	Share index (09/08)
	2008		2009			
	Number	Share	Number	Share		
1. Substantiated cases	410	14.0	403	14.5	98.3	103.6
2. Partially substantiated cases	350	11.9	301	10.8	86.0	90.8
3. Unsubstantiated cases	427	14.5	399	14.4	93.4	99.3
4. No conditions for processing the case:	1,331	45.3	1,269	45.7	95.3	100.9
5. Ombudsman's non-competence:	420	14.3	403	14.5	96.0	101.4
TOTAL	**2,938**	**100.0**	**2,775**	**100.0**	**94.5**	

The share of substantiated and partially substantiated cases in 2009 (25.3 percent) did not significantly change as compared to the previous year (25.9 percent). **However, it is still observed that the share of substantiated cases is rather high in comparison to figures held by similar institutions abroad.**

Closed cases by areas

Table 3.10.9 shows the classification of cases closed in 2009 by areas. They relate to areas as handled by state authorities and are not identical with the areas of the Ombudsman's work. An individual case is classified in the appropriate area according to the content of the issue which caused an initiator to turn to the Ombudsman and about which inquiries were made. As some initiatives required activities to be performed in various areas, the number of closed cases according to the Ombudsman's classification differs from the number of closed cases by areas.

The Table shows that the most cases completed in 2009 referred to:
- administration of justice (764 cases or *27.5* percent),
- labour, family and social affairs (690 cases or *24.9* percent),
- environment and spatial planning (315 cases or *11.4* percent) and
- internal affairs (224 cases or *8.1* percent).

The number of cases opened in 2009 increased the most in the area of public administration (from 44 to 68) as compared to 2008, but decreased in the area of culture (from 76 to 37).

Table 3.10.9: Closed cases being processed by the Human Rights Ombudsman of the Republic of Slovenia in the period 2006-2009 by areas of work of the state authorities

AREA OF WORK OF STATE AUTHORITIES	CLOSED CASES								Index (09/08)
	2006		2007		2008		2009		
	Number	Share	Number	Share	Number	Share	Number	Share	
1. Labour, family and social affairs	574	22.77	712	26.9	755	25.70	690	24.86	91.39
2. Finance	63	2.5	78	2.9	59	2.01	60	2.16	101,.69
3. Economy	72	2.86	62	2.3	72	2.45	48	1.73	66.67
4. Public administration	11	0.44	24	0.9	44	1.50	68	2.45	154.55
5. Agriculture, forestry and food	13	0.52	12	0.5	23	0.78	16	0.58	69.57
6. Culture	51	2.02	55	2.1	76	2.59	37	1.33	48.68
7. Internal affairs	250	9.92	251	9.5	251	8.54	224	8.07	89.24
8. Defence	16	0.63	8	0.3	9	0.31	9	0.32	100.00
9. Environment and spatial planning	246	9.76	253	9.5	290	9.87	315	11.35	108.62
10. Justice administration	748	29.67	691	26.1	733	24.95	764	27.53	104.23
11. Transport	24	0.95	29	1.1	24	0.82	19	0.68	79.17
12. Education and sport	98	3.89	89	3.4	147	5.00	112	4.04	76.19
13. Higher education, science and technology	10	0.4	17	0.6	27	0.92	18	0.65	66.67
14. Healthcare	137	5.43	165	6.2	177	6.02	161	5.80	90.96
15. Foreign affairs	5	0.2	5	0.2	16	0.54	12	0.43	75.00
16. Government services	7	0.28	7	0.3	9	0.31	11	0.40	122.22
17. Local administration	28	1.11	16	0.6	26	0.88	23	0.83	88.46
18. Other	168	6.66	178	6.7	200	6.81	188	6.77	94.00
TOTAL	**2,521**	**100**	**2,652**	**100**	**2,938**	**100**	**2,775**	**100**	**94.45**

This year, Table 3.10.10 includes an overview of substantiated and partially substantiated cases by individual areas of work of state authorities. This display of data was prepared following the proposal by Deputies who (reasonably) expected that on the basis of data those areas where most violations were found might be pointed out.

If, firstly, focus is placed on areas which included more than 100 initiatives it may be observed that the largest share of substantiated cases refers to areas of education (56%), healthcare (43%), labour, family and social affairs (31%), internal affairs, environment and spatial planning (each 28%) and administration of justice (14% of substantiated cases). In areas where from the point of view of substantiation of cases the number of cases is increasing (index above 100) the area of environment and spatial planning is highlighted, where, on the basis both of the absolute number (88 substantiated cases) and the share (27.94% of substantiated cases) it can be observed that we are dealing with a very serious and complex issue. That is why an integral approach toward a resolution of this issue is sought in our work. More about violations in individual areas can be found in other chapters of the report.

Table 3.10.10: Analysis of closed cases by substantiation for 2009

AREA OF WORK OF STATE AUTHORITIES	NUMBER OF CLOSED CASES	NUMBER OF SUBSTANTIATED CASES	SHARE OF SUBSTANTIATED CASES
1. Labour, family and social affairs	690	216	31.30
2. Finance	60	18	30.00
3. Economy	48	2	4.17
4. Public administration	68	8	11.76
5. Agriculture, forestry and food	16	5	31.25
6. Culture	37	6	16.22
7. Internal affairs	224	62	27.68
8. Defence	9	3	33.33
9. Environment and spatial planning	315	88	27.94
10. Justice administration	764	106	13.87
11. Transport	19	4	21.05
12. Education and sport	112	63	56.25
13. Higher education, science and technology	18	7	38.89
14. Healthcare	161	69	42.86
15. Foreign affairs	12	3	25.00
16. Government services	11	6	54.55
17. Local administration	23	9	39.13
18. Other	188	29	15.43
Total	**2,775**	**704**	

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