ANNUAL REPORT OF THE HUMAN RIGHTS OMBUDSMAN OF THE REPUBLIC OF SLOVENIA FOR 2017

ABBREVIATED VERSION

REPUBLIC OF SLOVENIA

HUMAN RIGHTS OMBUDSMAN

23rd Annual Report of the Human Rights Ombudsman of the Republic of Slovenia

for 2017

Ljubljana, March 2018

CONTENT

The expressions used in this report, which are written in the masculine grammatical form, are deemed to apply equally to men and women.

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INTRODUCTION BY THE OMBUDSMAN AND PRESENTATION OF THE OMBUDSMAN'S WORK IN 2017

Criticism may not be agreeable, but it is necessary.
It fulfils the same function as pain in the human body.
It calls attention to an unhealthy state of things.

Winston Churchill

Symbols used in the Report:

Ombudsman's recommendation

Ombudsman's criticism or warning

Ombudsman's positive finding

REPUBLIKA SLOVENIJA

VARUH ČLOVEKOVIH PRAVIC

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NATIONAL ASSEMBLY OF THE REPUBLIC OF SLOVENIA
Dr Milan Brglez, President
Šubičeva 4
1102 Ljubljana

Dear President of the National Assembly, Dr Milan Brglez,

pursuant to Article 43 of the Human Rights Ombudsman Act (hereinafter: ZVaCP), I hereby submit to you the twenty-third regular annual report on the work of the Human Rights Ombudsman of the Republic of Slovenia in 2017. The report on the implementation of tasks and powers of the National Prevention Mechanism according to the Act Ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which is printed in a separate publication, is also a part of this Report.

On the basis of Article 44 of the Human Rights Ombudsman Act, I wish to present the summary of the Report and the findings concerning the level of the observance of human rights and basic freedoms and the legal certainty in the Republic of Slovenia at a session of the National Assembly of the Republic of Slovenia.

Yours sincerely,

Vlasta Nussdorfer
Human Rights Ombudsman

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1.1 ASSESSMENT OF THE OBSERVANCE OF HUMAN RIGHTS AND LEGAL CERTAINTY IN THE COUNTRY

Vlasta Nussdorfer,
Human Rights Ombudsman

Dear Ladies and Gentlemen,

I have been the Human Rights Ombudsman for exactly five years, which means that I am entering the final year of my term. This undoubtedly represents the right moment to take a look at the past, and to judge the current situation in the observance of human rights and fundamental freedoms and expectations for the future.

The 23rd regular Annual Report and the Report on the Implementation of the Duties and Powers of the National Preventive Mechanism (NPM) for 2017, which is published in a separate publication but which represents a part of the overall report, describes the level of observance of human rights and fundamental freedoms and legal certainty in the Republic of Slovenia. I submit it to the President of the National Assembly of the Republic of Slovenia, the President of Slovenia, and the Prime Minister of the Republic of Slovenia, as well as to other authorities and of course the Slovenian public.

I report on the level of observance of human rights and fundamental freedoms legal certainty in the Republic of Slovenia.

The report analyses the received petitions which were processed by the Ombudsman, the Ombudsman's own petitions (in agreement with the petitioners), and broader issues associated with the protection of human rights and fundamental freedoms. Their numbers have been increasing over the years, as we regularly react to current

topics, especially those which indicate a large number of violations or systemic deficiencies and the need to supervise the work of state institutions and local authorities. The Ombudsman continues to stand on the bridge overseeing this observance, and receives petitions, investigates the alleged violations of human rights, and, once they have been established, requests the elimination of the irregularities or violations. We are critical of all whose work, inefficiency, and violation of rights give rise to such criticism. We are granted this possibility by the independent and autonomous status of our institution, which is specifically defined as a constitutional category in Article 159 of the Constitution of the Republic of Slovenia.

We are critical of all whose work, inefficiency, and violation of rights give rise to such criticism.

When violations are established, we inform the state and local authorities and holders of public powers of our findings on the claimed violations, proposals, opinions, criticism, or recommendations. **While we do not have the argument of power, we do have the power of arguments and own authority, which is evident from the positive changes arising from our activities**.

In 2017, we processed 4,471 cases, of which 3,023 petitions, and of these another 2,627 (87%), have already been concluded in 2017, while the remainder are continuing in 2018 (petitions carried forward).

Of the 2,627 concluded petitions, **the claims on the violation of human rights and fundamental freedoms have been established as absolutely justified in 386 cases (14.7%).** Of these, there were **39 various violations** of human rights and fundamental freedoms or irregularities stipulated in the Constitution of the Republic of Slovenia and the Human Rights Ombudsman Act (ZVarCP). Through analysis of the claims of petitioners and the answers of the competent authorities to our inquiries, and by special unannounced investigations, we have often established that some of the violations do not have a legal basis or that the reproaches were not consistent with the facts. **In 485 petitions, or almost one fifth of all petitions (18.5%) the claims were not justified.**

One justified petition, where the Ombudsman establishes a systemic irregularity, can mean the violation of the rights of a hundred or even several thousand people.

It must be emphasised that the number and share of well-founded petitions in the concluded cases are not a true indicator of the situation in the protection of human rights in Slovenia. This is firstly because not everybody whose human rights are being violated by the authorities necessarily turns to the Ombudsman, and secondly because one well-founded petition, where the Ombudsman establishes a systematic irregularity, can mean the violation of the rights of a hundred or even several thousand people. It is also for this reason that the Ombudsman uses the data that it obtains from publicly available sources to open its own petitions in individual fields, especially in more complex issues. The justification of one case can mean something entirely different in another case. The Ombudsman therefore tries to report on the perceived problems in more detail than merely providing numbers. We describe the cases discussed, as this helps paint a clearer picture to our readers. For this reason, the report is rather long and offers numerous examples which illustrate the findings on the justification of a petition or the violation of human rights and freedoms and International Human Rights Standards.

1.
The Ombudsman recommends that state and local authorities answer letters, requests or petitions of individuals or groups of residents, in accordance with the principle of good administration and the rule of law.

In 113 cases, a violation of the principle of good administration was established, and in 15 cases a violation of the principle of equity. In this respect, we referred to Article 3 of the Human Rights Ombudsman Act (ZVarCP), which specifically instructs the Ombudsman to invoke both principles in carrying out his functions and interventions. An example of the violation of both principles, i.e. equity and good administration, was established in the case of misplaced or unclaimed wills. Even though the Supreme Court of the Republic of Slovenia, on behalf of the Slovenian judiciary, sincerely regrets the irregularities concerning the deposited wills, as it is aware of the consequences for individuals and for the system, the Ombudsman believes that the correct conclusion concerning the established violations has yet to be prepared, that some cases are irreversible, and that those responsible for the irregularities have not yet been held accountable.

The Ombudsman finds it unacceptable that authorities do not answer letters, requests, or petitions. This relates to various ministries and the Government of the Republic of Slovenia, who do not acknowledge receipt to the senders, or inform them of the reasons for not discussing the received letter, request or petition, or of their viewpoints. The right to information concerning the reasons for the decision on a petition is also associated with the principle of good administration, and its foundation lies in the principle of the rule of law. Under this principle, the decisions of public authorities must state the reasons justifying such a decision, as this prevents arbitrary decisions by the authorities and ensures equal treatment of all petitioners. Regularly answering citizens' requests would strengthen faith in the rule of law and improve the generally accepted opinion of the state's inefficiency.

How to achieve the public's trust in the work of the judiciary? The Ombudsman persistently recommends the adoption of measures aimed at improving the quality of court decisions and the shaping of a more unified judicial practice, as this will in turn strengthen people's trust. On the basis of the findings arising from the petitions processed in this area, I can specifically emphasise the need for a high-quality reasoning behind each court decision. Only such decisions can constitute the essence of a fair proceeding. They are the court's obligation to concretely and clearly define the reasons which were used as the basis for the court's decision. The public often believes that individuals are not granted equal constitutional rights in legal proceedings. I believe that the judiciary should appropriately react to serious reproaches concerning the legality of the work of the courts, as this is the only way to obtain the better trust of citizens, which is the fundamental condition for the rule of law. Failure to do so can cement the belief of individuals that the claims appearing in the media are true, which consequently weakens public trust in the judiciary and the rule of law. We believe that responding to the publicly emphasised reproach in the media concerning the work of the courts would contribute to a better transparency of the workings of the judiciary. I therefore encourage the courts to make sure there is an appropriate level of communication with the public, including, if necessary, providing the reasoning behind its decisions.

We processed several individual cases where petitioners **claimed discrimination based on a personal circumstance,** or multiple discrimination, where a person is discriminated against simultaneously due to several different personal circumstances. We processed a petition put forward by a member of the Italian national community in Slovenia, who emphasised the problems concerning the preservation of the culture, tradition, and cultural heritage of the Italian national community, and commented on the lack of understanding from the Ministry of Culture with regard to his recommendations for mentioning (also) the autochthonous Italian national community. In 2017, we continued our discussion of the problems associated with **systemic discrimination of students with disabilities** with regard to their transport from home to school. In this respect, the incompleteness of the Student Status Act is a disappointment, as the Act does not resolve two main issues concerning the rights of students with disabilities, i.e. the possibility of prolonging student status, and ensuring transportation for students with disabilities. We find the position of the Ministry of Education, Science and Sport on the reimbursements of travel expenses to and from work for employees with disabilities or employees with health problems, which states that this is regulated by the same rules as apply to other employees, unacceptable. We believe such a view is an indirect form of discrimination.

In 2017, we continued to consider the problems of systemic discrimination of students with disabilities.

I find that we should seriously consider the recommendations provided by international monitoring bodies (ECRI), which have recommended that Slovenia **improve its systems for monitoring the situation of minority groups** in different areas of life by collecting relevant information broken down according to categories such as religion, language, nationality and national or ethnic origin, and ensure that this is done in all cases with due respect to the principles of confidentiality, informed consent, and voluntary self-identification. In this respect, ECRI has emphasised that the gathering of such data is indispensable to the formulation of rational policy. The arguments of the Ministry of Justice that there are serious constitutional and

Serious consideration should be given to the recommendations provided by international supervisory mechanisms and measures should be adopted for their implementation.

legislative obstacles to such gathering of data have not fully convinced us. **Even the simple question of how many Roma children do not complete primary school cannot be answered with official data, yet this could serve as a starting point for designing more effective programmes** and for the state to create real possibilities for the implementation of the constitutional right to appropriate education.

With regard to the special protection of members of the Roma community, I continually emphasise that this cannot be equated with protection from any kind of responsibility for criminal actions. Every criminal action, regardless of nationality or ethnicity, must be equally persecuted. I therefore point out the urgency for police presence in Roma settlements, where various offences against public order and peace or other offences, including criminal ones, still take place. However, the burden of solving the accumulated problems in Roma settlements cannot lie exclusively with the municipalities. The state should participate with good and comprehensive programmes and measures, especially by providing financial aid and by adopting urgent decisions when local politics is unable or refuses to do so for various reasons.

Every criminal action, regardless of nationality or ethnicity, must be equally persecuted.

I am critical towards the state authorities which have, for half a decade, been failing to appropriately react to the recognised deficiency of the legislation which does not foresee **voting by post** for people who have not expressed their intention to do so at least ten days prior to election day, as it does not regulate the position of people who have been deprived of their liberty after that time, or who have been admitted for treatment to a hospital or institutional care in a social care institution and are therefore unable to vote either at the polling station or by post.

We have filed two requests for the review of constitutionality with the Constitutional Court of the Republic of Slovenia.

In 2017, the Ombudsman again used the opportunity provided by the Constitutional Court Act to file a request for the review of constitutionality with regard to individual cases that the office is dealing with. **We filed a request for the review of constitutionality of the Act Amending the Aliens Act (measures in the case of changed conditions in migrations) and of the Act Amending the Police Tasks and Powers Act.** The Ombudsman believes that with regard to the possibility of data processing, the new police legislation is, at least in some aspects, in contravention of constitutional and convention standards on the protection of privacy. The Ombudsman is occasionally faced with great public expectation that we will file a request for the review of constitutionality soon after the adoption of an act. It should be emphasised that we are always ready to list the arguments of the civil and professional public and their claims on the unconstitutionality of an adopted act; however, the Ombudsman **prepares its decisions fully independently and autonomously, and its decisions are predominantly based on careful consideration of national and international standards on the protection of human rights,** which in turn requires in-depth expert work and time. We are critical of the failure to enforce the Constitutional Court decision on equal financing of public and private primary schools. With its decision of 2014, the Constitutional Court of the Republic of Slovenia found that the fact that the same services (in terms of content) are paid for differently by public and private schools was discriminatory and that this regulation should be amended.

We are critical of the failure to enforce the Constitutional Court decision on equal financing of public and private primary schools.

On the basis of the Ombudsman's request of 2015, the Constitutional Court decided in 2017 that the Pension and Disability Insurance Act, in the articles referring to the purchased periods f or the pension qualifying period, was not inconsistent with the Constitution of the Republic of Slovenia. We respect this decision, even though we considered our request for the review of constitutionality to be both urgent and fair.

The Ombudsman rarely files a **constitutional complaint.** Of the three filed constitutional complaints in the history of the institution of the Ombudsman, we were successful for the first time in 2017, with a constitutional complaint against the decisions of the court of first instance (Ljubljana District Court), second instance (High Court in Ljubljana), and the highest court in the country, i.e. the Supreme Court of the Republic of Slovenia, with regard to involuntary detention for treatment in a psychiatric hospital. We believe that the judiciary took on viewpoints which were in

contradiction to human rights. The Constitutional Court unanimously decided that the decisions of all three courts violated the right to protection of personal liberty and the right to protection of human personality and dignity.

The state has made significant progress in the enforcement of judgements by the European Court of Human Rights.

In 2017, **the European Court of Human Rights (ECHR), in ten cases against Slovenia, found there was a violation of at least one right under the European Convention on Human Rights** I consider that the state has made significant progress in enforcing ECHR judgements, as the Council of Europe has recognised Slovenia as a country which adopts appropriate systemic solutions for the elimination of established violations: for example, Lukenda (reasonable time and right to an effective remedy) and Kurić (the 'erased'). An inter-ministerial working group for the coordination of the implementation of ECHR judgements, of which the Ombudsman is also a member, systemically monitors and directs state authorities in the enforcement of judgements issued by international courts. Progress is also evident from the website of the Ministry of Justice. The Ombudsman encourages the present and future governments to continue with this positive practice.

In 2017 the Ombudsman acted in the role of an amicus curiae (friend of the court) for the first time, and submitted written comments to the European Court of Human Rights in Strasbourg concerning one of the cases of this court against the Republic of Slovenia. We will undoubtedly continue with this practice.

I must specifically emphasise that the Collective Actions Act was adopted in 2017, governing collective actions, settlements, the rules of collective proceedings, and payment of compensation. This will facilitate access to judicial protection for many people, and enable injured parties to be awarded compensation in cases of mass damages, and ensure appropriate process guarantees for the prevention of unfair litigation. **This is especially important for those individuals who do not have the means to engage in litigation and have problems enforcing free legal aid. The petitioners claim that they do not feel equal in justice to those who can afford litigation, and add that there is no equality of arms, and that they missed a lot or conducted things poorly because they were unable or did not know how to do them.** There were also petitioners who claimed that attorneys had performed their work poorly when providing this aid. Of course, there must be supervision over the work of judges, attorneys, and notaries so that claims that 'hawks will not pick out hawks' eyes' will be unfounded. I find that it happens that lengthy procedures for being granted free legal aid prolong judicial proceedings and we need to ensure that the network of granting this aid is expanded. **I continue to encourage local communities, especially during meetings away from the head office and in talks with mayors, to provide additional forms of this aid.** This aid gives guidance to individuals who are not versed in the law on institutions and regulations, explains the legal terms and deadlines for legal remedies, and so on. A best practice example is the response by the mayor of Slovenske Konjice, who immediately reacted to our findings concerning the municipality's operations in December of 2017 and arranged the provision of free legal aid to his citizens.

The response of the mayor of Slovenske Konjice was fast, as he immediately arranged the provision of free legal aid to his citizens.

A regular feature of all previous reports by former Ombudsmen and, of course, all five of my reports, is the highlighting of the **ineffectiveness of supervision of the implementation of legal order.** An effective supervision system should be implemented by independent and autonomous institutions and numerous inspections (we have a total of 25 inspections), agencies, authorised parties, offices, administrations, and other authorities. It is precisely these supervisory institutions that can contribute to both discovery and sanction, as well as to reducing the extent of unwanted, wrong, or illegal actions. The Ombudsman finds that this supervision is lacking, especially because of staff shortages, ineffective cooperation, and sometimes also due to lack of jurisdiction and authorisation over an issue. Consequently, supervision is often insufficient and late, e.g. when it comes to inspection services. The Ombudsman cannot see how 40 labour inspectors can effectively supervise 200,000 business entities, and the answer is simple: they cannot.

2.
The Ombudsman recommends that all state and local authorities adopt measures to ensure the elimination of any unjustified delays in proceedings and unreasonably long decision-making.

The jurisdiction concerning supervision by individual authorities is sometimes less appropriately regulated or current regulations enable the overlapping of supervision between individual authorities. The Ombudsman finds it unacceptable that petitioners are sometimes left to wander between these authorities and are often dissatisfied with the explanations provided by the inspection services i.e. that they are not authorised to take action. **For some violations, corresponding measures are not even foreseen in the government Act.** As an example, the legislator, on the basis of the autonomy of schools, prohibited organised religious ceremonies in public kindergartens and schools; however, it failed to stipulate sanctions for the violation of this prohibition, a fact which was established by the competent inspectorate after the supervision. If it had, we would have an established administrative or judicial practice today. As things stand, we continue to leave sufficient room for persistently debating the problematic nature of this issue. We also established a modest performance of duties by the competent inspectorate with regard to supervision of the enforcement of the right to correction. The inspectorate wished to conclude the processing of the petitioner's claim as soon as possible, without establishing whether the refusal to publish the correction actually included all the legally stipulated components. The inspectorate failed to do so even after receiving the Ombudsman's recommendation, a fact which we are especially critical of. The work of the Health Inspectorate of the Republic of Slovenia was also of long duration. The inspectorate informed us that in the past seven years, i.e. in a period when they have been assigned new jurisdictions in key regulations (patients' rights, medical practitioners, mental health), the number of health inspectors has actually decreased by 43.

There were cases of inspectors who conducted a supervision at our request and established violations and ordered the adoption of appropriate measures.

We further established that, in specific cases, superior authorities should have eliminated questionable decisions made by subordinate authorities but failed to do so, despite the Ombudsman's findings on the violation of individual rights. **I believe that the current inspection services are not effective enough.** However, I do need to emphasise the positive examples, where inspectors conducted a supervision at our request, established violations, and ordered the adoption of appropriate measures.

The Ombudsman does not process cases for which judicial or other legal proceedings are running, unless these involve undue delays in proceedings or an obvious abuse of power. **I find that individual courts and state and local authorities too often exceed all reasonable deadlines for discussing open cases, and repeatedly unjustifiably delay proceedings,** a fact which has been established in 29 cases and which is repeatedly pointed out in this report. The lengthiness of judicial proceedings is also sometimes the result of missed deadlines for preparing expert opinions. We are pleased to establish that our interventions in court, especially when there are unjustified delays in the hearing, often help the proceedings to move forward. **Individual minor offence and other authorities in administrative management unnecessarily put off decision-making,** and do not provide their decisions within the legally determined deadline. We specifically emphasise a case of lengthy decision-making on an objection against an informative calculation of income tax. There are backlogs in granting water rights and deciding on ownership relationships in water areas, as has been pointed out by non-governmental organisations from the field of environment and spatial planning. The Ombudsman therefore insists on the consistent use of mechanisms which are stipulated in individual proceedings for cases of violations of legally determined deadlines. For years now, we have been establishing, writing, recommending, expecting, and demanding that more effective measures be adopted for the elimination of backlogs in deciding on individual rights, which are the responsibility of the Ministry of Labour, Family, Social Affairs and Equal Opportunities as the body of second instance. The situation remains unchanged, even though the Ministry has adopted programmes for their elimination. Individuals have to wait years for the decision on some of the rights, even though the general legal deadline is no more than two months from the day of filing the complaint.

We insist that more effective measures for the elimination of pending cases in decision-making on individual rights be adopted.

Imagine the distress of a secondary school student who has been refused a scholarship and who has to wait two years for an answer to his complaint; or the lengthy wait for a decision on a complaint concerning the removal of a child or a decision associated

with the rights to public funds. **With the lengthy decision-making process, the Ministry is violating the right to equal protection of rights stipulated by Article 22 of the Constitution of the Republic of Slovenia and the principle of a social state and a state governed by the rule of law.**

All too frequently the Ombudsman receives answers from authorities that the reasonable deadline for hearing a case has been exceeded due to staff shortages and too many pending cases. I believe that in a state governed by the rule of law such excuses are totally unacceptable, as exceeding any legally determined deadline is unacceptable and can represent an infringement of constitutional rights. It is completely illogical that an individual loses his rights in the event of missing a deadline, but a public servant or official suffers no consequences under the same conditions.

I therefore recommend to the legislator, the Government of the Republic of Slovenia, and the ministries to focus all required attention on this issue and to adopt measures for observing the legally determined deadlines for all actions which the authorities must perform under their jurisdictions. **The unreasonably long proceedings and lengthy decision-making are among the reasons why people are losing faith in the rule of law and the effective protection of their rights.**

3.
The Ombudsman recommends that all authorities and supervisory institutions adopt measures to more effectively perform their duties so as to contribute even more to uncovering wrong and illegal actions, sanctioning such actions, and reducing their extent. These measures include the elimination of staff shortages, setting up effective mutual cooperation, and a clearer determination of jurisdictions and authorisations.

In 2017, we again heard **petitions about the restriction of freedom.** In order to establish the actual situation and to implement the duties and powers of the National Preventive Mechanism, we visited prisons, residential treatment institutions, retirement homes, special social care institutions, psychiatric hospitals, police stations, the Aliens Centre, the Asylum Centre, and other institutions. We established that some of the prisons were still overcrowded, including Ljubljana Prison with its non-functional building, which urgently requires a new construction. **These conditions require the adoption of necessary measures for ensuring the observance of human rights of people in custody, especially the right to protection of their personality and dignity, a fact also pointed out to Slovenia by the European Court of Human Rights.** Organising activities or providing work to all people in custody who are able and want to work remains a weakness. As an example, I point out a totally unacceptable mistake which was found looking at a criminal file, where the court missed the deadline for issuing a decision by more than two months, and forgot about the convict in prison. When processing petitions and conducting visits in the role of the NPM, we established a shortage of staff due to budget cutbacks and taking on new obligations, both with regard to judicial police officers and expert staff. The shortage of expert staff is evident from the lack of preparation for the appropriate inclusion of the convicted person in normal life once they are released from prison. We have been pointing out the lack of regulations of the activity of the **forensic unit** for quite some time. The majority of petitions from people with impaired mobility in psychiatric hospitals and social care institutions were again associated with the Mental Health Act or unresolved systemic issues, such as placement in secure departments of social care institutions on the basis of court decisions. I point out the fact that we have again seen a court decision stipulating that the introduced safety measure of mandatory psychiatric treatment and care be implemented in a social care institution, and not in a health institution as stipulated by criminal law provisions.

We have been pointing out the lack of regulatory regulation of the activity of the forensic unit for quite some time.

In the second half of January 2017, the National Assembly of the Republic of Slovenia adopted amendments to the **Aliens Act (ZTuj-2D) and we believed that the Constitutional Court of the Republic of Slovenia should provide its opinion on the constitutionality of the act.** I came in for a lot of sharp criticism for not filing a request, reproaches for being passive, hesitant, and indecisive, calls for my resignation and opinions voiced on the Ombudsman being subordinate to the interests of non-citizens or foreigners, among other things. I respect the constitutionally protected freedom of expression and plurality of opinions; however, I emphasise that these were completely unnecessary attempts to exert pressure on my and our activities, both by civil society and individuals from the political sphere. These opinions also expressed a lack of familiarity with the position and role of the institution as a constitutional category which is independent and autonomous in its work, and whose viewpoints

Attempts to exert pressure on my and our activities are completely unnecessary.

can be displeasing to authorities, individuals, political parties, or groups. We see it as a positive fact that the Government of the Republic of Slovenia wished to legally prevent a possible repeat of the problems that we faced with the migration waves in 2015 and 2016; **however, the concrete solution in the ZTuj-2D is, in some respects, inconsistent with the current level of development of constitutional and convention standards on the protection of human rights.**

I especially wish to emphasise that there are **individuals and families who have been living illegally in Slovenia for years,** some for eight years and the longest (as claimed by the petitioners) for fifty-five years. They all claim that it has been impossible to regulate their status despite years of trying. We assume that there are even more such cases, as not everyone seeks legal assistance or turns to the Ombudsman with a petition. The state must adopt a more appropriate solution to this problem than the one currently used.

Despite our special report and recommendations, social care institutions are still voicing problems associated with the admittance of people on the basis of court decisions. We find it unacceptable that the institutions, the Association of Social Institutions, the courts, and the Ombudsman have been emphasising the **problem of overcrowding in secure departments** for years, yet the situation has not improved and has even deteriorated. I therefore again call upon all the responsible parties to implement the recommendations which the National Assembly of the Republic of Slovenia issued after the discussion of the Ombudsman's special report as soon as possible.

We have been emphasising the problem of overcrowding in secure departments for years.

The lack of regulation of the admission procedure in secure departments of social care institutions in circumstances of admission without consent remains a problem. It is unacceptable that the legislator did not provide for a timely constitutionally compliant procedure for the admission of individuals who have been deprived of their legal capacity. We have also pointed out the need to update the professional guidelines for the use of special precautionary measures. As it is difficult to ensure the strengthening of patients' self-respect in uniform sleeping clothes, we recommend, as did the European Committee for the Prevention of Torture (CPT), that patients who are not very sick or bedridden are given the possibility to wear their own daytime clothes.

Why is there still no secure psychiatric department for children and adolescents?

I am especially critical of the fact that after numerous promises by ministries, we still do not have a **secure psychiatric department for children and adolescents, which is unacceptable. I push for better conditions in retirement homes,** especially in secure departments for people with dementia. In 2018, special attention will be paid to the issue of the elderly in our society, especially those staying in retirement homes. We will visit retirement homes and discuss the issues at a meeting scheduled for the second half of the year. Unfortunately, Slovenia is one of the few EU member states which has not regulated the field of specialised comprehensive treatment of people who, due to mental illness or the most severe mental health disorders, pose a danger to themselves and/or others and who are unable to be included in the community due to exceptional behavioural characteristics. The authorities must pay additional attention to this issue and search for appropriate solutions in order to protect other residents and the employees in these institutions. I persistently point out the problems concerning the returning of juvenile runaways to residential treatment institutions, and the urgency of preparing new instructions on the implementation of procedures with minors in educational and precautionary measures.

We established violations of human rights and freedoms associated with restriction of movement due to returns of migrants under the Dublin Regulation, especially with regard to slow progress in procedures where applicants for international protection are also deprived of their liberty or their movements are restricted. We found that in the reception department of the Asylum Home, foreign nationals are actually deprived of their freedom but no decision is issued on the reasons for the deprivation of liberty, which is unacceptable.

We found that the fundamental provision of the Constitution of the Republic of Slovenia, which says that that Slovenia is a state governed by the rule of law and a social state, has been violated in 35 cases. **We claim that the principle of a social state has been violated when we establish that human dignity has been affected, when an individual or their family do not have the conditions to meet their fundamental human needs,** and when they are pushed into poverty and not ensured material and social security or the enjoyment of fundamental social and economic rights. The principle of a social state also means that the state, without discriminating against individuals or social groups, must ensure access to rights to public funds and organise a network of public services for the effective implementation of social assistance. Statistical data show a decline in the proportion of the population threatened by poverty; however, the Ombudsman has established that there are still groups of people living in poverty whose minimum income, social transfers, or low pensions do not enable a decent living. The most endangered group are the elderly, especially retired women. **Many live at the bottom of society and are losing their dignity by asking for clothes and food from humanitarian organisations,** as the too low pensions (if they have them) or disability allowances do not provide the material means for a decent living. Almost one half of the unemployed population, one tenth of all the employed, especially including self-employment, slightly more than 10% of underage children who share the faith of their parents, and one fifth of people with an incapacity to work are endangered. A social state, whose mirror reflects the poverty of so many individuals, must adopt more decisive measures for eliminating this poverty. When comparing social indicators with those of other countries, Slovenia achieves rather good results; however, the state cannot afford to be in the 'golden centre' but should be striving to eliminate the poverty of all, especially underage children.

4.
The National Assembly, the Government of the Republic of Slovenia, and the ministries should adopt measures aimed at enforcing the fundamental principle of the Constitution of the Republic of Slovenia, i.e. that Slovenia is a state governed by the rule of law and a social state, in order to eliminate poverty and provide individuals and their families with the conditions for meeting fundamental human needs, free of discrimination on the basis of any personal circumstance.

During our work, including in discussions with people in municipalities (in 2017 we held 12 meetings away from the head office and 268 personal discussions), I have learned of the **full extent of the distress of a number of people. This is predominantly associated with poverty and other social problems, including ensuring an appropriate place to live, unemployment and homelessness, disability, health and access to health services, care for the elderly and mentally ill, overindebtedness and the threat of eviction, the availability of legal aid, and the threat of enforcement of debts.** In 2017, there were 2,531 proposals for enforcement against immovable property which were filed due to debts of less than one thousand euro. It is mostly people from the fringes of society who could lose their homes, and I am especially pleased that the amendment to the Claim Enforcement and Security Act was adopted in early 2018, a result which the Ombudsman has persistently strived for and which was pointed out by the European Court of Human Rights in the case of Vaskrsić v. Slovenia. In such cases, the courts will now have to consider the proportionality of the matter and enforcement on real estate is now stipulated as the option of last resort for the repayment of debt. I believe that this is an appropriate solution, as poverty and consequently social exclusion already represent a severe violation of human dignity and therefore a violation of human rights, and losing one's home is the worst blow to people living on the edge of society.

In early 2018, the amendment to the Claim Enforcement and Security Act was adopted. Enforcement on real estate is now stipulated as the option of last resort for the repayment of debt.

I find that an important step was made in 2017 concerning the legislative regulation of child advocacy, which has been managed as a pilot project in the Ombudsman's office for a whole decade. In September, the Act Amending the Human Rights Ombudsman Act (ZVarCP-B) was adopted and will enter into force on 14 October 2018. This Act defines child advocacy as an independent organisational unit of the Ombudsman. In this way, we will be able to provide all children who need an advocate with expert help to express their opinions in all proceedings and cases which they are part of. The advocate will submit the child's opinion to the competent authorities who decide on the child's rights and benefits.

The Ombudsman is especially pleased that in March 2017 the **Family Code, which will solve numerous issues which we have been emphasising, was finally adopted.** We anticipate that until its enforcement, all courts and social work centres

will be prepared and the paths of mutual cooperation between various institutions arranged.

We will continue with our endeavours towards improving the situation of children with special needs.

In previous years, the Ombudsman has repeatedly dealt with requests by parents to have kindergartens or schools organise the possibility of vegetarian meals. We assessed that such meals are not a human right that could be judicially enforced, but a free choice. **It is not the obligation of public institutions to provide special meals to individuals with regard to their wishes, beliefs, and other personal circumstances, unless there are medical reasons to do so.** For years we have been dealing with problems in the implementation of contact between parents and children, while the question of contact between parents and children who have been removed from the home, which has to be decided upon by the court, is especially sensitive. We will continue our endeavours towards improving the situation of children with special needs, ensuring appropriate conditions, including transportation to kindergarten and school so as to facilitate the enforcement of the right to education together with their peers. The financing of their primary education cannot remain the burden of individual municipalities, as the smaller municipalities are unable to carry this load alone. I specifically emphasise the situation concerning children on the autism spectrum who need a professionally trained assistant with them. I expect that this issue will now be resolved with the amendment to the Act which is still in the legislative procedure. If not, the Ombudsman will request a review for the constitutionality of the rules and regulations which unjustifiably discriminate against individual groups of children with special needs.

Exploitation of workers is absolutely unacceptable and I publicly condemn it.

The state still allows individuals to remain unpunished for breaking legal rules or skilfully bypassing them and doing their best to find loopholes to outsmart other people. We have established cases of the **exploitation of workers, which is absolutely unacceptable and I publicly condemn this.** If the state allows such things to happen, it is putting workers in an unequal position compared to those who go unsanctioned for exploiting and squeezing workers so drastically that the latter do not have the means to pay for legal assistance or attorneys to enforce their rights. **The state is wrong in not adopting fundamental amendments and protecting working people better, instead of only protecting the employers or owners of capital.** The main questions and dilemmas that we studied were: the failure to pay salaries and social security contributions and the related work of supervisory mechanisms; retroactive deregistration from social insurance; precarious work (agency work, providers of port services, etc.); labour market reform; workplace violence (bullying, mobbing, tormenting, inappropriate payment of overtime work, inappropriate working conditions, etc.); and the position of workers with disabilities. The decades of allowing violations of labour law legislation without any significant systemic amendments and more effective work of supervisory authorities are completely unacceptable to people who have been robbed of their human dignity and material goods, and represents a violation of their fundamental social and economic rights. **We therefore insist that measures be adopted which will ensure a transparent, effective, and fast system of supervision of the payment of salaries and contributions.** We anticipate that the Government of the Republic of Slovenia will prepare an effectiveness analysis of the already adopted amendments aimed at suppressing the lack of payment discipline and the violation of workers' rights (Employment Relationships Act, Labour Inspection Act, Labour Market Regulation Act, Criminal Code, and the Pension and Disability Insurance Act). I believe that the amendment to the Criminal Code with regard to eliminating direct intent as a condition of the definition of the criminal offence of violation of fundamental rights of employees is a welcome innovation in proving that employers' are at fault. All the measures which were adopted in 2017 must show results or they will have to be supplemented.

The position of people with disabilities in the labour market is not good.

The position of **people with disabilities** in the labour market is not good, and it has been established that there are questionable discriminatory practices of terminating employment relationships of people with disabilities, even though there are safety mechanisms in place which should protect workers with disabilities from such actions by employers. Several irregularities have been established in social

enterprises, whose provision of employment to people with disabilities makes them enterprises of special importance, and we requested stricter supervision of their operations. Supervision conducted almost two years after a petition has been filed is absolutely not in accordance with the principle of good administration to which all authorities are bound. The failure to observe and implement the Ombudsman's recommendations is evident from the decade-old and still not yet implemented request that the Government of the Republic of Slovenia, in accordance with the Pension and Disability Insurance Act, **prepares an Implementing Regulation with regard to the types and levels of physical impairment, to provide a basis for determining the types and levels of physical impairment to regulate the enforcement of rights from disability insurance.**

In 2017, we received a request from the UN Committee on the Rights of Persons with Disabilities for a report on our views on the implementation of the protection of people with disabilities in our country. We analysed the received petitions and prepared a **special report which was sent to the Committee and published on our website.** I need to add that we believe that the Council for People with Disabilities of the Republic of Slovenia, a body established on the basis of the Equalisation of Opportunities for People with Disabilities Act, is not fully and satisfactorily implementing the tasks imposed by this Act.

A lot of attention was paid to petitions **from the field of healthcare.** Unfortunately, we were not satisfied with the responsiveness of the Ministry of Health to our inquiries. As we have been informed by our petitioners, the Ministry poorly reacted to the petitions, proposals, and complaints filed by individual citizens. We regret that the amendment to the Health Services Act, which entered into force in December 2017, has not enforced some very much needed systemic changes. The criteria for determining a network of health services providers, which will allow the Government of the Republic of Slovenia to define this network and consequently ensure equal opportunities for public and private health services providers, and provide users with equal accessibility to providers, must be urgently prepared. **We regularly meet with representatives of patients' rights who, prior to the meeting, send us their reports and during the meeting report on the numerous problems that they have come across during their work.**

We were not satisfied with the responsiveness of the Ministry of Health to our inquiries and petitions.

We are pleased that our recommendation on the necessity for regulating the use of precautionary measures outside of departments of a psychiatric hospital under special supervision and secure departments of social care institutions, i.e. also in health institutions, has been considered with the amendment to the Patients Rights Act. The Personal Assistance Act, which has finally brought some order and help to people who need assistance, has been adopted. We are still waiting for the necessary amendments and additions to the Mental Health Act. I cannot understand why we still do not have the much needed urgent paediatric psychiatry, even though all conditions have been met and the media have shown us fully equipped facilities. There are still continual setbacks. The provision of psychotherapeutic services has also not yet been regulated. I emphasise that systemic solutions should ensure accessible, high-quality, and safe programmes for the prevention of a disease, treatment, and rehabilitation, while also reducing inequality and ensuring accessible healthcare to vulnerable groups. **These solutions should contribute to shorter waiting times, appropriate regulation of concessions, health services in retirement homes, the right to joint rehabilitation, and the elimination of dissatisfaction of health professionals with the situation.**

The Personal Assistance Act has been adopted.

I must specifically thank the National Council of the Republic of Slovenia, with which we organised a number of good discussions; the last one on palliative care and euthanasia was entitled Reflections on Issues at the End of Life.

The Constitution of the Republic of Slovenia specifically stipulates that everyone has the right to a **healthy living environment** in accordance with the law. **The conditions for exercising this right must be ensured by the state.** Over the years, the Ombudsman has received a growing number of petitions relating to activities

affecting the environment and living conditions which are harmful to health, including a growing number of well-founded petitions. Our petitioners often claim non-transparent decision-making, an ignorant and belittling attitude from those responsible for the petitions filed by individuals and civil society, and failure to include the public in decision-making.

Legislative provisions on public participation in the adoption of environmental regulations are often only formally met by the regulation drafters..

In order to unite the opinions of civil society, the professional public, decision-making bodies, and our guests, Ombudsmen from South-Eastern European countries, on environmental issues, we prepared and successfully implemented the 4th international conference on the Environment and Human Rights – Public Participation in Environmental Matters, in September 2017. Together, we established that public participation in environmental decision-making is in practice often merely formal. Legislative provisions on public participation in the adoption of environmental regulations are often only formally met (e.g. public discussion of extensive legislation during the summer holidays) by the regulation drafters, and the civil and professional public are often included in the drafting of regulations too late and are not provided with high-quality and comprehensive information. Unfortunately, decision-makers do not deal with the observations and recommendations provided by civil society with due diligence, and do not inform the petitioners of their reasons for not incorporating them in the drafting of the regulation. **They are therefore convinced, and I share this opinion, that state and local authorities too often and uncritically support decisions in favour of capital and not of the needs and interests of people living in the affected area.** Legislative amendments should not limit the constitutional right to a healthy living environment.

We need to trust the people who do all they can to point out and prove detrimental environmental conditions.

It is therefore necessary for society to treat issues concerning a healthy living environment as a priority, as it is unfair to all future generations to allow excessive environmental burdens and pollution, the destruction of water resources, biotic diversity, and high-quality soil, and the worsening of air quality, emissions of unpleasant smells, and excessive noise. **We also need to remedy all reckless activities affecting the environment: the Celje Basin, the Mežica Basin, soil in kindergartens and schools, high radon concentrations, and many others.** If we truly care about our posterity, our grandchildren, we need to say goodbye to the indifference and apathy in the offices of ministries, inspectorates, and agencies, and to the small and large companies aspiring for profit at any price. We need to trust the people who do all they can to point out and prove detrimental environmental conditions, while state and local authorities find it easier to believe the polluters and do not doubt their well-paid expert opinions and monitoring, which is not always independent.

At the end of 2016, the National Assembly, with a majority decision, supported the proposal for an amendment of the Constitution of the Republic of Slovenia to add the **right to drinking water.** Before that, the Ombudsman had been persistently recommending such an amendment to the Constitution for over a decade. In this recommendation, it was supported by the professional public, civil society, and decision-makers. I am really pleased with this result, but also point out that **all legislative and implementing regulations must be harmonised with this constitutional provision.**

In 2017, amendments to the Human Rights Ombudsman Act were adopted.

One of our most frequently reiterated recommendations, i.e. that **Slovenia needs a full human rights institution** which would provide the legal grounds to acquire Status A according to the Paris Principles relating to the Status of National Institutions for Human Rights, has been implemented. Now we have such an institution. The intensive endeavours of the Ministry of Justice, the favourable inclination of the Government of the Republic of Slovenia, and the cooperation of the Ombudsman have resulted in the preparation of the Act Amending the Human Rights Ombudsman Act. The amendments allow the setting up of a **Human Rights Ombudsman Council** and three internal organisational units, i.e. a **Human Rights Centre, the National**

Preventive Mechanism, which is now in its tenth year of operation, and **Child Advocacy,** which operated under the auspices of the Ombudsman for ten years as a pilot project.

With regard to the expansion of the Ombudsman's tasks, I specifically emphasise the need to amend the regulations which govern **public finance, including the financing of the work of the Ombudsman.** The Ombudsman's independence and autonomy must be ensured, as stipulated by the Constitution of the Republic of Slovenia and the ZVarCP. The current regulations on public finance do not ensure the constitutional position of independent and autonomous constitutional bodies such as the Ombudsman, the Supreme Court of the Republic of Slovenia, and the Court of Audit of the Republic of Slovenia. In this respect, I specifically emphasise the issue concerning the autonomous preparation of the draft budget, which is now not possible. **During the financial year, we cannot use the funds which have been recognised by the National Assembly of the Republic of Slovenia,** as is determined for all other budget users. In consideration of the principle of separation of power, control over the Ombudsman's use of budget funds can only be implemented by an independent and autonomous body, such as the Court of Audit of the Republic of Slovenia and not the Ministry of Finance. In relation to the Ombudsman, the Government of the Republic of Slovenia should not have any jurisdiction or authorisation of control, as this subverts the constitutionally determined relations between these two bodies.

The Ombudsman's use of budget funds must be implemented only by an independent and autonomous body such as the Court of Audit of the Republic of Slovenia.

Perhaps my introduction has focused more on the systemic issues of observance of human rights and freedoms than on best practice examples where the state and local authorities have eliminated the alleged violations on the basis of our findings. **I must commend the Ministry of Justice, which prepared interim reviews of the implementation of the Ombudsman's recommendations which the National Assembly of the Republic of Slovenia adopted when discussing our regular reports.** With its regular annual response reports to our findings and recommendations, the Government of the Republic of Slovenia expressed a high level of respect for our work, findings, and recommendations. For this reason, the State Secretary of the Government of the Republic of Slovenia visited us repeatedly in order to establish which bodies should work faster and what still needs to be done. However, I reproach the Government of the Republic of Slovenia for not being able to ensure more intensive cooperation between the relevant ministries, despite enthusiastic work, in the elimination of the most complex and still unresolved issues mentioned in this report.

5.
The Ombudsman recommends that the Government of the Republic of Slovenia ensures effective inter-ministerial cooperation and coordination 6.in the drafting and enforcement of legislation and the implementation of regulations and other systemic measures aimed at eliminating violations of human rights and fundamental freedoms.

Co-workers of the Ombudsman of the Republic of Slovenia (January 2018)

Finally, I would like to thank all of my colleagues as this report would not be so versatile and well-grounded without them. This Introduction is followed by a special presentation in which we tried to present, also graphically, our work and achievements, and the substantive diversity in the approaches and work methods used.

I must also **thank the media** for sharing sad stories with us, and perhaps slightly less often the ones with a happy ending, to which the Ombudsman often contributes. They often help when the story of wrongdoings must be spread to all parts of society, and the reaction of those responsible must be monitored. I do wish that they would also bring good news to people, which is also the result of authorities working more responsibly and with greater sensitivity to the needs of ordinary people. **I also thank civil society and non-governmental organisations** for their good cooperation. We can eliminate violations of human rights and freedoms only together and accompanied by the awareness that the existence of contemporary society depends on their observance.

My thanks also goes to the representatives of state and local authorities and holders of public powers who provided fast and substantive responses to our inquiries, explained their decisions, and, faced with the Ombudsman's critical findings, turned bad practices into good ones.

Vlasta Nussdorfer,
Human Rights Ombudsman

1.2 THE HEAD OFFICE OF THE HUMAN RIGHTS OMBUDSMAN OF THE REPUBLIC OF SLOVENIA

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Toll-free telephone number: 080 15 30
Email: info@varuh-rs.si
Website: www.varuh-rs.si

1.3 THE LEGAL FRAMEWORK FOR THE WORK OF THE OMBUDSMAN

The Constitution of the Republic of Slovenia

Article 159
(Ombudsman for Human Rights and Fundamental Freedoms)

In order to protect human rights and fundamental freedoms in relation to state authorities, local government authorities and bearers of public authority, the office of the Ombudsman for the rights of citizens shall be established by law.

Human Rights Ombudsman Act (ZVarCP)

Article 1
In order to protect human rights and fundamental freedoms in relation to state authorities, local self-government authorities and bearers of public authority, the office of the Human Rights Ombudsman shall be established by law.

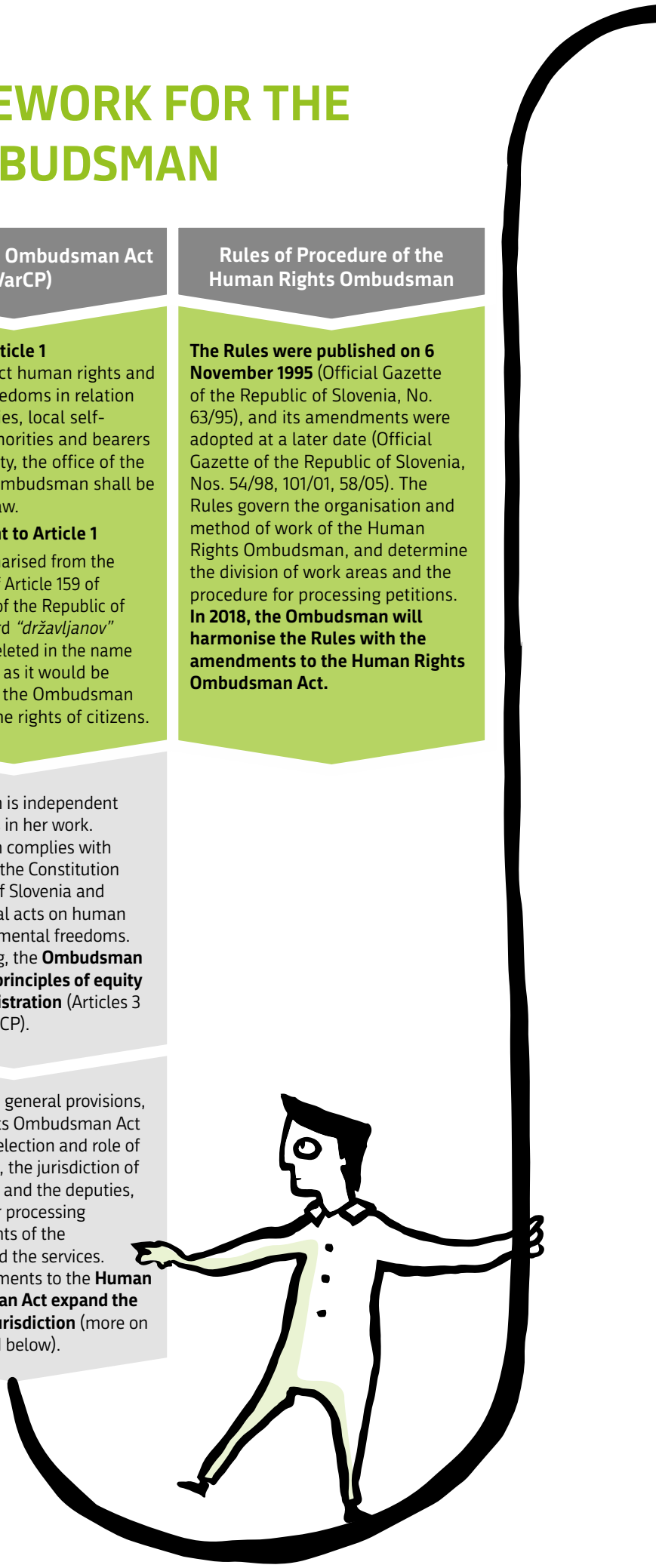
Comment to Article 1
This text is summarised from the first paragraph of Article 159 of the Constitution of the Republic of Slovenia. The word *"državljanov"* (i.e. citizens) is deleted in the name of the institution, as it would be discriminatory if the Ombudsman only protected the rights of citizens.

The Ombudsman is independent and autonomous in her work. The Ombudsman complies with the provisions of the Constitution of the Republic of Slovenia and international legal acts on human rights and fundamental freedoms. When intervening, the **Ombudsman may invoke the principles of equity and good administration** (Articles 3 and 4 of the ZVarCP).

In addition to the general provisions, the Human Rights Ombudsman Act also defines the election and role of the Ombudsman, the jurisdiction of the Ombudsman and the deputies, the procedure for processing petitions, the rights of the Ombudsman, and the services. The 2017 amendments to the **Human Right Ombudsman Act expand the Ombudsman's jurisdiction** (more on this can be found below).

Rules of Procedure of the Human Rights Ombudsman

The Rules were published on 6 November 1995 (Official Gazette of the Republic of Slovenia, No. 63/95), and its amendments were adopted at a later date (Official Gazette of the Republic of Slovenia, Nos. 54/98, 101/01, 58/05). The Rules govern the organisation and method of work of the Human Rights Ombudsman, and determine the division of work areas and the procedure for processing petitions. **In 2018, the Ombudsman will harmonise the Rules with the amendments to the Human Rights Ombudsman Act.**



Act Amending the Human Rights Ombudsman Act (ZVarCP-B)

(Official Gazette of the Republic of Slovenia, No. 54/17 as of 29 September 2017)

These amendments, which were adopted in 2017, refer to the expansion of the institution of the Ombudsman in a way which ensures the basis for acquiring status A according to the Paris Principles relating to the Status of National Institutions for Human Rights of 1993. Furthermore, the Act also regulates child advocacy, the national preventive mechanism (NPM), and managing personal data records.

With the adopted amendments, the position of the Human Rights Ombudsman and consequently the level of observance of human rights are becoming even stronger, which is in the interest of individuals, the state, and society as a whole.

The new Act foresees the setting up of the **Human Rights Ombudsman Council** and **three internal organisational units:**

Human Rights Ombudsman Council

The Council will be part of the office of the Ombudsman and work in accordance with the principle of expert autonomy. The Council will comprise the president and 16 members, i.e. seven members from civil society, three members from the world of science, and two government representatives, while the advocate of the principle of equality, the information commissioner, the National Assembly, and the National Council will each have one representative.

The provisions concerning the Human Rights Ombudsman Council (Article 50a) **become applicable.**

Human Rights Centre

The centre will perform broader tasks and will not process petitions.

Its tasks include promotion; providing information, education and training; preparation of analyses and reports from individual fields associated with the facilitation and protection of human rights and fundamental freedoms; organising consultations on the implementation, facilitation, and protection of human rights and fundamental freedoms; cooperation with civil society, trade unions, and state authorities; providing general information on the types of complaints to international organisations for violations of human rights and fundamental freedoms; and cooperation in international organisations and associations, at the European and the global level, which are active in the implementation, facilitation, and development of human rights and fundamental freedoms.

The provisions concerning the Human Rights Centre (Article 50b) **become applicable on 1 January 2019.**

National Preventive Mechanism (NPM)

More on this can be found at page 53 and in NPM report 2017.

Child Advocacy

An additional intention behind the adopted amendments was the **formal, legal, and systemic regulation of child advocacy,** which will be active in the context of the Ombudsman's office, just as it has been in the last ten years. The Ombudsman also confirmed, with an expert evaluation of the project in 2017, the necessity of ensuring there is a specially selected and qualified person who acts as an advocate for a child and who can significantly change the course of events especially to the benefit of the child, whose viewpoints, wishes, and interests in proceedings before state authorities will not be overlooked or ignored.

Representation and advocacy of children in various social issues is the natural role of parents or legal guardians. However, when parents, for whatever reason, fail in this function or their interests are in collision with the interests of the child, the protection of the child's interests depends on the advocacy of other people.

The Human Rights Ombudsman can file with the courts:

Requests for a review of constitutionality

On the basis of Article 23a of the Constitutional Court Act, the Ombudsman may initiate a procedure for the **review of the constitutionality or legality of regulations or general acts** issued for the exercise of public powers if they deem that a regulation or general act inadmissibly interferes with human rights or fundamental freedoms.

Throughout the years of its work, the Ombudsman's office has filed

30

requests or the review of the constitutionality or legality of a regulation or a general legal act (more information is available at www.varuh-rs.si).

In 2017, the Ombudsman filed

2

requests for the review of constitutionality; during the term of Ombudsman Vlasta Nussdorfer, **eight** such requests have been filed.

Opinions from the viewpoint of the protection of human rights and fundamental freedoms

In accordance with Article 25 of the ZVarCP, the Ombudsman may *"communicate to each body his opinion, from the aspect of protection of human rights and fundamental freedoms, about the case he is investigating, irrespective of the type or stage of proceedings which are being conducted by the respective body"*, including cases for which judicial or other legal proceedings are in progress, i.e. the Ombudsman can **act as a friend of the court (amicus curiae).**

In 2017, the Ombudsman, for the first time, acted in the role of an **amicus curiae** (friend of the court) and submitted written comments to the **European Court of Human Rights** concerning one of the cases of this court (no. 60503/15) against the Republic of Slovenia (in accordance with Article 36 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Constitutional complaint

The second paragraph of Article 50 of the Constitutional Court Act (ZUstS) grants the Ombudsman the right to file a constitutional complaint **concerning a violation of human rights or fundamental freedoms of individuals or legal entities** with an individual document of a state or local authority or a holder of public powers.

A constitutional complaint may be filed only after all ordinary and extraordinary legal remedies have been exhausted, and within 60 days from the serving of the final document.

In 2017, the Constitutional Court of the Republic of Slovenia **decided on one of the Ombudsman's requests** for the review of constitutionality.

Purchased periods for the pension qualifying period

In July 2015, the Ombudsman filed a request for the review of constitutionality of the fourth paragraph of Article 27, the first and second paragraphs of Article 38, and the first and second paragraphs of Article 391 of the **Pension and Disability Insurance Act (ZPIZ-2).**

At its session of 14 September 2017, the Constitutional Court, during the procedure for the review of constitutionality, decided, by Decision **U-I-100/15-17,** that the fourth paragraph of Article 27, the first and second paragraphs of Article 38, and the first and second paragraphs of Article 391 of the Pension and Disability Insurance Act, in the parts referring to the purchased periods for the pension qualifying period, were not inconsistent with the Constitution of the Republic of Slovenia.

1.

At its session of 26 January 2017, the National Assembly of the Republic of Slovenia adopted the Act Amending the Aliens Act (ZTuj-2D).

On 19 April 2017, the Ombudsman filed a **request for a review of constitutionality** of Article 10b (measures in the event of changed conditions in migrations) of the **Aliens Act** (ZTuj-2D) due to inconsistencies in Articles 2, 14, 18, 22, 25, and 34 of the Constitution of the Republic of Slovenia.

2.

At its session of 17 February 2017, the National Assembly of the Republic of Slovenia adopted the Act Amending the Police Tasks and Powers Act (ZNPPol-A).

On 22 September 2017, the Ombudsman filed a request for a review of the constitutionality of the fourth paragraph of Article 113 of the **Police Tasks and Powers Act** due to inconsistencies between Articles 2, 32, 35, and 38 of the Constitution of the Republic of Slovenia and individual articles of the Convention for the Protection of Human Rights and Fundamental Freedoms.

In 2015, with the consent of the person affected, we **filed a constitutional complaint against the decisions of the court of first instance (Ljubljana District Court), second instance (High Court in Ljubljana), and the highest court in the country (the Supreme Court of the Republic of Slovenia).** The Constitutional Court of the Republic of Slovenia informed us that the panel, during the procedure for examining the constitutional complaint at its session of **12 July 2016,** adopted the Decision (number Up-563/15-7) to accept the constitutional complaint for consideration.

In 2017, at the Constitutional Court of the Republic of Slovenia, the Ombudsman was successful with a constitutional complaint against the decisions of the court of first instance (Ljubljana District Court), second instance (High Court in Ljubljana), and the highest court in the country (the Supreme Court of the Republic of Slovenia) with regard to involuntary detention for treatment in a psychiatric hospital.

1.4 THE OMBUDSMAN AND HER DEPUTIES

Ombudsman Vlasta Nussdorfer
univ. dipl. prav.

Deputy	Deputy	Deputy	**Deputy**
Tone Dolčič, univ. dipl. prav.	**dr. Kornelija Marzel,** univ. dipl. prav.	**Ivan Šelih,** univ. dipl. prav.	**Miha Horvat,** univ. dipl. pol. in mag. prava




Responsible for the following fields of the Ombudsman's work

Protection of children's rights, social security, social activities, healthcare and health insurance, pension insurance, the Advocate – A Child's Voice project	The environment and spatial planning, administrative procedures and property law matters, labour law matters, unemployment, housing matters, public utility services	Restriction of personal freedom (people with restricted movement), justice, police procedures, the National Preventive Mechanism	Constitutional rights, discrimination, national and ethnic minorities, personal data protection, citizenship, foreign nationals and applicants for international protection, correcting injustices, international cooperation

Management

From left to right (standing): **Ivan Šelih,** Deputy Ombudsman; **Kristjan Lovrak,** Secretary General of the Ombudsman; **Tone Dolčič,** Deputy Ombudsman; **Miha Horvat,** Deputy Ombudsman.

From left to right (sitting): **Dr Kornelija Marzel,** Deputy Ombudsman; **Vlasta Nussdorfer,** Human Rights Ombudsman; **Martina Ocepek,** Director of the Expert Service of the Ombudsman.

According to Article 17 of the ZVarCP, the **Ombudsman has laid down a hierarchy of her deputies, according to how long their full period of work as a Deputy Ombudsman has lasted.** The first Deputy is the one with the longest total period of work in that position.

1.5 EMPLOYEES AT THE OMBUDSMAN'S OFFICE

40 people were employed at the Om budsman's Office as of 31 December 2017

26 officials

8 expert and technical public employees

6 high officials: the Ombudsman, four Deputy Ombudsmen, and the Secretary General

2 mployees have a **diploma of secondary education.**

1 employee holds a **short-cycle college degree.**

29 employees have a **university degree.**

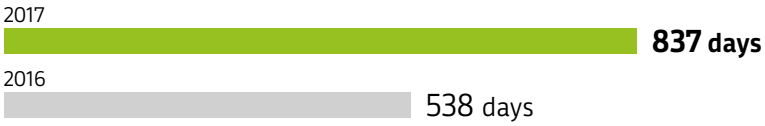
Two of them have a PhD and 3 have a Master's degree.

8 employees have completed **higher professional education.**

Two of them have completed a specialisation.

Absences

Sick leave



Maternity and parental leave

Taking into account both types of leave, **only 36 employees actually worked for the Ombudsman in 2017.**

Business trips in 2017

In 2017, the Ombudsman again intensively cooperated with the Faculty of Administration, the Faculty of Arts, the Faculty of Medicine, the Faculty of Education, and the Faculty of Social Sciences of the University of Ljubljana; the Faculty of Criminal Justice and Security of the University of Maribor; and the European Faculty of Law in Nova Gorica, where the Ombudsman and her deputies presented the work of the Ombudsman, especially in the participants' fields of study.

On the basis of trilateral agreements, in 2017 150 hours of **internship** was granted to one **student** of the Faculty of Social Sciences in Ljubljana, and a two-week internship was granted to one **student (with special needs) of Anton Janša Primary School in Radovljica,** who performed this internship at the Ombudsman's head office.

Under the mentorship of the Ombudsman's adviser, Mojca Valjavec, Živa Cotič carried out a qualitative analysis of the Decisions of the courts of first instance in the field of international protection, which were passed in 2014, 2015, and 2016. This analysis took place in the context of the **Ambassadors of Knowledge** project, under the auspices of the Life Learning Academy. On 31 May 2017, the Human Rights Ombudsman, Vlasta Nussdorfer, as one of the ambassadors of knowledge, gave the Reference 2017 award to the author, Živa Cotič. A mentorship award was also bestowed upon Mojca Valjavec.

In 2017, the Ombudsman cooperated with the **Faculty of Law of the University of Ljubljana** in a project focusing on a **legal clinic for refugees and foreigners.** The Ombudsman's office worked with two students, Maja Korimšek and Matej Cerovšek, led by the Ombudsman's adviser Mojca Valjavec. On 19 December 2017, in the context of the **labour law clinic,** Deputy Ombudsman Dr Kornelija Marzel held a lecture for the students of the Faculty of Law, and one of the students was given the possibility of doing her internship at the Ombudsman's office.

1.6 SERVICES OF THE OMBUDSMAN'S OFFICE

Article 9 of the Rules of Procedure of the Human Rights Ombudsman stipulates that the services of the Human Rights Ombudsman are organised in the Office of the Human Rights Ombudsman and the Office is managed by the Secretary General of the Ombudsman. The services of the Ombudsman comprise the Expert Service of the Ombudsman and the Secretary General's Office.

The Office of the Human Rights Ombudsman

Since 1 July 2017, the Office of the Ombudsman has been managed by the Secretary General of the Ombudsman, **Kristjan Lovrak,** uni. dipl. ekon.

The Expert Service of the Ombudsman

The Expert Service is managed by the Director of Expert Service **Martina Ocepek,** univ. dipl. prav.

The Expert Service carries out expert tasks for the Ombudsman and her deputies in individual fields, classifies petitions, manages the handling of petitions, processes petitions, and prepares opinions, proposals and recommendations, carries out investigations and prepares reports on its findings, and provides information to petitioners about their petitions.

On 31 December 2017, 23 public officials were employed in the Expert Service, of whom 21 officials were employed for an indefinite duration, one official was hired on a fixed-term contract, and one intern was employed in the Expert Service.

Sick leave in 2017 amounted to **634 days;** maternity and parental leave amounted to 257 days. That means that 3.4 officials were missing from work.

Until her retirement, i.e. until 30 June 2017, the Secretary General of the Ombudsman was **mag. Bojana Kvas,** univ. dipl. prav.

The Secretary General's Office

The Office is managed directly by the Secretary General.

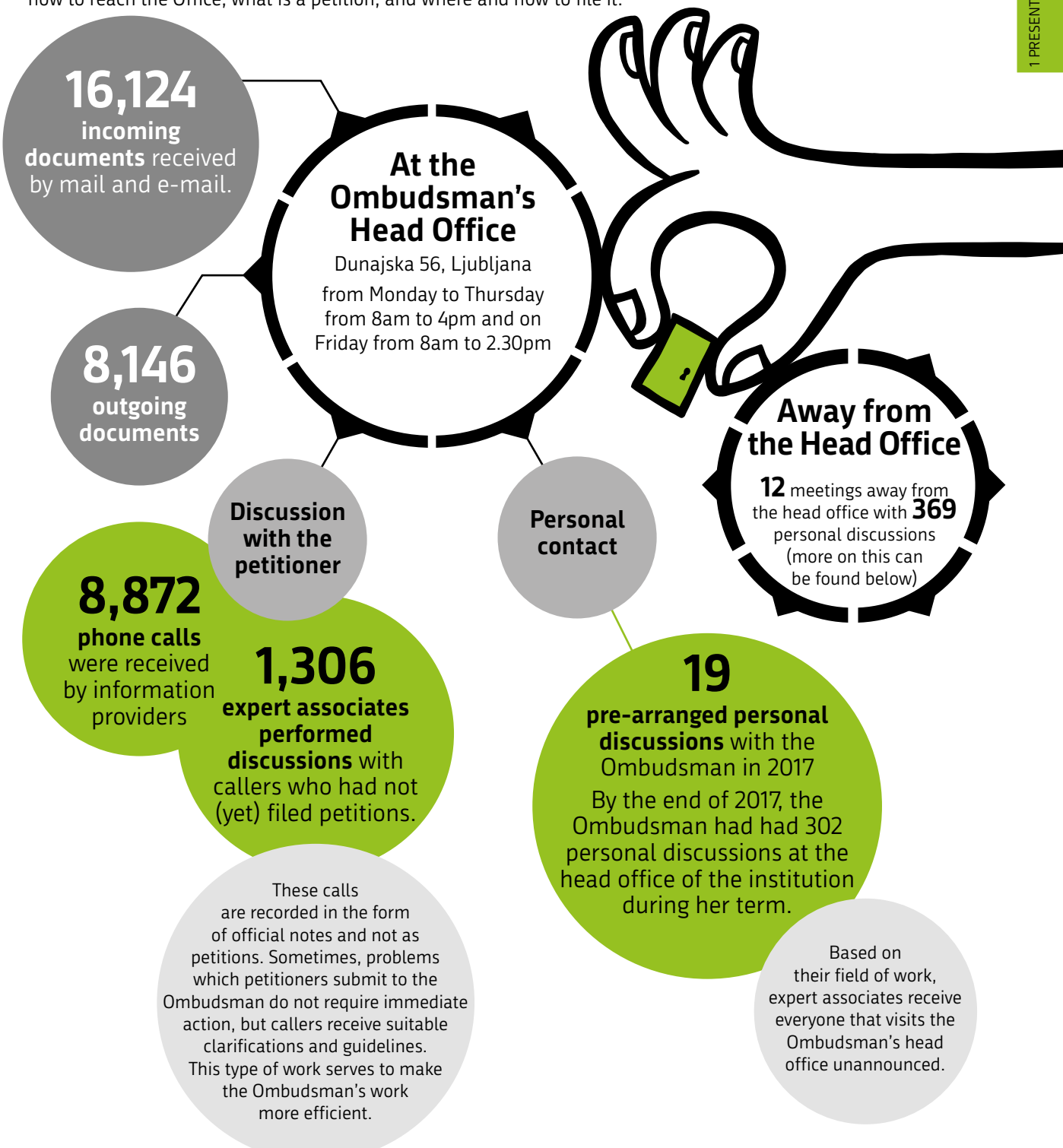
The Office, independently or in cooperation with external associates, performs tasks in the following areas: organisational, legal, administrative, material, financial, personnel, administrative and technical, IT, publishing, and analytical, and in the area of international cooperation and public relations. It also performs other tasks required for the operation of the Ombudsman's Office.

In 2017, sick leave in the Secretary General's Office amounted to **170 days** (0.6 officials were missing from work).

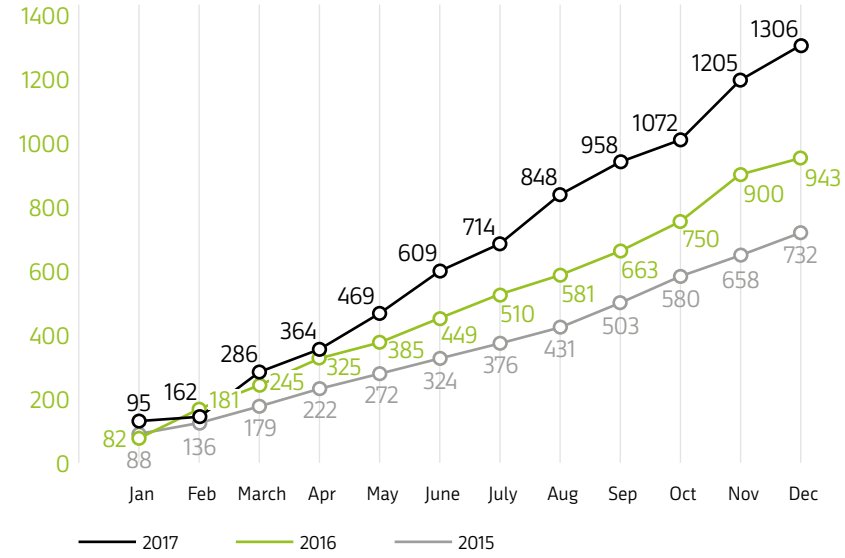
1.7 ACCESSIBILITY OF THE HUMAN RIGHTS OMBUDSMAN IN 2017

So as to present the work and the authorities of the Ombudsman in as simple a way as possible, we published a brochure in Slovene and had it translated into the languages of both constitutionally recognised minorities (Italian and Hungarian) and into three versions of the Roma language. At meetings both at the head office and away from it, the deaf and hearing impaired can communicate using sign language and, since 2017, also using an audio induction loop.

Online users visiting the Ombudsman's website receive extensive information about what the Ombudsman can do, how to reach the Office, what is a petition, and where and how to file it.



Comparison of the number of calls received by expert associates in 2015 and 2016



In 2017, expert associates took 363 calls more than in 2016 and 574 calls more than in 2015.

Employees in the Secretary General's Office

1.8 MEETINGS AWAY FROM THE HEAD OFFICE

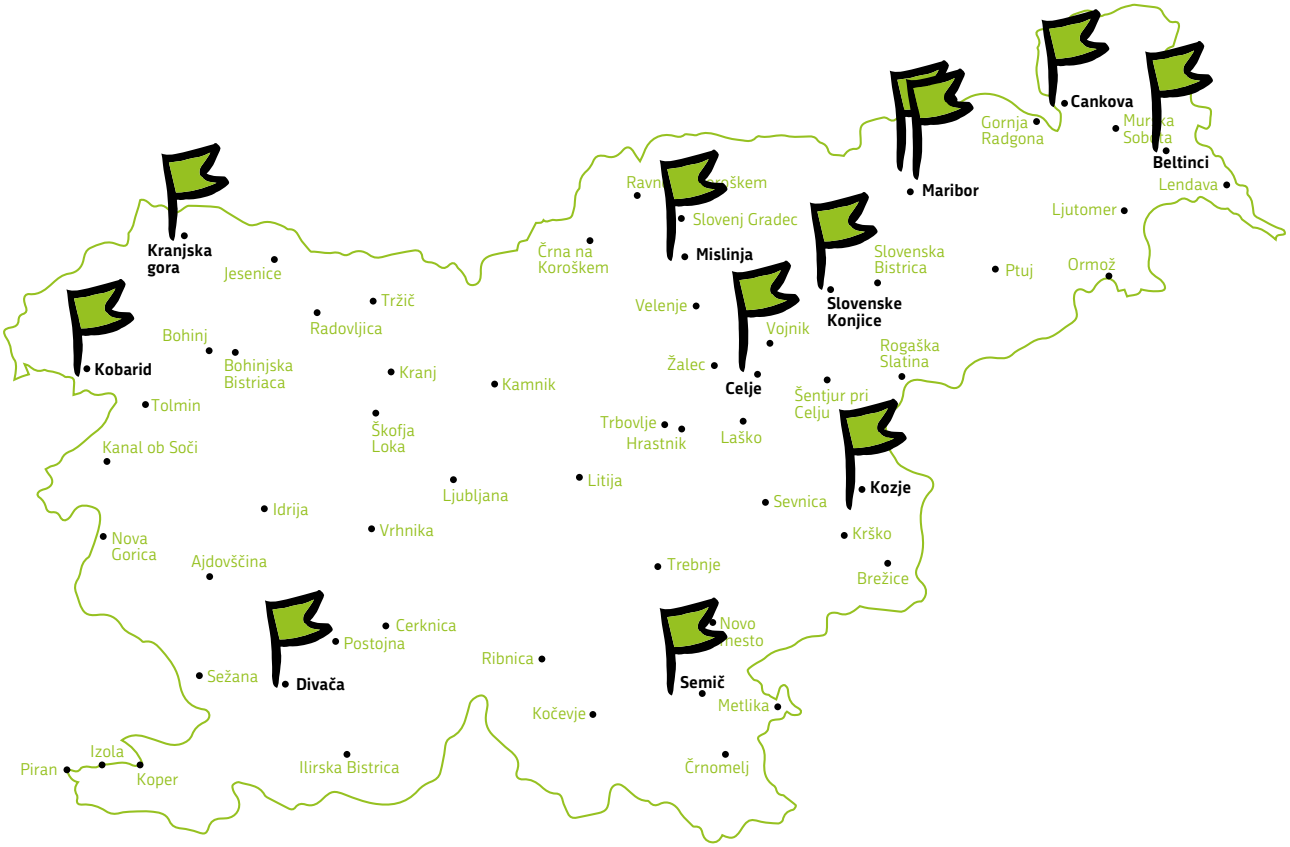
Meetings outside Ljubljana fall within the framework of efforts to make the Human Rights Ombudsman as accessible as possible to individuals who are unable to attend a meeting at the head office due to distance or for another reason. This has allowed us to improve the possibilities for talking to the Ombudsman or her deputies, thus making our work more accessible to people.

Meetings away from the head office are carefully planned. In December, the Director of the Expert Service prepares a plan of meetings away from the head office for the following year. The towns and cities are selected so that the entire territory of Slovenia is covered, and so that visits are made to municipalities where the Ombudsman has not yet been or where a number of years have passed since the Ombudsman's last visit. We hold meetings in Maribor at least once a year, and in or near towns where members of national minorities live.

In 2017, we held 12 meetings away from the head office, in the following municipalities:

Cankova, Semič, Mislinja, Maribor, Kranjska Gora, Celje, Kobarid, Divača, Beltinci, Kozje, Slovenske Konjice.

We had a good response in all the towns that we visited. The largest response was in Maribor, where we held two meetings and talked to 76 petitioners.



Over the years, all the meetings away from the head office have been provided free of charge by the mayors at the head offices of the municipalities. When organising meetings, we pay special attention to vulnerable groups and make sure that access and discussion are also available to people with disabilities.

Meetings of the Ombudsman away from the head office in 2017

268 personal discussions

69 newly opened petitions

142 discussions where petitioners received answers.

We recorded these in the collection of official notes, which means that the issue does not require additional action by the Ombudsman.

2 petitions were re-opened

34 re-opened petitions, where clarifications were provided so that these cases could remain closed.

21 discussions on issues that are already pending.

An example of a poster for a meeting held in Beltinci

All of our visits were announced in the local news, especially in free municipal publications, and on the Ombudsman's website and the website of the relevant municipality.

The improvement from 2016, which aimed to bring the Ombudsman even closer to the petitioners and provide as much direct contact in the field as possible, proved effective. A special phone number was introduced and used by the head of the office to **receive applications for meetings away from the head office** during the time period for receiving applications, i.e. 14 days prior to such meetings. Calls were returned to all those who called outside of office hours.

In 2017, the head of the office made **772 calls** associated with handling applications for meetings away from the head office.

All meetings held away from the head office take place in three parts

Private discussions with petitioners

Each petitioner has a 30 minute appointment. Many ask for legal advice. Often, they need someone to listen to them and hear their distress.

We clarify many problems together or may even resolve them at the meeting or later through a discussion with the mayor.

At every meeting away from the head office, we are faced with cases emphasising the need to set up free legal aid. In numerous cases, petitioners asked for legal advice on how to start proceedings and see them through to the end. We need to commend those municipalities, the municipality of Divača for example, which have organised free legal aid for their citizens.

Interviews with mayors

During the discussions, the Ombudsman highlights the problems perceived through interviews with citizens and the processing of petitions referring to the work of the municipality.

These talks are very important, as they allow us to clarify and sometimes even resolve issues arising from the petitions.

The mayor presents the general situation in their municipality to the Ombudsman, as well as their endeavours, issues, and the systemic problems encountered by the local community and its citizens.

Additionally, the Ombudsman always highlights topics such as: housing issues, residential units, assistance for homeless citizens, social distress, municipal aid, unemployment, community work (also in companies where the municipality is the cofounder), care for socially vulnerable people, write-offs of debts, care for people with disabilities, property law matters, problems in pre-school and primary school education, availability of the mayor, public healthcare services, social security, whether the municipality is elderly- and children-friendly, spatial planning, environmental issues, ownership relationships associated with the categorisation of roads, municipal inspection services, free legal aid, and mediation.

Press conferences

After every meeting, the Ombudsman usually issues several statements and gives interviews to the local and national media or appears as a guest in talk shows.

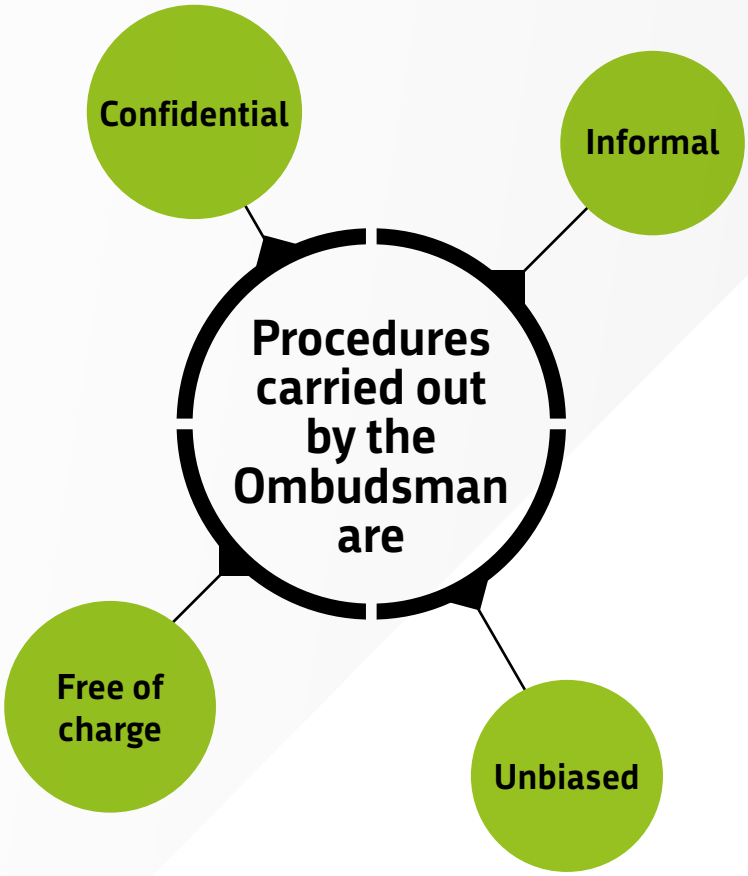
Best practice example:

At a meeting away from the head office held **in December 2017, the Ombudsman alerted the mayor of Slovenske Konjice to the fact that people had again asked for advice** on how to enforce their rights, which legal paths to take and which institutions to turn to. The mayor immediately reacted to the Ombudsman's findings and **on 15 January 2018 we could already read in the media that the municipality of Slovenske Konjice was offering free legal aid to its citizens.** With prior agreement, they will be able to seek free legal aid every first Thursday of the month at the premises of the municipality.

1.9 PROCESSING CASES

Cases are:

- Petitions (received petitions and wider issues),
- Talks with callers who have not (yet) filled their petitions,
- Talks in meetings held away from the head office where the petitioners received clarification at the meeting and the issue did not require further discussion by the Ombudsman. These are recorded through official notes.



Who may turn to the Human Rights Ombudsman?

Anyone who believes that their human rights or fundamental freedoms have been violated by an act or action of an authority can **file a petition for the start of a procedure** with the Ombudsman.

The Ombudsman can also discuss **wider issues** which are relevant to the protection of human rights and fundamental freedoms, and to the legal security of citizens in the Republic of Slovenia (the second paragraph of Article 9 of the Human Rights Ombudsman Act).

When does the Human Rights Ombudsman intervene?

The Ombudsman intervenes in cases of improper or incorrect work by state or local authorities and holders of public powers.

Filing a petition

Filing a petition does not require formality or the assistance of a lawyer.

A special form is available on the Ombudsman's website and in the head office.

Generally, petitions are filed in writing by mail or email at **info@varuh-rs.si.**

People deprived of their liberty have the right to submit a petition to the Ombudsman in a sealed envelope. The members of the NPM also receive petitions at interviews with prisoners.

In emergencies, a petition may also be filed by telephone. The petitioner must also later file such a petition in writing.

A petition should:

- Be signed and include the personal information of the petitioner;
- Contain the circumstances, facts, and evidence on which the petition for initiating a procedure is based;
- State whether any legal remedies have been used in the matter, and if so which;
- Contain a written consent or authorisation if the petition is filed by another person on behalf of the injured party.

The Ombudsman rejects a petition:

- If it does not concern a violation of human rights and fundamental freedoms;
- If the petitioner fails to complete the petition following a prior reminder;
- If the matter is subject to a procedure before judicial authorities;
- If the matter falls under the competency of the investigative committees of the National Assembly of the Republic of Slovenia;
- If not all ordinary or extraordinary legal remedies have been exhausted;
- If it is a less important matter.


Start of the procedure for processing a petition
The Ombudsman **decides on a petition in a summary procedure** when the facts of the petition are evident from the documentation.
The Ombudsman does not process a petition if it is anonymous, received too late, is offensive, or constitutes an abuse of the right to appeal.
The Ombudsman **notifies** the petitioner as soon as possible **on the status of their petition.**
If necessary, the Ombudsman **advises the petitioner to take another route** to resolve their problem.
The Ombudsman **decides to investigate in greater detail any claims** concerning violations of human rights and freedoms.
The Ombudsman requests information (clarifications and additional information) which is within the competency of state and local authorities and holders of public powers, regardless of the level of confidentiality.
In relation to her work, the Ombudsman has **the right to review data and documents** which fall under the jurisdiction of other authorities.
The Ombudsman may enter the premises of an authority.
The Ombudsman **stipulates the time limit** within which the authority must provide clarifications and information. This period may not be less than eight days.
If the authority fails to provide the Ombudsman with information within the required time limit, it must immediately **notify** the Ombudsman of the reasons for this.

Employees of the Expert Service of the Ombudsman

A refusal or failure to comply with the Ombudsman's request is deemed an **obstruction of the Ombudsman's work.**

The Ombudsman prepares a report on the case and states the following:

- Her opinion on the basis of the facts and circumstances of individual cases;
- Whether the case in question constitutes a violation of human rights and fundamental freedoms;
- How human rights and freedoms were violated, or whether there was a different type of irregularity established;
- A proposal, opinion, criticism, or recommendation;
- The way in which the established irregularity should be eliminated.

The Ombudsman can address **proposals, opinions, criticism, or recommendations** to the authorities, and the authorities must address them and reply within the deadline set by the Ombudsman.

If the authority fails to submit a report on the observance of the Ombudsman's recommendations, or if these are only partially observed, the **Ombudsman may notify the directly superior authority** or the competent ministry, issue a special report to the National Assembly of the Republic of Slovenia, or publicly publish the matter.

The Ombudsman may, at the expense of the authority, publish her report and recommendation in the media if the authority fails to respond appropriately to her proposals or recommendations following a repeated request.

On the basis of the proposals, opinions, criticisms, or recommendations provided by the Ombudsman, the authority must notify the Ombudsman of the measures taken within 30 days.

1.10 STATISTICS FOR 2017

4.471 cases

processed by the Ombudsman.

In 2016, **4,308 cases** were processed, which means a **3.78% increase** in 2017.

1.306 discussions
callers who had not (yet) filled their petitions.

3.023 petitions

142 discussions
in meetings held away from the head office which were recorded through official notes, as the petitioners received clarification at the meeting and the issue did not require further discussion by the Ombudsman.

2.546
newly opened

440
petitions carried forward from

37
re-opened petitions

Classification of the petitions processed (3,023) according to the area of activity of the Ombudsman

Judicial and police proceedings
584 petitions (19.32%)

Social security
456 petitions (15.08%)

Administrative matters
405 petitions (13.40%)

Children's rights
341 petitions (11.28%)

Other
272 petitions (9.00%)

Labour law matters
233 petitions (7.71%)

Environment and spatial planning
182 petitions (6.02%)

Restriction of personal liberty
157 petitions (5.19%)

Constitutional rightse
150 petitions (4.96%)

Housing rights
106 petitions (3.51%)

Public utility services
69 petitions (2.28%)

Discrimination
68 petitions (2.25%)

3,023 petitions

processed by the Ombudsman in 2017.

Of these, on 31 December 2017:

2,627 (87%)
concluded petitions

396 (13%)
n the process of being solved.

386
or 14.7% of well-founded petitions

485
or 18.5% of unfounded petitions

1.421
or 54.1% of petitions that did not meet the conditions for further processing

335
or 12.8% of petitions that do not fall within the competence of the Ombudsman

The Ombudsman established that the claims on the violation of human rights and fundamental freedoms were

well-founded in 386 petitions

and that at least one (or more) fundamental human right or freedom (according to the Constitution of the Republic of Slovenia) had been violated or that the principles of equity and good administration had not been observed.

Legal proceedings are in progress in relation to a case in which no delay or great irregularities have been noted. This group also includes late, anonymous, and insulting petitions, and petitions for which procedures were suspended due to the petitioner's non-cooperation or the withdrawal of the petition.

Of the **386 well-founded petitions,** the Ombudsman established

433 violations of human rights and fundamental freedoms

(defined in the Constitution of the Republic of Slovenia) **and other irregularities** such as a violation of the principles of equity and good administration, or undue delay in proceedings and evident abuse of authority under the ZVarCP.

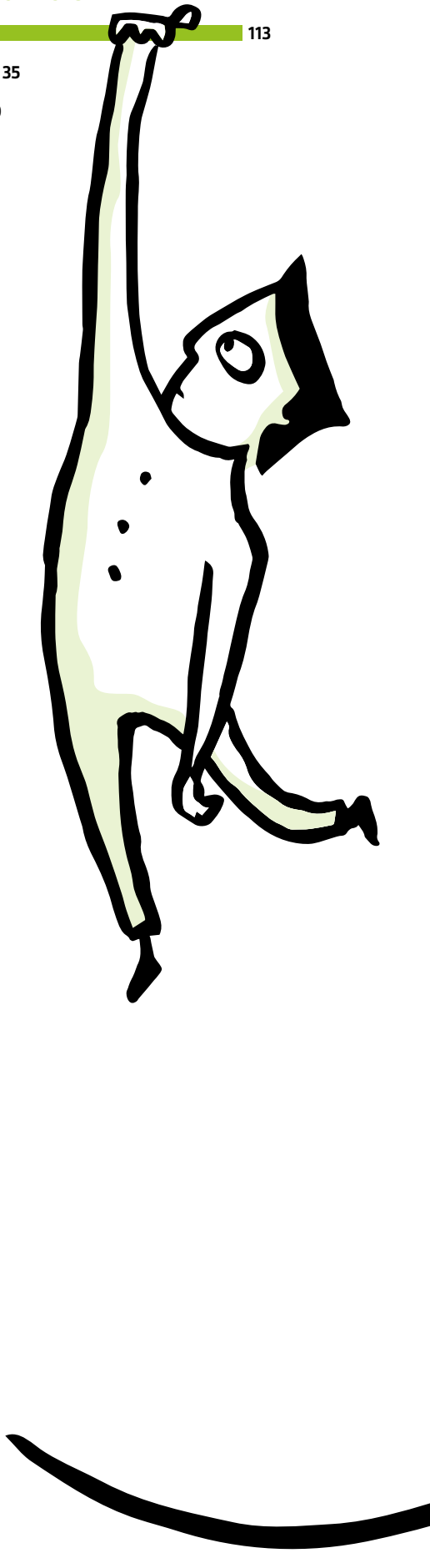
In addition to these 433 violations, there were also **44 child advocacy cases** where no concrete violations have been established, but which were processed as well-founded petitions and therefore part of the 386 well-founded petitions.

The greater number of violations of human rights compared to the number of well-founded petitions is the result of there being several established violations in a single individual petition. **While processing individual petitions, it has happened that three or more violations of human rights and fundamental freedoms or other irregularities were established.**

Among the well-founded petitions processed, the Ombudsman established 39 violations of human rights and fundamental freedoms or irregularities specified in the Constitution of the Republic of Slovenia and the ZVarCP. The most frequently established violations were of the principle of good administration (Article 3 of the ZVarCP), i.e. in 113 cases, and of the principle that Slovenia is a state governed by the rule of law and a social state (Article 2 of the Constitution of the Republic of Slovenia), i.e. in 35 cases. A detailed overview of the most frequently established violations of human rights and fundamental freedoms and other irregularities is evident from Figure 8 (included are violations which were established in more than 12 cases).

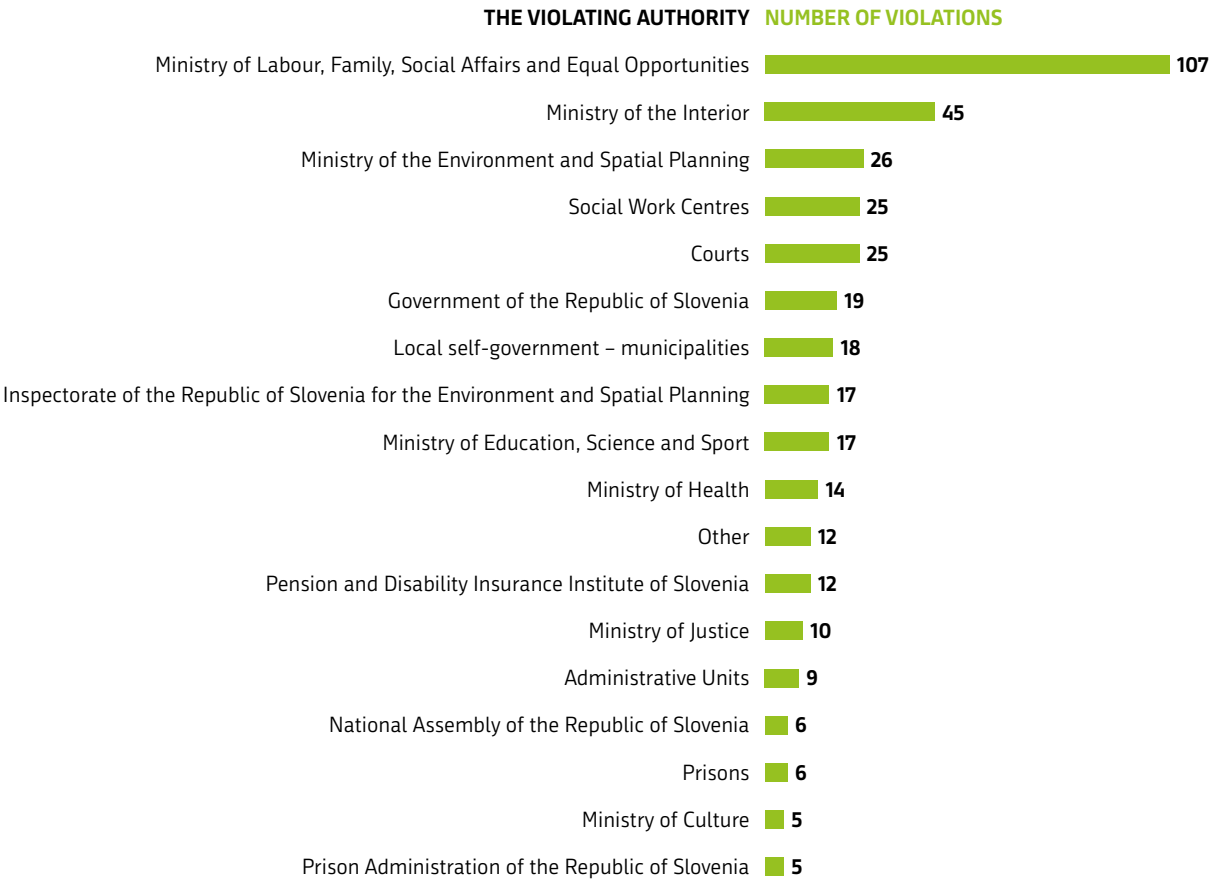
The most frequently established violations of human rights and fundamental freedoms and other irregularities

RIGHT	NUMBER OF VIOLATIONS
Principle of good administration – Article 3 of the Human Rights Ombudsman Act	113
Slovenia is a state governed by the rule of law and a social state – Article 2 of the Constitution of the RS	35
Undue delay in the proceedings – Article 24 of the Human Rights Ombudsman Act	29
Healthy living environment – Article 72 of the Constitution of the RS	26
Protection of the rights to privacy and personality rights – Article 35 of the Constitution of the RS	24
Right to social security – Article 50 of the Constitution of the RS	24
Rights of children – Article 56 of the Constitution of the RS	24
Right to personal dignity and safety – Article 34 of the Constitution of the RS	23
Equality before the law – Article 14 of the Constitution of the RS	19
Right to healthcare – Article 51 of the Constitution of the RS	17
Equal protection of rights – Article 22 of the Constitution of the RS	16
Principle of equity – Article 3 of the Human Rights Ombudsman Act	15
Right to judicial protection – Article 23 of the Constitution of the RS	14
Other	11
Protection of human personality and dignity – Article 21 of the Constitution of the RS	5
Rights of disabled people – Article 52 of the Constitution of the RS	5
Prohibition of torture – Article 18 of the Constitution of the RS	4
Legal Guarantees in Criminal Proceedings – Article 29 of the Constitution of the RS	4
Rights and duties of parents – Article 54 of the Constitution of the RS	4
Right to compensation – Article 26 of the Constitution of the RS	3
Right to petition – Article 45 of the Constitution of the RS	3
Exercise and limitation of rights – Article 15 of the Constitution of the RS	2
Protection of personal liberty – Article 19 of the Constitution of the RS	2
Right to legal remedies – Article 25 of the Constitution of the RS	2
Protection of personal data – Article 38 of the Constitution of the RS	2
Marriage and the family – Article 53 of the Constitution of the RS	2
Education and schooling – Article 57 of the Constitution of the RS	2
Protection of the natural and cultural heritage – Article 73 of the Constitution of the RS	2
Proper housing – Article 78 of the Constitution of the RS	2
In its own territory, the state shall protect human rights and fundamental freedoms – Article 5 of the Constitution of the RS	1
Religious communities shall enjoy equal rights; they shall pursue their activities freely – Article 7 of the Constitution of the RS	1
Presumption of innocence – Article 27 of the Constitution of the RS	1
Principle of legality in criminal law – Article 28 of the Constitution of the RS	1
Right to private property and inheritance – Article 33 of the Constitution of the RS	1
Freedom of expression – Article 39 of the Constitution of the RS	1
Right to correction and reply – Article 40 of the Constitution of the RS	1
Participation in the management of public affairs – Article 44 of the Constitution of the RS	1
Asylum – Article 48 of the Constitution of the RS	1
Right to use one's own language and script – Article 62 of the Constitution of the RS	1
Status and special rights of the Romany community in Slovenia – Article 65 of the Constitution of the RS	1



The Ombudsman established these 433 violations of human rights and fundamental freedoms and other irregularities in the cases of 54 different authorities, i.e. most frequently the Ministry of Labour, Family, Social Affairs and Equal Opportunities (in 107 cases), the Ministry of the Interior (in 45 cases), the Ministry of the Environment and Spatial Planning (in 26 cases), and social work centres and courts (in 25 cases respectively). A detailed overview of the authorities where the largest number of violations of human rights and fundamental freedoms and other irregularities was established is shown below (included are authorities where more than 5 cases of violations were established).

Authorities where violations of human rights and fundamental freedoms and other irregularities were established



The reasoning behind these statistical data is provided in the substantive chapter of this report. Statistical data is provided at the beginning of each substantive chapter.

It needs to be emphasised that the number and proportion of well-founded petitions in the resolved petitions are not a true indicator of the situation with human rights protection in Slovenia. This is firstly because not everybody whose human rights are being violated by the authorities necessarily turns to the Ombudsman, and secondly because one well-founded petition, where the Ombudsman establishes a systematic irregularity, can mean the violation of the rights of a hundred or even a thousand people. It is also for this reason that the Ombudsman uses the data that it obtains from publicly available sources to open its own petitions in individual fields.

1.11 THE HUMAN RIGHTS OMBUDSMAN'S REPORTS

The Ombudsman reports to the National Assembly about her work by means of regular annual or special reports.

In 2017, she submitted the following reports:

22nd regular Annual Report on the work of the Ombudsman in 2016.

9th Annual Report of the NPM on the work of the NPM in 2016.

Special Report
on the violation of human rights of people with mental disorders with regard to involuntary placement and involuntary treatment in secure departments of social care institutions.

19. 5. 2017
the Ombudsman and her deputies presented the main findings from both reports at a press conference held at the head office of the Ombudsman.

The Ombudsman submitted both reports to.

Dr Milan Brglez, the President of the National Assembly of the Republic of Slovenia, on 19 May 2017.

The Report was received by all the deputies of the National Assembly of the Republic of Slovenia.

The National Council of the Republic of Slovenia

The Report was received by all the members of the National Council of the Republic of Slovenia.

Dr Miro Cerar, the Prime Minister of the Republic of Slovenia, on 23 May 2017

The Report was received by all the Ministers of the Government of the Republic of Slovenia.

Borut Pahor, the President of the Republic of Slovenia, 19. 5. 2017

On 28 September 2017, the Ombudsman attended the joint session of the Committee on Education, Science, Sport and Youth and the Committee on Culture at the National Assembly where both reports were discussed.

On 29 September 2017, the Deputy Ombudsman attended the **8th session of the Commission for the National Communities of the National Assembly** where they also discussed the Annual Report of the Ombudsman for 2016.

On 3 October 2017, the Ombudsman and her associates attended the **18th session of the Commission for Petitions, Human Rights and Equal Opportunities of the National Assembly** where they discussed both reports and the Special Report.

On 24 October 2017, the Ombudsman and her deputies attended the **34th session of the National Assembly of the Republic of Slovenia** where they discussed both reports and the adopted recommendations (see below).

On 20 September 2017, the Deputy Ombudsmen attended the 95th session of the Commission for State Organisation and the 81st session of the Commission for Social Care, Labour, Health and the Disabled of the National Council where both reports were discussed.

On 28 September 2017, the Ombudsman and her deputy attended the 82nd session of the Commission for Social Care, Labour, Health and the Disabled of the National Council where they discussed the Special Report.

On 11 October 2017, the Ombudsman attended the 55th session of the National Council of the Republic of Slovenia where they discussed both reports and the Special Report.

On 15 June 2017, the Ombudsman presented both reports at the **139th regular session of the Government of the Republic of Slovenia.**

26. 7. 2017
the Government of the Republic of Slovenia adopted the Informative Report on the Implementation of the Recommendations of the National Assembly of the Republic of Slovenia with regard to the discussed 21st regular Annual Report of the Human Rights Ombudsman for 2015, the Response Report of the Government of the Republic of Slovenia to the 22nd regular Annual Report of the Human Rights Ombudsman for 2016, and the Response Report of the Government of the Republic of Slovenia to the Report on the Implementation of the Duties and Powers of the NPM.

At its session of 24 October 2017, when discussing the 22nd Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2016, the National Assembly of the Republic of Slovenia, pursuant to Articles 272 and 111 of the Rules of Procedure of the National Assembly (Official Gazette of the Republic of Slovenia, No. 92/07 – official consolidated text, 105/10, 80/13 and 38/17), adopted the following

RECOMMENDATION

The National Assembly recommends that all institutions and officials at all levels observe the recommendations of the Human Rights Ombudsman of the Republic of Slovenia stated in the 22nd Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2016.

Number: 000-04/17-101
Date: 24 October 2017
EPA 1881-V11

National Assembly of the
Republic of Slovenia
Dr Milan Brglez
President

The level of implementation of the 71 recommendations

adopted at the 34th session of the National Assembly of the Republic of Slovenia on 24 October 2017 is presented in the introductory part of each chapter of this Report.

Issues concerning the implementation of the Ombudsman's recommendations, systemic issues, and measures to eliminate violations of human rights discovered in the discussed cases were examined by the Ombudsman and her deputies and advisers at numerous meetings and discussions with the **President of the Republic of Slovenia and the Prime Minister,** ministers and heads of national institutions, and at sessions of the bodies of the National Assembly of the Republic of Slovenia and the National Council. More about these discussions can be read under the review of events in individual chapters or at the Ombudsman's website: Press releases.

16
discussions with ministers and their associates at the **Ombudsman's office**

The Ministry of Labour, Family and Social Affairs, the Ministry of Foreign Affairs, the Ministry of the Environment and Spatial Planning, the Ministry of Education, Science and Sport (all four twice), the Ministry of Defence, the Ministry of Infrastructure, the Ministry of the Interior (three times), the Ministry of Public Administration, the Ministry of Health, and the Ministry of Justice.

15
discussions with the heads of directorates or heads of bodies within ministries and judicial authorities at the **Ombudsman's office**

The Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning, the Financial Administration of the Republic of Slovenia, the Pension and Disability Insurance Institute of Slovenia, the Employment Service of Slovenia, the Health Insurance Institute of Slovenia (twice), the Inspectorate of Social Affairs, the Judicial Training Centre, the Medical Chamber of Slovenia, the Prison Administration of the Republic of Slovenia, the Office of the State Prosecutor General of the Republic of Slovenia, the Supreme Court of the Republic of Slovenia, RTV Slovenija, and the Media Ombudsman.

21
participations at sessions of commissions and committees of the National Assembly and the National Council of the Republic of Slovenia

The Commission for Petitions, Human Rights and Equal Opportunities, the Committee on Labour, Family, Social Policy and Disability of the National Assembly, the Committee on Education, Science, Sport and Youth of the National Assembly, the Committee on Justice of the National Assembly, the Commission for the National Communities of the National Assembly, the Commission for Social Care, Labour, Health and the Disabled of the National Council, and the Commission for State Organisation of the National Council.

12
discussions with mayors

The Ombudsman and her associates met and held meetings with state presidents, prime ministers, presidents of the National Assembly, the National Council, the Constitutional Court and the Court of Audit, among others. The meetings were held at the Ombudsman's office or at the head offices of these institutions.

Best practice example:

On 27 February, 12 June, and 2 October 2017, the Ombudsman and her associates welcomed mag. Liljana Kozlovič, Secretary General of the Government of the Republic of Slovenia, to attend a systematic discussion and review of the implemented recommendations of the Ombudsman and the National Assembly of the Republic of Slovenia and to analyse the reasons for the delays in their implementation.

At meetings which were attended by the Ombudsman, the competent deputy, the Director of the Expert Service, expert associates who work in this field, and representatives of state authorities were **alerted to the implementation of recommendations, violations and irregularities at the systemic level, and the irregularities in concrete cases which we observed in their work.** Such work methods require more activity from the institution and its employees; however, they also lead to improvements in the work of state and other institutions.

1.12 MEETINGS WITH CIVIL SOCIETY OR NON-GOVERNMENTAL ORGANISATIONS

Civil society or non-governmental organisations (hereinafter NGOs) are important for the Ombudsman's work, as they establish the true state of affairs among the people, they perceive their needs and problems, and quickly react to changed circumstances in society. They perceive individual and systemic forms of human rights violations and strive to eliminate them.

In 2017, the Ombudsman again organised meetings with NGOs or attended their events in order to exchange information in a direct dialogue on the achievements and, more particularly, the problems with enforcing human rights, democracy and the rule of law.

In particular, meetings with NGOs in the field of the environment and spatial planning have become common practice. These meetings have been taking place on a monthly basis since 2014, and have been upgraded during the term of Ombudsman Vlasta Nussdorfer, so that one meeting is held at the head office of the Ombudsman and another away from the head office.

42 meetings

with non-governmental organisations – civil society representatives

8 meetings

were organised by the Ombudsman in 2017 with **non-governmental organisations from the field of the environment and spatial planning** (more on these meetings in Chapter 2.7 The Environment and Spatial Planning).

In 2017, the Ombudsman invited representatives of NGOs which focus on foreign nationals, fugitives, and applicants for international protection. Together, they discussed the Aliens Act (ZTuj-2) (21 February 2017) and domestic violence (this discussion took place on 20 November 2017).

At her office, the Ombudsman also met with representatives of the Slovenian Federation of Pensioners' Associations, Zavod usmiljenk Dom svete Katarine v Mengšu, Mednarodni klub slovanskih rojakov RUSLO, the Slovenian Red Cross, Zveza kulturnih društev nemško govoreče narodne skupnosti v Sloveniji, Spominčica – Alzheimer Slovenia Association, and Odbor 2015.

At the invitation of the NGOs, the Ombudsman and/or her associates attended 25 events in 2017, which were organised by NGOs: Zveza kmetic Slovenije, Športno društvo Olimpiki, Alma Mater Europea – ECM, Soroptimist klub Ptuj, Europa Donna, Sekcija čebelarjev na invalidskih vozičkih, Društvo Metulj, Kulturno -prosvetno in športno rekreativno društvo slepih in slabovidnih Karel Jeraj, medgeneracijsko društvo Mozaik generacij Polzela, Spominčica – Alzheimer Slovenia Association, Ustanova Anin sklad, Zveza Sožitje – the Slovenian Association for Persons with intellectual Disabilities, Sonček – Cerebral Palsy Association of Slovenia, Down Syndrome Slovenia, Društvo DEBRA Slovenija, Slovenska krovna zveza za psihoterapijo, the Slovenian Association of Friends of Youth, the Association for Technical Culture of Slovenia, the Association of the National Liberation Movement of Slovenia, Zveza romske skupnosti Slovenije Umbrela – Dežnik, Društvo paraplegikov Koroške, Zveza kulturnih društev nemško govoreče narodne skupnosti v Sloveniji, Društvo Iz srca dam kar imam, the Nurses and Midwives Association of Slovenia, and Sožitje Murska Sobota.

In 2017, the Human Rights Ombudsman, Vlasta Nussdorfer, was the patron, guest of honour, honorary speaker or ambassador at numerous events.

From September 2016 to June 2017, the Ombudsman was a project partner in **Stand up – Your Career in the EU.** The project developed and implemented an innovative approach to teaching and learning about European issues. This approach is based on humour and is directed towards the development of skills associated with employment opportunities in the EU, European citizenship, and familiarity with people's own rights. **In 2017, the Human Rights Ombudsman, Vlasta Nussdorfer, or her Deputy, Dr Kornelija Marzel, participated in six events across Slovenia.**

In 2017, the Ombudsman was an honorary patron of the charity multimedia dance show Življenje je vrednota (Life Is a Value), which raises money across Slovenia for the **Mali vitez foundation assisting young people who have overcome cancer.** The Ombudsman spoke to the visitors at all the events: on 16 May 2017 in Španski Borci Hall in Ljubljana; on 3 June 2017 in Cankarjev Dom in Vrhnika; on 17 June 2017 in Bled Festival Hall; on 9 September 2017 in Celje National Hall; on 23 September 2017 in the Šeškov dom cultural centre in Kočevje; on 30 September 2017 in Ipavec Cultural Centre in Šentjur; on 20 October 2017 in Maribor National Hall; on 6 October 2017 in Park Theatre in Murska Sobota; on 11 November 2017 in Prešeren Theatre Kranj; and on 17 December 2017 in National Hall in Logatec.

On 16 February 2017, the Ombudsman, as the patron of honour, and the Secretary General of the Ombudsman, mag. Bojana Kvas, attended the music show Rok'n'LOVE for children, parents, and grandparents, which was organised in Siti Theatre by Rok'n'band and the Enostavno prijatelji institute. On 23 May 2017, the Ombudsman presented the Head of Dolfka Boštjančič Education, Work and Care Centre, Dr Valerija Bužan, with funds collected for children, adolescents, and adults with learning difficulties.

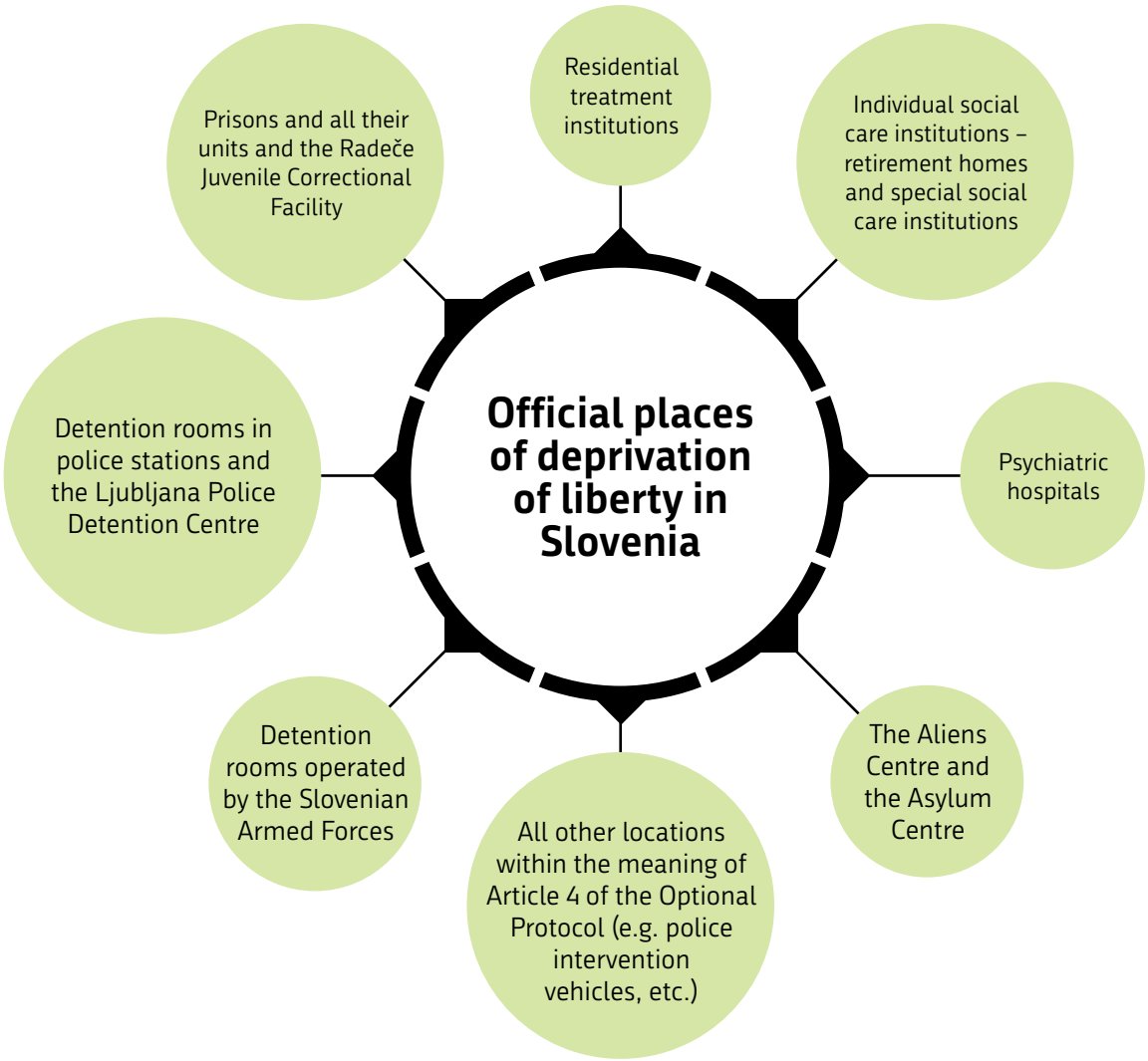
On 16 March 2017, in Tartini Theatre in Piran, the Ombudsman, as the patron of honour, spoke to the participants of the 4th Congress on Homelessness entitled The Current Problems with Homelessness in Slovenia. The event was organised by the Brezdomni – do ključa association (a Slovenian network of associations working with the homeless). The Ombudsman also visited the homeless shelter in Koper. **On 1 April 2017,** in Škrlovec Tower in Kranj, the Ombudsman, as the patron of honour, spoke to the participants of the Integra festival, an international festival of performing arts for vulnerable groups. **On 6 April 2017,** in Brdo pri Kranju, the Ombudsman, as the guest of honour, spoke to the participants of the 16th traditional consultation seminar of criminal police officers, state prosecutors, judges, and counsels entitled On Behalf of the Child, which is organised by the State Prosecutors' Association of Slovenia and the General Police Directorate, in association with the Judicial Training Centre. **On 2 June 2017,** the Ombudsman, as the patron of honour, spoke to the participants of a charity event organised at Komenda-Moste Primary School. **On 10 June 2017,** the Ombudsman was the honorary speaker at the 50th International Meeting of Naive Artists in Trebnje. **On 20 September 2017,** the Ombudsman, as the guest of honour, spoke to the participants of a consultation seminar at the Faculty of Social Sciences, entitled E-Abuse of Children: Yesterday, Today, Tomorrow, which was organised by Spletno okno. **On 26 September 2017,** in Slovenj Gradec Youth Culture Centre, the Ombudsman, as the patron of honour, spoke to the participants of the 7th international scientific conference on health and social sciences entitled Connecting Theory and Practice for Sustainable Development in the Field of Health and Social Sciences. The conference was organised by Slovenj Gradec University College of Health Sciences. **On 29 September 2017,** in Moravske toplice, the Ombudsman, as the guest of honour, spoke to the participants of the traditional Days of Slovenian Lawyers, organised by the Bar Association of Slovenia. **On 16 November 2017,** the Ombudsman was the honorary speaker at the 26th Forum of Excellence and Mastery in Trebnje. **On 3 December 2017,** the Ombudsman, as the patron of honour, attended the premiere of Terror in Prešeren Theatre Kranj.

1.13 THE OMBUDSMAN AS THE NATIONAL PREVENTIVE MECHANISM

In connection with the Act Ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Official Gazette of the Republic of Slovenia, No. 114/2006 – International Treaties, No. 20 as of 9 November 2016), the Republic of Slovenia declared: ***"The duties and powers of the National Prevention Mechanism*** *under the Optional Protocol, in accordance with Article 17, shall be* ***implemented by the Human Rights Ombudsman*** *and, in agreement with the Ombudsman, also by non-governmental organisations registered in the Republic of Slovenia and organisations that have acquired the status of a humanitarian organisation in the Republic of Slovenia."*

The purpose of implementing the duties and powers of the National Preventive Mechanism (NPM)

is to strengthen the protection of persons deprived of their liberty against torture and other forms of cruel, inhuman or humiliating treatment or punishment. In the implementation of its duties and powers, the NPM visits all places in Slovenia holding people who have been deprived of their liberty on the basis of an Act issued by the authorities. These are preventive visits whose purpose is to prevent torture or other ill-treatment before it occurs.



The Ombudsman has been implementing the duties of the National Preventive Mechanism (NPM) since the spring of 2008. The work is organised within a special internal organisational unit of the Ombudsman. **The unit is led by the Deputy Ombudsman Ivan Šelih.**

The Ombudsman has been implementing the duties of the national preventive mechanism (NPM) since the spring of 2008. The work is organised within a special internal organisational unit of the Ombudsman. The unit is led by the Deputy Ombudsman Ivan Šelih. In addition to Mr Šelih, there are also four other officials in the unit: a specialist in criminal investigation with a Bachelor's degree in criminal justice and security who is responsible for visiting prisons, remand prisons, police stations, and the aliens and asylum centres; a person responsible for visiting social care institutions and psychiatric hospitals, who has a Master's in Law; a professor of special education for behavioural and personality disorders and institutional education science, who is responsible for visiting residential treatment institutions; and a person with a Bachelor's degree in law who, in one part of her work, is responsible for visiting social care institutions.

The non-governmental organisations which cooperated with the Ombudsman in the implementation of the duties and powers of the NPM in 2017 were: Novi paradoks, the Association for Developing Voluntary Work Novo mesto, Humanitarno društvo Pravo za vse, Caritas Slovenia, SKUP – Community of Private Institutes, the Legal Information Centre for NGOs (PIC), the Peace Institute, and the Slovenian Federation of Pensioners' Associations.

Each team conducting a visit is comprised of the Ombudsman's representatives and representatives of the selected organisations.

In 2017, the NPM visited 80 locations in Slovenia,

where persons deprived of their liberty have been placed on the basis of an act issued by the authorities.

- **27** visits to detention rooms at police stations
- **21** visits to prisons (including the juvenile correctional facility)
- **1** visit to locations of deprivation of liberty of aliens
- **2** visits to psychiatric hospitals
- **10** visits to special social care institutions
- **15** visits to retirement homes
- **4** visits to educational institutions treating children and adolescents with emotional and behavioural disorders

18 thematic visits

We visited 13 prisons and five special social care institutions.

18 review visits

During review visits, we mostly focus on the implementation of recommendations made following a previous visit.

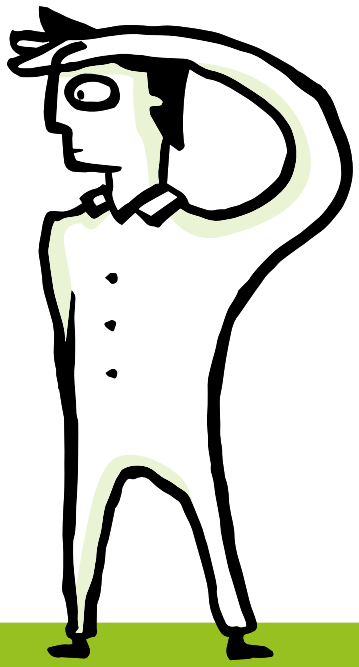
The majority of the 80 visits were **unannounced.**

Only four visits were announced:

- A visit to one police station, one psychiatric hospital, and one prison, due to the attendance of foreign observers who were part of the visiting group,
- A visit to Dob Prison, the largest prison in Slovenia, was also announced a day in advance for better organisation of the visit.

For each visit, the NPM drafts a comprehensive (final) report on the findings established at the institution visited. This report also covers **proposals and recommendations for the elimination of any established irregularities and the improvement of the situation,** including measures to reduce the likelihood of improper treatment in the future.

The report is submitted to the competent authority (i.e. the superior body of the institution visited) with a proposal that the authority takes a position on the statements or recommendations in the report and submits it to the Ombudsman by a set deadline. The institution visited also receives the report, and in specific cases (when visiting social care institutions, psychiatric hospitals, and juvenile institutions) a preliminary report is also prepared.



615
recommendations

170	20	163	18	20	24	48
to social care institutions	to police stations	to prisons	to the Aliens	to psychiatric	to special social care institutions	to residential

Every year, the National Preventive Mechanism prepares a report on its work. The 2017 Report of the NPM is the tenth report of its kind. It is printed in a separate publication, but is an integral part of the regular Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2017. Both reports are published on the Ombudsman's website.

The NPM report also provides information on whether the recommendations had been accepted and implemented.

The NPM may also submit proposals and observations concerning existing or draft legislation (Article 19 of the Optional Protocol). In the role of the NPM, the Ombudsman has been making use of this possibility in the preparation of individual reports, and more directly in the procedure of drafting regulations or their amendments and additions concerning restrictions of personal liberty.

In 2017, the Ombudsman prepared proposals and observations concerning existing or draft Acts, implementing regulations, and other draft documents, i.e.

- Amendment to the ZNPPol-A,
- Amendment to the Rules on Police Powers,
- Amendment to the Criminal Code (KZ-1E),
- Amendment to the Criminal Procedure Act (ZKP-N),
- Amendment to the Rules on the Implementation of Remand,
- Amendment to the Enforcement of Penal Sentences Act (ZIKS-1),
- Strategy of the Prison Administration of the Republic of Slovenia (2017-2020),
- Mental Health Act (ZDZdr),
- Updating of professional guidelines for the use of special precautionary measures (SPM),
- Rules Amending the Rules on the Standards and Norms for Social Services.

1.14 CHILD ADVOCACY

Slovenia has committed itself to special care for children by signing the Convention on the Rights of the Child (CRC) and the European Convention on the Exercise of Children's Rights (ECECR).

The CRC puts the interest of the child at the forefront and treats the child as an independent holder of rights, demanding that the child's position be strengthened in all procedures before state authorities. The advantage of such a regime is that it originates from the rights of the child, not from the rights of parents, thus enabling the child to be treated as an entity in various legal relationships. Advocates strengthen the voice of the child in such procedures.

The Ombudsman has been managing child advocacy since 2007, initially in the context of the Advocate – The Child's Voice project, while since 14 October 2017, child advocacy has been governed by the Human Rights Ombudsman Act. **This area is managed by the Deputy Ombudsman, Tone Dolčič, who is responsible for the protection of children's rights.**

The purpose of child advocacy is for the advocate to offer expert help to children to express their opinion in all proceedings and cases they are part of, and to submit the child's opinion to the competent authorities and institutions which decide on the child's rights and benefits. The advocate is not the child's legal representative.

Since the start of the implementation of the project, an advocate has been appointed to more than 600 children.

61 advocates
(as of 31 December 2017)

The work of the advocates was managed by the Pilot Project Team, which had ten meetings in 2017.

After the Human Rights Ombudsman Act has been amended, **implementation of child advocacy will be monitored by an expert council** which the Ombudsman will appoint from a pool of child advocates and experts.

2017

18 new candidates completed advocacy training

9 advocates passed the advocate exam

7 supervision teams across the country

20 hours of supervision were conducted in each team

Every other month a regional intervision is conducted (managed by the regional coordinator)

Intervision for coordinators took place at the head office of the Ombudsman. There were 12 meetings implemented.

Expert training for advocates at a two-day expert consultation seminar organised on 15 and 16 September in Dolenjske Toplice.

72 received petitions for the appointment of an advocate

3 times the petitioners were children.

28 times the petitioners were social work centres.

8 times the petitioners were courts.

29 times the petitioners were parents.

4 times the petitioners were other people/ organisations

29 times no advocate was appointed.

36 times an advocate was appointed.

7 petitions are still being processed

28 times the advocate was appointed with the parents' consent

1 times advocate was appointed with the consent of a child older than 15 years.

4 times the advocate was appointed by a court decision.

3 times the advocate was appointed by the decision of the social work centre.

The Child Advocacy team (from left to right): **Lidija Hvastja-Rupnik, Tone Dolčič,** Deputy Ombudsman, and **Jasna Vunduk**

1.15 PUBLICATIONS ISSUED IN 2017

We published **4** publications: two regular reports (in Slovene and English), one special report, and a collection of written contributions from an international conference.

The main publication is undoubtedly the **22nd regular Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2016.** It was published in April 2017 and comprised 406 pages (ISSN 1318-9255).

We also prepared a **shorter version of the 22nd regular Annual Report in English comprising 271 pages** which was published in September 2017 (ISSN 1318-9255).

The Report of the Ombudsman on the Implementation of the Duties and Powers of the National Preventive Mechanism (NPM) under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the year 2016 is an integral part of the Ombudsman's Report, but is printed in a separate publication. It was drafted in Slovene and published in April 2017 comprising 183 pages (ISSN 2232-4720). The report also includes an extensive table showing the level of implementation of NPM recommendations according to individual visited institutions holding people who have been deprived of their liberty on the basis of a document issued by the authorities. **The Report on the Implementation of the Duties and Powers of the NPM for 2016 has also been translated into English and published on the Ombudsman's website.**

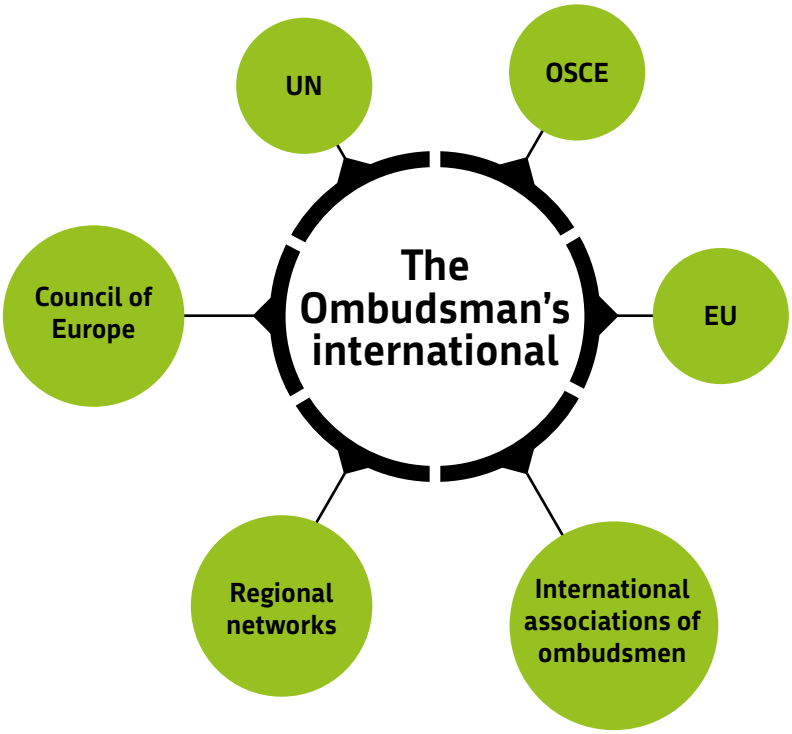
On 15 September 2017, the Ombudsman organised the **fourth international conference on the Environment and Human Rights: Public Participation in Environmental Matters.** We prepared and published (in January 2018) a bilingual collection of written contributions in Slovene and English: Collection of Written Contributions, 4th International Conference on the Environment and Human Rights, Public Participation in Environmental Matters comprising 164 pages (ISBN 978-961-93381-5-5).

In August 2017, the Ombudsman published a **Special Report on the violation of human rights of people with mental disorders with regard to involuntary placement and involuntary treatment in secure departments of social care institutions** comprising 32 pages.

1.16 INTERNATIONAL COOPERATION

In 2017, the Ombudsman participated in 62 international events.

The Ombudsman primarily collaborates with international human rights organisations (the UN, the EU, the Council of Europe, the OSCE) and international associations of ombudsmen.



THE COUNCIL OF EUROPE

Within the Council of Europe, we mainly cooperate with the European Commission against Racism and Intolerance (ECRI), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Advisory Committee on the Framework Convention for the Protection of National Minorities, and the Commissioner for Human Rights.

Commissioner for Human Rights:

On 20 March 2017, the Ombudsman and her deputies, Miha Horvat and Ivan Šelih, met with Nils Muižnieks, the Council of Europe's Commissioner for Human Rights, at the Ombudsman's office.

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT):

On 27 March 2017, the deputy ombudsmen, Ivan Šelih (also Head of the NPM) and Miha Horvat, and the Ombudsman's advisers and members of the NPM, Robert Gačnik, mag. Jure Markič, and Lili Jazbec, and representatives of non-governmental organisations which work with the Ombudsman in the context of the NPM, met with the CPT delegation at the Ombudsman's office. The CPT delegation was on its regular periodic visit to Slovenia.

On 28 March 2017, the Deputy Ombudsman, Miha Horvat, and Robert Gačnik, member of the NPM, met with the second part of the CPT delegation at the offices of the Ministry of Justice. The CPT delegation was on its regular periodic visit to Slovenia.

On 4 April 2017, the Ombudsman and members of the NPM, Robert Gačnik and mag. Jure Markič, met with the CPT delegation at the offices of the Ministry of Justice for the final meeting.

On 4 and 5 April 2017, the Deputy Ombudsman, Ivan Šelih, as the Head of the NPM, attended an international conference on cooperation activities between the Council of Europe and National Preventive Mechanisms, the CPT and the SPT, which was held in the Palace of Europe in Strasbourg.

Advisory Committee on the Framework Convention for the Protection of National Minorities:

On 11 April 2017, the Ombudsman, the Deputy Ombudsman, Miha Horvat, and the Ombudsman's adviser for international cooperation, analyses and publications, Liana Kalčina, met with a delegation of the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities at the Ombudsman's office.

On 12 April 2017, the Deputy Ombudsman, Tone Dolčič, and the Ombudsman's adviser, Lan Vošnjak, met with a GRETA (Group of Experts on Action against Trafficking in Human Beings) delegation at the Ministry of the Interior. The delegation came to Slovenia for its second evaluation visit to assess developments in the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings.

Committee of Ministers of the Council of Europe:

On 25 and 26 September 2017, the Deputy Ombudsman, Miha Horvat, attended a conference in Prague entitled Immigration Detention of Children: Coming to a Close? The two-day conference hosted by the Czech Chairmanship of the Committee of Ministers of the Council of Europe presented a unique opportunity to exchange knowledge and experience, viewpoints, approaches and current actions promoting an end to the immigration detention of children and developing effective alternatives to the search for solutions for safeguarding the best interests of the child.

EUROPEAN UNION

Within the European Union, the Ombudsman primarily collaborates with the Fundamental Rights Agency (FRA).

On 28 February 2017, the Ombudsman, at the invitation of Michael O'Flaherty, Director of the EU Agency for Fundamental Rights, attended the 10th anniversary of the Agency, which was organised in the House of the European Union in Vienna.

On 27 and 28 June 2017, the Deputy Ombudsman, Tone Dolčič, attended a FRA symposium in Brussels, Belgium, on the protection of children's rights in Europe.

On 6 December 2017, the Deputy Ombudsman, Miha Horvat, travelled to Brussels to attend the Reality Bites: Experiences of Immigrants and Minorities in the EU conference in Brussels hosted by the European Union Agency for Fundamental Rights (FRA).

UNITED NATIONS

In the context of the United Nations, the Ombudsman primarily cooperates with the United Nations High Commissioner for Refugees (UNHCR) and the Committee against Torture: Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

On 22 May 2017, the Ombudsman attended a ceremony on the 25th anniversary of the membership of the Republic of Slovenia in the United Nations, which was organised at the Ministry of Foreign Affairs.

On 4 September 2017, the Ombudsman attended the Bled 2017 Strategic Forum at the Bled Festival Hall and also met with Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights.

OSCE

On 31 August 2017, the Deputy Ombudsman, Miha Horvat, and the Ombudsman's adviser, Gašper Adamič Metlikovič, met at the Ombudsman's office with OSCE/ODIHR representatives Alexander Shlyk, the Head of the OSCE/ODIHR Election Department, and his Election Adviser, Tamara Otiashvili. They spoke about the Ombudsman's previous experience and observations in the study of elections, freedom of speech on the World Wide Web, and the protection of minorities, particularly Roma.

INTERNATIONAL ASSOCIATIONS OF OMBUDSMEN

The Ombudsman cooperates with the International Ombudsman Institute (IOI), the European Network of National Human Rights Institutions (ENNHRI), the European Network of Ombudspersons for Children (ENOC), and the Association of Mediterranean Ombudsmen (AOM).

On 3 and 4 April 2017, the Deputy Ombudsman, Miha Horvat, attended a symposium entitled Human Rights Challenges II: Populism? Regression of Human Rights and the Role of the Ombudsman, which took place in Barcelona, Spain, and was hosted by Rafael Ribó, Catalan Ombudsman and Chairman of the European Region of the International Ombudsman Institute (IOI).

On 19 and 20 June 2017, the Deputy Ombudsman, Miha Horvat, attended a conference of the European Ombudsman Institute (EOI) in Brussels, Belgium.

From 19 to 21 September 2017, the Deputy Ombudsman, Tone Dolčič, attended the 21st ENOC Annual Conference and General Assembly Meeting in Helsinki, Finland.

From 25 to 27 September 2017, the Ombudsman's adviser and member of the NPM, mag. Jure Markič, attended international workshops for NPM members in Vienna. The workshops were organised by the International Ombudsman Institute (IOI).

From 5 to 7 November 2017, the Deputy Ombudsmen, Miha Horvat and Ivan Šelih, attended the Own Initiative Investigation workshop in Hague, the Netherlands, on investigations conducted on the initiative of ombudsmen. The event was organised by the National Ombudsman of the Netherlands in cooperation with the International Ombudsman Institute (IOI).

From 28 to 30 November 2017, the Deputy Ombudsman, Tone Dolčič, attended a conference on long-term care of the elderly, which was organised by the European Network of National Human Rights Institutions (ENNHRI). He also participated in the ENNHRI General Meeting and Seminar on Dignity and Autonomy: Making Decisions in LTC using a HRBA Framework.

COOPERATION WITH AMBASSADORS

On 16 January 2017, the Ombudsman welcomed HE Bart Twaalfhoven, Ambassador of the Kingdom of the Netherlands for a visit. **On 27 February 2017,** she attended a reception at the Mons Hotel and Congress Centre organised on the occasion of the Independence Day of the Republic of Kosovo by HE Nexhmi Rexhepi, Ambassador of the Republic of Kosovo. **On 7 March 2017,** she attended a reception on the occasion of Liberation Day of Bulgaria at the Ljubljana City Museum. **On 13 June 2017,** she attended a reception by HE Vesna Terzić, Ambassador of the Republic of Croatia. **On 15 June 2017,** she attended a ceremony on the occasion of the birthday of Queen Elizabeth II, which was organised by the British Ambassador to Slovenia, HE Sophie Honey. **On 30 July 2017,** she attended a memorial service for the victims of the First World War, which was organised at the Russian Chapel on the Vršič Pass. The ceremony was organised by the Embassy of the Russian Federation, the municipality of Kranjska Gora, the Russkiy Mir Foundation and the Slovenia-Russia Association.

INTERNATIONAL COOPERATION OF THE NATIONAL PREVENTIVE MECHANISM

Our model of activities in relation to the duties and powers that the Ombudsman has as the National Preventive Mechanism (NPM) is particularly interesting. Our findings, experience, operation, and achievements are often presented abroad, at international conferences, workshops, and meetings organised by ombudsmen and international human rights organisations.

On 13 and 14 February 2017, at the invitation of the Council of Europe, the Deputy Ombudsman, Ivan Šelih, attended a meeting of the newly established organisation the Observatory of National Preventive Mechanisms against Torture, set up pursuant to the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (NPM Observatory), which was held in Paris, France.

On 20 February 2017, the Deputy Ombudsman, Ivan Šelih, and the Ombudsman's adviser, mag. Jure Markič, hosted a Kyrgyz delegation which came to Slovenia to attend a study visit, at the invitation of the Ministry of Justice of the Republic of Slovenia.

On 23 and 25 April 2017, the Deputy Ombudsman, Ivan Šelih, and the Ombudsman's adviser, mag. Jure Markič, travelled to Vienna to visit the Austrian Ombudsman (Volksanwaltschaft), where they learned how (post) forensic treatment is regulated in Austria.

On 16 and 17 May 2017, the Deputy Ombudsman, Ivan Šelih, travelled to Astana, Kazakhstan, to attend the First Forum of the National Preventive Mechanism *"Prevention of Torture: Kazakhstani and International Experience"*. The event was hosted by the Kazakhstan National Ombudsman's Office and co-organised with the Council of Europe and other international institutions.

From 24 to 26 May 2017, the Deputy Ombudsman and Head of the NPM, Ivan Šelih, and the Ombudsman's advisers, mag. Jure Markič and Robert Gačnik, travelled to Belgrade, Serbia, to attend a meeting of the SEE NPM Network, where they discussed issues concerning the detention of people with mental health problems.

From 30 May to 1 June 2017, the Deputy Ombudsman and Head of the NPM, Ivan Šelih, and the Ombudsman's adviser and member of the NPM, Robert Gačnik, travelled to Strasbourg, France to attend a consultation meeting of National Preventive Mechanisms (NPM) on the draft rules for the detention of migrants and the independent monitoring of the work of NPMs. The meeting was organised by the Council of Europe and the OSCE/ODIHR.

On 5 and 6 July 2017, the Deputy Ombudsman, Ivan Šelih, and the Ombudsman's adviser, mag. Jure Markič, travelled to Podgorica, Montenegro, to attend a meeting of the SEE NPM Network, where they discussed issues concerning healthcare in prisons and psychiatric institutions.

From 28 August to 1 September 2017, the Human Rights Ombudsman of the Republic of Slovenia and the Legal Information Centre for NGOs – PIC hosted a delegation from Tajikistan. The delegation came to Slovenia to learn about the work of the National Preventive Mechanism.

From 25 to 27 September 2017, the Ombudsman's adviser and member of the NPM, mag. Jure Markič,

travelled to Vienna to attend an international workshop for NPM members, entitled Communication Skills and Techniques. The workshop was organised by the International Ombudsman Institute (IOI).

On 3 October 2017, the Ombudsman's adviser, Ana Polutnik, travelled to Vienna to attend a meeting of the European Forum of National Preventive Mechanisms, on the subject of setting up a database on detention.

On 25 and 26 October 2017, representatives of the Slovenian NPM, the Deputy Ombudsman, Ivan Šelih, and the Ombudsman's adviser, Robert Gačnik, had a working visit to the NPM of the Republic of Croatia, which was implemented by the Ombudsman of the Republic of Croatia. The main purpose of the visit was the exchange of practical experience in the implementation of preventive visits.

From 13 to 15 November 2017, the Deputy Ombudsman, Ivan Šelih, travelled to Prague in the Czech Republic to attend a consultation of European National Preventive Mechanisms (NPM) on norm-making and skills management (Brainstorming Meeting on the Norm-making Powers and Skills Management of NPMs). The meeting was organised in the context of the European NPM Forum.

From 11 to 13 December 2017, the Deputy Ombudsman, Ivan Šelih, and the Ombudsman's adviser, Robert Gačnik, travelled to Belgrade to attend a meeting of the SEE NPM Network.

On 15 and 16 December 2017, at the invitation of the Council of Europe, the Deputy Ombudsman, Ivan Šelih, attended the International Colloquium of National Preventive Mechanisms – Repositories and Practices in Hammamet, Tunisia. The event was organised in the context of a joint project by the European Union and the Council of Europe, entitled Towards Strengthened Democratic Governance in the Southern Mediterranean.

OTHER ACTIVITIES

On 1 February 2017, the Deputy Ombudsman, Miha Horvat, and the Ombudsman's adviser, Mojca Valjavec, met with representatives of the RUSLO Russian-Slovenian association, Chairman Evgenij Meleščenko and Vice Chairman Evgenija Breskvar, at the Ombudsman's office. **On 6 February 2017,** the Ombudsman and the Ombudsman's adviser, Robert Gačnik, attended a ceremony on the occasion of the tenth anniversary of the Ombudsman of the Republic of Serbia, which was organised at the Palace of Serbia in Belgrade by Ombudsman Saša Janković. **From 1 to 3 March 2017,** the Deputy Ombudsman, Ivan Šelih, attended the 4th International Symposium on Ombudsman Institutions in Ankara, Turkey, which was organised by the Office of the Turkish Ombudsman. **On 27 March 2017,** the Ombudsman attended a reception with military honours at Congress Square in Ljubljana for the Polish President, Dr Andrzej Duda. The reception was organised by President Borut Pahor. **On 8 May 2017,** the Deputy Ombudsman, Tone Dolčič, welcomed a group of students from the University of Gothenburg in Sweden for a study visit at the Ombudsman's office. **On 11 and 12 May 2017,** the Deputy Ombudsman, Tone Dolčič, travelled to Zagreb for the occasion of the 25th anniversary of the Ombudsman of the Republic of Croatia, and attended a meeting of ombudsmen from SEE and an international conference on the Protection of Human Rights and Strengthening Democracy in Europe: Combating Terrorism–Freedom of Speech–Coexistence. **On 24 May 2017,** the Ombudsman attended a reception at Congress Square in Ljubljana for Dr Alexander Van der Bellen, the President of the Republic of Austria. **On 25 May 2017,** the Ombudsman's adviser, Lan Vošnjak, conducted a study visit to Zagreb to learn about the operations of the Child and Youth Protection Centre of Zagreb. The study visit to Zagreb was organised by the Ministry of Justice in the context of preparations for the implementation of the House for Children project. **On 15 September 2017,** the Deputy Ombudsman and Head of the Advocate – A Child's Voice project, Tone Dolčič, the Ombudsman's advisers working on the project, Jasna Vunduk and Lidija Hvastja Rupnik, and advocates conducted a study visit to the Child and Youth Protection Centre in Zagreb. **On 13 March 2017,** the Deputy Ombudsman, Miha Horvat, attended a conference on Regulating Privacy through Accountability Principles and Ethical Standards in the Era of Big Data at the University of Maastricht in Brussels (Belgium).

1.17 PUBLIC RELATIONS IN 2017

The Ombudsman's communication with the media

500
events in Slovenia and abroad in which the Ombudsman and her associates participated.

170
news items at the Ombudsman's website informing the public of meetings with heads of state (state presidents, prime ministers, presidents of the National Assembly, the National Council, the Constitutional Court), ministers and representatives of sub-departments, civil society, non-governmental organisations, conducted visits by the NPM, and participation at international events, among other things. The media received individual content regularly in the form of press releases, while e-newsletter recipients received this content every Thursday.

58
press releases (viewpoints on individual topics from various fields of protection of human rights, press releases on meetings and events, statements accompanying international days).

250
media questions and requests for cooperation in the field of media relations which were sent to the office.

The Ombudsman's website:
www.varuh-rs.si
and the website for children's rights:
www.pravice-otrok.si

51
weekly e-newsletters (every Thursday), which are sent to **almost 500** email addresses of media outlets and **300** addresses of interested individuals.

19
press conferences
Six press conferences were held at the head office of the Ombudsman (meeting with the media; the role of the request for the review of constitutionality of the Aliens Act; a presentation of the Annual Report of the Ombudsman and the work of the NPM for 2016; the setting up of the first dementia friendly point; and the presentation of the Special report on the violation of human rights of people with mental disorders with regard to involuntary placement and involuntary treatment in secure departments of social care institutions) and thirteen on the occasion of meetings held away from the head office across Slovenia.

82
published cases on the Ombudsman's website (cases processed and concluded by the Ombudsman) and in e-newsletters, which were published by the media if they believed that the cases would be of interest to their public. The cases were also regularly published in the Pravna praksa journal.

Media Relations

Cooperation with the media is one of the key relationships of the office of the Ombudsman with its target public. It contributes to raising the people's awareness of their rights, as well as important questions for society about human rights, and to making sure that the standards for protecting human rights and fundamental freedoms are maintained – both new ones and those already achieved. The Ombudsman also watches over freedom of expression, the ethics of public speech, and the relationship between privacy and public matters.

The Ombudsman is aware of the importance of transparent operations and the right of the public to be informed. The office therefore ensures a high-quality, professionally substantiated, correct, and rapid response to media initiatives and questions.

The Ombudsman reacts publically if she believes this to be necessary from the viewpoint of her role and

By providing information to the media, the Ombudsman exercises the public's right to public information.

The Ombudsman usually only reacts to questions on individual cases which are being processed once all the relevant data have been obtained, and an opinion has been formed on the basis of the information collected. If the Ombudsman is asked about the content of a discussed case, she always obtains the consent of the petitioners prior to revealing any details. Without such consent, only general opinions are provided about a particular problem.

When informing the public of her work, the Ombudsman observes the regulations governing the protection of data confidentiality and the confidential nature of a procedure, in accordance with the law.

Media monitoring

The employees of the Ombudsman's office are informed of media reports and cases of violations of rights, which are established by these media, by means of media monitoring (clippings). We also actively monitor other sources of information online, which can also be a source of alleged violations of human rights. The information obtained can serve as a basis for the Ombudsman's actions. Many people do not trust institutions and resort to trusting the representatives of the 'fourth estate' with their story. The Ombudsman studies the obtained information and assesses whether it would be appropriate to address the problem as a petition on the Ombudsman's own initiative or as a broader issue.

Cooperation with the media

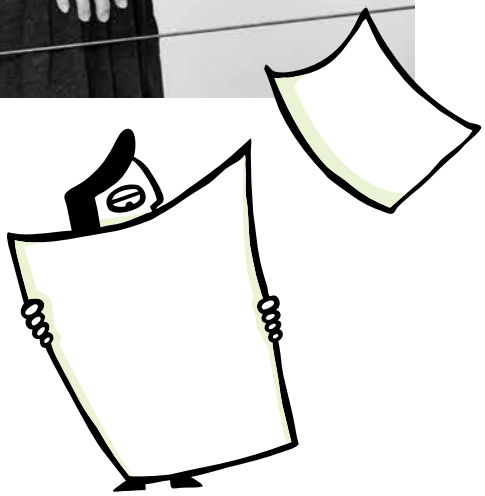
The Ombudsman and her deputies are available to representatives of the fourth estate on various occasions, at conferences, meetings, round table discussions, symposiums, and at other events. It is impossible to record all the statements, interviews, and other forms of communication with the media with statistical precision. The Ombudsman responded to numerous invitations from media organisations; she spoke on Radio Europa05, which became Radio Bob in 2017, about current issues regularly every month. We regularly published cases which we encountered in our work in the Pravna Praksa journal. The Ombudsman presented the Ombudsman's findings in two editorial articles, one at the time of publishing the Annual Report and the other at the time of the adoption of amendments to the Human Rights Ombudsman Act. Her deputies, Ivan Šelih and Dr Kornelija Marzel, wrote two in-depth articles on topics processed by the Ombudsman (Does Detention in a Psychiatric Hospital also Allow Medical Procedures without Consent? and Challenges and Dilemmas Concerning the Enforcement of the new Residence Registration Act). In 2017, the Ombudsman continued to regularly publish a column on the IUS INFO legal online portal every two weeks. In the column, the Ombudsman wrote about her deliberations and personal viewpoints, including on content associated with human rights and freedoms.

We are aware of the circumstances surrounding the work of journalists, who are usually under enormous pressure due to time constraints. We understand that and try to respond to their requests and questions in the shortest possible time. Nevertheless, sometimes unrealistic deadlines still manage to surprise us. The circumstances surrounding their jobs reduce the possibility of representatives of the fourth estate specialising in a specific field. We therefore also cooperate with them informally and often help them to prepare articles or considerations on a topic concerning human rights. Well-formed questions, which clearly show that the journalist is familiar with the work of the Ombudsman, allow us to prepare expert and high-quality answers.

In 2017, the greatest interest was expressed in the filing of a request for the review of constitutionality of the Aliens Act, and a request for the review of constitutionality of the Police Tasks and Powers Act. There was a lot of interest in the environment, as there were a number of events organised throughout the year which encouraged the Ombudsman's office and the media to monitor and respond. As always, we again received a lot of questions concerning the rights of children. There were also an increasing number of questions on the protection of the rights of the elderly. One issue repeatedly addressed is that of social conditions associated with health, employment, income, poverty, and violence.

The anticipated amendments to the Human Rights Ombudsman Act resulted in a few questions on this subject. We also received questions on the eventual parallels between the warnings of the Ombudsman and the European Commissioner for Human Rights concerning the state of affairs with journalism in Slovenia, and on universal basic income. We also answered questions about the 'pharmacist affair'. Before the elections, the Ombudsman provided her views on the function of the President of the Republic of Slovenia and mutual cooperation. She responded to numerous invitations to be a guest on television and radio, where she spoke about general issues concerning the protection of human rights. The majority of the invitations are received at the time of the presentation of the Annual Report of the Ombudsman for the previous year, and on Human Rights Day in December.

Liana Kalčina, the Ombudsman's Adviser for International Relations, Analyses and Publishing, and **Nataša Kuzmič,** the Ombudsman's Adviser for Public Relations



1.18 PROCESSING REQUESTS TO ACCESS PUBLIC INFORMATION

The Ombudsman has authorised three officials to provide public information, i.e. two officials to provide the public with information concerning the substantive work of the Ombudsman (processing of petitions), and one official who is responsible for providing public information concerning all other aspects of the work of the Ombudsman.

In 2017, we received and processed two requests to access public information.

In both cases, the requests were partly denied, but the remaining information was provided to the applicant.

Case No. 0106-10/2017
The applicant requested public information concerning the setting up of GSM-R base stations in the Slovenian rail network. Her questions predominantly related to the processing of petitions in this field and the attention of the media to their treatment. The applicant's request was partially granted, i.e. in the part concerning general information on the number of petitions and press releases, and partially denied in accordance with Item 11 of the first paragraph of Article 6 of the ZDIJZ, which stipulates that the applicant shall be denied access to the requested information if the request relates to information from a document drawn up in connection with internal operations or activities of bodies, and its disclosure would cause disturbances in the operations or activities of the body. The documents requested by the applicant, and contained in the files in the context of which the Ombudsman processed petitions concerning the construction of these base stations, contain information which comprises communication between the petitioner and the Ombudsman and the bodies which the Ombudsman turns to for the needs of the proceedings in question. In terms of content, this information is associated with the issue of the violation pointed out by the petitioner, and therefore certainly expresses an internal confidential relationship between the petitioner and the Ombudsman. This is information which has undoubtedly been compiled or acquired in connection with the internal operations or activities of the body, due to an independent and autonomous investigation aimed at eliminating potential violations of the human rights and fundamental freedoms of individuals and groups. As such, its provision would shake the confidential relationship between the Ombudsman and the petitioner.

Case No. 0106-14/2017
The applicant divided his request to access public information into three segments, and requested documents and information on the handling of the procedure by the Human Rights Ombudsman of the Republic of Slovenia from two files which were managed on the basis of concrete petitions, and documents which related to the visit of the previous Ombudsman, Dr Zdenka Čebašek Travnik, to the municipality of Krško. The first two segments of the request to access public information, which referred to the documents and the management of the procedure on the basis of two concrete petitions, were denied. The third segment was also partially denied, i.e. in the part that referred to documents which had been created at the time of the visit to the municipality of Krško. These denials were based on the fact that they contain information which is considered an exception in accordance with Item 11 of the first paragraph of Article 6 of the ZDIJZ, which stipulates that the applicant shall be denied access to the requested information if the request relates to information from a document drawn up in connection with internal operations or activities of bodies, and its disclosure would cause disturbances in the operations or activities of the body. The documents which the applicant requested are held by the Ombudsman in the context of managing a non-formal procedure under ZVarCP. For this purpose, the Ombudsman is authorised to obtain all data and information under the competency of various authorities regardless of the level of confidentiality. Furthermore, the first paragraph of Article 8 of the ZVarCP explicitly stipulates that the procedure of the Ombudsman is confidential. The Ombudsman established that the requested documents represent communication between petitioners and the Ombudsman and the authorities which the Ombudsman turns to for the needs of the proceedings in question. In terms of content, this information is associated with the issue of the violation pointed out by the petitioner, and therefore certainly expresses an internal confidential relationship between the petitioners and the Ombudsman. This is information which has undoubtedly been compiled or acquired in connection with the internal operations or activities of the authority due to an independent and autonomous investigation aimed at eliminating potential violations of the human rights and fundamental freedoms of individuals and groups, and its provision would shake the confidential relationship between the Ombudsman and the petitioner. The Ombudsman has partially granted the applicant's third request to access public information, i.e. in the part referring to obtaining the travel order for the business trip during the visit to the municipality of Krško.

1.19 FINANCES

The second paragraph of Article 5 of the Human Rights Ombudsman Act (ZVarCP)

stipulates that the funds for the Ombudsman's work are to be allocated by the National Assembly of the Republic of Slovenia from the national budget

In 2017, the Ombudsman was allocated budget funds amounting to

EUR 2,171,821

The Ombudsman spent on its three sub-programmes

EUR 2,151,491

Protection of human rights and fundamental freedoms:
EUR 1,886,898

Implementation of the duties and powers of the NPM:
EUR 158,972

Advocate – A Child's Voice project:
EUR 105,621

Funds spent in 2017 according to budget items within individual sub-programmes

	Funds allocated (in EUR)	**Current budget (CB)** (in EUR)	**Funds spent** (in EUR)	**Remaining funds with regard to the CB** (in EUR)
Human Rights Ombudsman of the Republic of Slovenia	**2,151,791**	**2,050,909**	**2,042,767**	**8,142**
SUB-PROGRAMMES				
Protection of human rights and fundamental freedoms	**1,923,791**	**1,895,907**	**1,886,898**	**9,010**
Salaries	1,496,191	1,439,364	1,433,292	6,072
Material costs	387,600	410,246	407,325	2,921
Investments	40,000	46,297	46,280	17
Implementation of the duties and powers of the NPM	**158,000**	**160,399**	**158,972**	**1,427**
Salaries	1,496,191	1,439,364	1,433,292	6,072
Material costs	387,600	410,246	407,325	2,921
Cooperation with non-governmental organisations	40,000	46,297	46,280	17
Advocate – A Child's Voice project	**70,000**	**109,167**	**105,621**	**3,546**
Salaries	3,600	22,767	22,767	0
Material costs	66,400	86,400	82,854	3,546
Earmarked funds*	**0**	**6,348**	**0**	**6,348**
Compensation funds	0	1,048	0	1,048
Funds from the sale of state assets	0	5,300	0	5,300

* Earmarked funds have been carried forward into the 2018 budget.

The Ombudsman's budget trends between 2013 and 2018

Year	2013	2014	2015	2016	2017
Current budget	**1,890,979**	**1,868,206**	**1,965,209**	**2,050,909**	**2,171,821**
Funds spent	**1,853,086**	**1,851,108**	**1,961,205**	**2,042,767**	**2,151,491**
SUB-PROGRAMMES					
Protection of human rights and fundamental freedoms	**1,658,600**	**1,645,402**	**1,745,427**	**1,804,898**	**1,866,898**
Salaries	1,281,014	1,263,396	1,311,202	1,352,089	1,433,292
Material costs	360,059	355,326	384,042	398,138	407,325
Investments	17,528	26,680	50,182	54,671	46,280
Implementation of the duties and powers of the NPM	**120,306**	**114,722**	**125,557**	**130,095**	**158,972**
Salaries	107,706	100,105	106,388	113,030	115,099
Cooperation with non-governmental organisations	5,631	4,367	11,666	11,435	9,716
Cooperation of medical experts	2,878	5,580	5,105	1,720	3,592
Travel costs	797	690	1,799	2,686	1,012
Other material costs*	3,294	3,980	599	1,224	29,553
Advocate – A Child's Voice project	**56,180**	**77,027**	**90,221**	**107,774**	**105,621**
Salaries	1,824	1,448	17,899	18,290	22,767
Material costs	54,356	75,579	73,322	89,484	82,854
Earmarked funds*	**0**	**13,957**	**0**	**0**	**0**
Compensation funds	0	9,322	0	0	0
Funds from the sale of state assets	0	4,635	0	0	0

* Other material costs for 2017 for NPM include rent of office space.

1.20 FINANCIAL INDEPENDENCE AND AUTONOMY OF THE OMBUDSMAN

The second paragraph of Article 5 of the Human Rights Ombudsman Act (ZVarCP) stipulates that the funds for the Ombudsman's work are to be allocated, at the Ombudsman's proposal, by the National Assembly of the Republic of Slovenia from the national budget. **During the yearly budgetary coordination with the Ministry of Finance, the Ombudsman has repeatedly pointed out that the independence and autonomy of the Ombudsman, which originate from the Constitution of the Republic of Slovenia and the ZVarCP, are not consistently considered in the rules and regulations governing public finance.** Independence and autonomy are additionally stipulated by the Paris Principles, i.e. that funding should be independent of the Government and not subject to financial control which might affect this independence. In the autumn of 2017, the Ombudsman, together with the President of the Constitutional Court of the Republic of Slovenia and the President of the Court of Audit, directed a special letter directly to the Prime Minister and informed him of this issue, which, for constitutional reasons, requires special attention in the preparation of amendments to the legislation governing public finance. Unfortunately, we have not received an answer to our letter.

The regulation under the Public Finance Act is particularly disputable in terms of the constitution, as it stipulates that the Ministry of Finance reviews the proposed financial plans of direct budget users and proposes any required harmonisation in accordance with the instructions for the preparation of the draft state budget. If the Government fails to reach an agreement with direct budget users who are not state administrative bodies and organisations, which includes the Ombudsman, the draft budget must include the draft financial plan proposed by the Government, and the draft financial plan proposed by the direct budget user must only be included in the explanation of the budget. The final decision is left to the National Assembly, where the latter obviously first decides on the Government's proposal.

In the light of the Ombudsman's specific position, this approach is not in line with the constitution. The law should consider the constitutional position of independent constitutional bodies, and include the draft financial plan proposed by these bodies in the draft budget, while the Government should have the possibility to alert the National Assembly of potential significant deviations from the set budgetary frameworks. Such a solution, which, with regard to the Ombudsman, derives explicitly from the aforementioned Article 5 of the ZVarCP, would take into account the fact that the Ombudsman is a constitutional body equal to the Constitutional Court and the Court of Audit. Its independence and autonomy should therefore also cover its budget. The Government and the Ombudsman should cooperate in the preparation of the budget so as to observe the jointly stipulated budgetary objectives which are defined in accordance with the fiscal rule. They should work together as equal partners, as otherwise, constitutionally speaking, this could be seen as the executive branch of power exerting pressure on an autonomous body. The same should of course apply in cases of potential amendments to the state budget.

The disputable nature of the provisions of the Public Finance Act, which are used as the basis for the Minister of Finance to adopt the annual Rules on the Conclusion of the Implementation of Central and Local Government Budgets, needs to be specifically emphasised. These Rules usually also contain a provision under which direct budget users, after a specific date in October (e.g. in 2017 this was 5 October), must obtain the prior consent of the Ministry of Finance for all appropriations to meet commitments, even though they are acting in accordance with the adopted budget. Such a provision is constitutionally disputable, as it interferes with the Ombudsman's independent and autonomous position, brings continuous uncertainty into its operations, and hinders normal activity as previously foreseen in accordance with the adopted budget. **The executive branch of power cannot limit the use of funds which have been allocated to the Ombudsman with the budget or amendments to the budget by the National Assembly of the Republic of Slovenia.** The legislature should systemically regulate this and prevent such interventions in the implementation of the adopted budget during the year.

On the basis of the Ombudsman's constitutional position, due to the constitutionally disputable legislative solutions, the provisions of the Public Finance Act, which stipulate budgetary inspections and supervision by the Ministry of Finance over the implementation of this Act and other rules and regulations governing public finance, should also be amended. In consideration of the principle of separation of power, control over the Ombudsman's use of budget funds can only be implemented by an independent and autonomous body such as the Court of Audit of the Republic of Slovenia. The Government of the Republic of Slovenia should not have any jurisdiction in relation to the Ombudsman, as this subverts the constitutionally determined relationships between these two bodies. **The constitutional principle of the division of power and the Ombudsman's constitutionally stipulated independence mean that the Ombudsman does not answer to the Government of the Republic of Slovenia for its work, including its operations.** The Government, as the

head of the executive branch of power, cannot control the Ombudsman's use of budget funds, as this represents an impermissible encroachment on the Ombudsman's constitutionally guaranteed independence and autonomy.

In this respect, we point out that the following issues must be considered when preparing the amendments to the act governing public finance: **(1) the constitutional position of independent and autonomous constitutional bodies such as the Ombudsman, the Constitutional Court and the Court of Audit when preparing the budget and budget amendments (2) the prohibition on limiting the use of funds during the year, which had been approved by the decision of the National Assembly, and (3) the admissibility of control over the financial operations of these constitutional bodies only by bodies which have themselves been constitutionally defined as independent and autonomous state bodies.**

In addition to financial independence, the problem with salaries of officials working at the Ombudsman's office must also be emphasised. Determining their salaries is also an important element of the institution's independence and autonomy. Article 47 of the ZVarCP stipulates that the Ombudsman is awarded a salary equal to the salary of the President of the Constitutional Court and a Deputy Ombudsman is awarded a salary equal to the salary of a judge of the Constitutional Court. Determining the salaries by an Act is an important element of the autonomy of the function, as it would be unacceptable for the Ombudsman's salary to be determined by the executive or other authorities. The ZVarCP still contains this provision; however, the Public Sector Salary System Act (ZSPJS) has eliminated the established Article 47 of the ZVarCP. The first paragraph of Article 52 of the ZSPJS specifically stipulates that *"on the day this Act enters into force all the provisions of laws and other regulations governing the salaries of employees of public institutes, state bodies and local authorities, and other persons under public law governed by this Act shall cease to be valid, /.../"*. The appendices to this Act have also redefined the salaries of officials and public officials, including the Ombudsman and her deputies.

In this respect, the Ombudsman has pointed out the need to consider the fact that the ZSPJS classifies the highest state functions into salary grades with regard to their position in the hierarchy of the highest state functions. **With regard to this position and the comparability with other constitutional bodies, the functions in the Ombudsman's office are not classified in accordance with the position awarded to the institution by the Constitution of the Republic of Slovenia and the law.** The authorisations of the Ombudsman have expanded with the amendments to the Act governing the operations of this institution. The institution's international role, with which it significantly contributes to the reputation of the state in the field of protection of human rights and fundamental freedoms, is getting stronger. The scope and breadth of control are exceptionally wide, as the Ombudsman supervises all relationships between state and local authorities and holders of public powers and individuals which relate to the protection and enforcement of rights in relationships with these authorities. Furthermore, the Ombudsman processes broader issues which are important for the protection of human rights and fundamental freedoms and legal certainty. In its role as the supervisor of authority, the Ombudsman significantly affects the development and improvement of the legal and administrative culture in relationships between holders of authority and individuals.

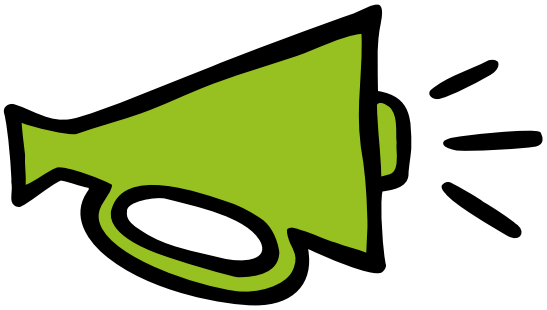
The ZSPJS has substantially intervened with the valid regulation (ZVarCP) and reduced the Ombudsman's salary by two salary grades (from grade 65 to 63), the salary of the Deputy Ombudsmen by four salary grades (from grade 59 to 55), and the salary of the Ombudsman's Secretary General by two salary grades (from grade 56 to 54). The current classification of the salary of the Deputy Ombudsmen and the Ombudsman's Secretary General also gives rise to problems concerning the classification of public officials into salary grades. In the areas of their responsibility, the Deputy Ombudsmen have all the powers granted to the Ombudsman. During the Ombudsman's absence, the Deputy, who is selected by the Ombudsman, fills in for the Ombudsman with all the powers granted to the Ombudsman by the law. As an official with such a salary, the Deputy Ombudsman cannot even achieve salary grade 57, which is the legally stipulated highest salary grade for public officials. In terms of its position and responsibility, the function of the Secretary General of the Ombudsman should be regulated in the same way as comparable functions.

Since the adoption of the ZSPJS, and most recently at the end of 2017, the Ombudsman has repeatedly alerted the Government of the Republic of Slovenia to the inappropriate or too low position of the Ombudsman's officials in salary grades with regard to the Ombudsman's position in the highest legal document in the country, i.e. the Constitution of the Republic of Slovenia and the law. **The Ombudsman has therefore recommended to the Government of the Republic of Slovenia to eliminate this anomaly and again determine the salary grades of the Ombudsman's officials as stipulated by Article 47 of the ZVarCP-UPB2 (the Ombudsman is awarded a salary equal to the salary of the President of the Constitutional Court and a Deputy Ombudsman is awarded a salary equal to the salary of a judge of the Constitutional Court.).** In this respect, the Ombudsman has not received any concrete answers from the Government of the Republic of Slovenia, but she insists on this proposal.

It must be emphasised that both financial and pay independence significantly affect the Ombudsman's position both at home and abroad.

2

CONTENT OF WORK AND REVIEW OF CASES HANDLED



2.1 CONSTITUTIONAL RIGHTS

	Cases processed			Resolved and well-founded		
Area of work	2016	2017	Index 17/16	No. of resolved cases	No. of well-founded cases	Proportion of well-founded cases among those resolved (in %)
1. Constitutional rights	**135**	**150**	**111.1**	**143**	**11**	**7.7**
1.1 Freedom of conscience	7	8	114,3	8	2	**25.0**
1.2 Ethics of public discourse	42	34	81.0	33	2	**6.1**
1.3 Assembly and association	11	5	45.5	4	1	**25.0**
1.4 Security services	0	0	-	0	0	**-**
1.5 Right to vote	8	13	162.5	12	1	**8.3**
1.6 Personal data protection	50	69	138.0	67	3	**4.5**
1.7 Access to public information	5	8	160.0	7	0	**-**
1.8 Other	12	13	108.3	12	2	**16.7**

2.1.1 FREEDOM OF CONSCIENCE

In 2017, there was again a lot of activity associated with freedom of conscience and religious communities; unfortunately with a negative connotation in some respects. More on this can be read below; but first, we need to focus on the fact that the Ombudsman's recommendation (Annual Report for 2016, p 69) concerning Article 72 of the ZOFVI, which prohibits the implementation of religious activities in state schools and kindergartens, has not been implemented.

The Ombudsman has already reported on the blessing of state schools on p 33 of the 2015 Annual Report and on p 69 of the 2016 Annual Report; in 2017, we received a petition addressing the blessing of a new branch school of Polica Primary School. There are also individuals who believe that the Ombudsman, before voicing its concerns about the blessing of schools, should call upon the *"National Assembly to enforce the decision of the Constitutional Court on the full funding of private and not only Catholic schools"* (even though, on the same page which addressed the issue of blessing of state schools and kindergartens, we reported on the violation of the deadline stipulated in this decision in our 2016 Annual Report – a fact which was pointed out to the sender of the complaint). **These are activities which are being constantly revealed as a problem by part of society, while such viewpoints, in the light of the existing regulatory framework, cannot be considered as being obviously wrong.** On the contrary, as persistently emphasised by the Ombudsman, such actions could represent a violation of Articles 7 and 41 of the Constitution of the Republic of Slovenia and Article 72 of the ZOFVI (see above for the page number in the 2015 Annual Report) and from the viewpoint of these legal standards, such practices can be considered problematic (see above for the page number in the 2016 Annual Report). Some see this situation as fuelling imaginary conflict (as in the case where the Ombudsman was reproached by the representative of the Catholic Church at the 3rd session of the Government Council for Dialogue on Religious Freedom on 23 October 2017) or spreading intolerance (as stated by the MIZŠ on p 17 of

the Review of Implementation of the Ombudsman's Recommendations from the 2015 Annual Report when rejecting the implementation); however, such reproach is entirely unsubstantiated. The Ombudsman was not the one to legalise the prohibition of religious ceremonies in state schools and kindergartens in the name of autonomous use of school property; furthermore, it was not us who failed to determine a sanction for violating this prohibition, which would make its meaning clearer in administrative and potentially also judicial practices.

The fact remains that the Slovenian legislator has decided on a codification of prohibition of religious activities in state schools and kindergartens (and now after more than twenty years also not amending it), explicitly including organised religious ceremonies in these activities. **The MIZŠ's determination** that *"the implementation of religious ceremonies in state schools and kindergartens is not permitted even as an exception, and such cases represent a violation by the school, which is established by the Inspectorate of the Republic of Slovenia for Education and Sport"*, which can be found in the Ministry's explanations in the Review of the Implementation of the Ombudsman's Recommendations from the 2016 Annual Report (p 20) **is encouraging; however, the Ombudsman cannot agree with the Ministry's conclusion that *"this area is appropriately regulated by the existing legislation"*** which means that our recommendation is consequently considered as implemented. The reason lies in the actions of the Inspectorate of the Republic of Slovenia for Education and Sport. We learned from the MIZŠ that the Inspectorate, after conducting inspections in Stična Primary School, Zagradec Branch School, Ivančna Gorica Kindergarten, the Sonček Zagradec Unit, and Louis Adamič Grosuplje Primary School, stated the following in its findings (Nos. 20102-225-2015, 20102-232-2015, and 10102-95/2015 of 19 October 2015): *"as the school legislation does not define the term organised religious ceremony, the Slovenian Conference of Catholic Bishops was asked to provide its expert opinion or definition of an organised religious ceremony"*. The Inspectorate received the opinion (probably not surprising to anyone) that *"the act of blessing cannot be classified as an organised religious ceremony, even though it is undoubtedly classified in the subcategory of religious actions and the category of religious or pastoral activity"*. The Inspectorate therefore concluded that *"on the basis of the established situation and the obtained expert opinion [...] it did not establish a violation of the provisions of Article 72 of the ZOFVI, which stipulates autonomous use of school property, and so inspection procedures against the educational institutions have been concluded."* The legislative material also does not indicate that with regard to Article 72 of the ZOFVI the legislator wishes to distinguish between different religious ceremonies as manifestations of religious activities in the above-described manner. If the inspector decides to ask for an opinion on the meaning of a legislative term in a place where circumstances lead us to question the respondent's impartiality, a convincing explanation should include a commentary on why the usual meaning does not prevail. The Dictionary of Standard Slovene explains the term to bless with these words: *"to perform a religious ceremony for an object in Christianity"*. As the invitation to the ceremonial opening of the new Polica Branch School clearly expresses that part of the event will also be the parish priest blessing the school, the fact that such a ceremony lacks the element of organisation is also unconvincing.

In principle, the Ombudsman sees the legalisation of the prohibition of religious activities in state schools and kindergartens as being in the domain of the legislator's own judgement. However, this does not mean that the prohibition from Article 72 of the ZOFVI is appropriate in all respects. In consideration of the above, **the Ombudsman repeats its recommendation that the law should stipulate a sanction for the violation of the prohibition on religious activities in state schools and kindergartens, or amendments be adopted which will allow organised religious ceremonies in state schools and kindergartens.**

In our experience, freedom of conscience and the activity of religious communities are still a controversial topic in modern society, one which easily becomes problematic, regardless of the best of intentions. In this respect, the Ombudsman is often targeted by individuals, representatives of religious communities, and even politicians.

In 2017, we received a letter whose author stated that he was writing *"as a citizen and a lawyer"* (the letter showed that the author was a lawyer with a Ljubljana law firm) and that he saw in the advertising brochure of LIDL and in the media that the company, on a product which it markets and sells, *"has desecrated the image of churches by removing their key sign, i.e. the sign of the Cross"*. The writer labelled such actions as *"a severe proactive and impermissible encroachment on religious freedom [...], whose only and exclusive motive was economic."* He further emphasised that *"this is not only a morally and ethically inadmissible business practice, but also a legally inadmissible act, with which LIDL severely encroached on my fundamental human right to freedom of religion without justifiable grounds."* The writer did not enclose the brochure in question.

We reminded the sender, primarily in his capacity as a lawyer, that the Constitution explicitly states that the Ombudsman protects human rights and fundamental freedoms in relation to state and local authorities and holders of public powers. This has been fully observed by the ZVarCP in establishing the office of the Ombudsman

and determining its authorisations and jurisdictions. LIDL Slovenija d.o.o. k.d. is, of course, neither a state nor a local authority nor a holder of public powers, and the Ombudsman has no jurisdiction with regard to this economic operator. In general, it was evident that the petitioner's **reproaches against the Ombudsman were the result of a lack of knowledge about the nature of our work, which, as records of our work are publically available, should be in stark contrast with the severity of the criticism directed towards our office,** criticism which was not lacking in this case, as the petitioner even claimed that if the company in question had similarly desecrated the image of a synagogue or a mosque, the Ombudsman and law enforcement officers would have, of their own initiative, *"taken action against such utterly reprehensible, primitive, and barbaric action."* In this respect, we need to emphasise that at the end of November 2016, when the valuable 15th century statue of the Mother of Sorrows in Koper Cathedral had been purposely damaged, the Ombudsman reacted by issuing a resolute press release in which she expressed her outrage over the act of vandalism perpetrated by insensitive individuals who, out of sheer wantonness and thoughtlessness, destroyed valuable monuments of cultural heritage, and emphasised that sacral objects of any religious community were sacred places for people of religion and exceptionally important in the culture of a nation. Such actions cause not only material damage but also unrest among people who perceive such actions as a form of attack on their religion (as reported on p 124 of the Ombudsman's Annual Report for 2016). The Ombudsman's predecessor also condemned graffiti which expressed hatred against Christians, and expressed her expectations that the police would do all in their power to discover the perpetrator(s) and that other measures for the implementation of criminal proceedings would be adopted (more on pp 38, 347, and 348 of the Annual Report for 2013). **These and similar insinuations about the Ombudsman's selective responsiveness with regard to religion are soon revealed as being absolutely uncalled for.** In the case at hand, we also reacted in the described manner to the misguided expectation that if the Ombudsman *"believes that not even in Europe do Christian religious ceremonies and Christians deserve the same level of protection as members of other religions, it should express its viewpoints directly and unambiguously."*

With regard to the petitioner's announcement that he would definitively pay attention as to whether the current Ombudsman and her successors would decide to publically criticise *"selectively and at your own discretion"*, we have emphasised, and wish to do so again, that **ever since the ZVarCP was published in the Official Gazette of the Republic of Slovenia, it cannot be considered a secret that the office of the Ombudsman is independent and autonomous in its work, which is also explicitly stated in Article 4 of this Act.** It should therefore come as no surprise, and especially to a lawyer, that we can decide to publicly criticise, using his own words, *"selectively and at our own discretion"*. The Ombudsman's actions so far (which are well-documented and publicly accessible) show that insinuations about the arbitrary nature of our work with regard to religion are nothing more than futile actions.

However, a few words must be said about the possibilities which would be an option for a person searching for legal protection provided by the state in a situation as described above. With regard to penal protection (under the valid KZ-1, the criminal offence of public incitement to hatred, violence or intolerance also includes the desecration of religious symbols, and whether this has happened is arbitrarily decided by the judicial branch of power), it needs to be reiterated that in accordance with Article 146 of the ZKP, any person may report a criminal offence which is liable to public prosecution, and crime reports can be submitted to the competent public prosecutor in writing or orally (Article 147). If anyone sees a disputable action as a severe encroachment upon their mental integrity (as was understood from the petitioner's statements in the aforementioned case), it needs to be said, in the context of civil law, that in accordance with Article 134 of the OZ, everyone has the right to request the court to order the cessation of an action which violates any of their personality rights, and to prevent such an action or eliminate its consequences (whereby the court may also order that the offender ceases such action, with failure to do so resulting in the payment of a monetary sum to the person affected). Finally, we also need to emphasise that under the ZVPot, advertising may not be indecent (Article 12), i.e. that which *"contains components which are or might be offensive to consumers, readers, listeners, and viewers or components which go against morals"* (Article 12a) If the market inspectorate establishes that a company is advertising goods in a manner which is in contravention of Article 12 or Article 12a of the ZVPot, it issues a temporary decision prohibiting such advertising of goods or services or prohibits the publication of such an advertisement if it had not yet been published but is about to be (Article 73) and in such a case may (Article 77) penalise the legal person for the offence with a fine of between EUR 3,000 and EUR 40,000. This means that it would be the Market Inspectorate of the Republic of Slovenia which should, in its authoritative decision-making, substantiate the term *"advertising containing components which are or might be offensive"*. (It would probably not take a similar approach to the aforementioned approach of the Inspectorate of the Republic of Slovenia for Education and Sport with regard to the term of *"organised religious ceremonies"* and base its decision on the opinion of the supermarket chain in question.) In the event of a judicial proceeding, the answer to this challenge would also be provided by case law.

The representative of the Islamic Community in the Republic of Slovenia in the Government Council for Dialogue on Religious Freedom was also repeatedly critical of the Ombudsman. At the 2nd, and especially at the 3rd session, his casting of doubt on the Ombudsman's viewpoint concerning circumcision of boys (a topic already covered by the Ombudsman in the light of children's rights – in this respect see p 350 of the 2015 Annual Report, p 331 of the 2014 Annual Report, etc.) was not particularly surprising; however, the same cannot be said about his assertions that their members *"feel stigmatised due to the opinion of the Ombudsman with regard to the processed case, and some have even said they would move and leave Slovenia"* and about the problems concerning the circumcision of boys in Islam in Slovenia even that *"this situation is being compared to events in Srebrenica in 1995"*. A testament to the Ombudsman's actual attitude towards Muslims can be found on pp 73 and 74 of last year's report, pp 57-58, 60, 335, and 348 of the 2013 Annual Report, pp 29 and 37-38 of the 2009 Annual Report, pp 24 and 25 of the 2008 Annual Report, p 26 of the 2007 Annual Report, p 171 of the 2006 Annual Report, pp 3 and 19 of the 2005 Annual Report, pp 5, 9, and 145 of the 2004 Annual Report, pp 3, 7, and 75-76 of the 2003 Annual Report, p 8 of the 2002 Annual Report, etc. The Ombudsman similarly reacted to the request of the media to comment on pig's heads and blood being found on the construction site of the Islamic Centre in Ljubljana by unambiguously condemning actions which show obvious intolerance or hatred on the basis of religious beliefs, and emphasised that it was important that the perpetrators of such actions were discovered and that state authorities quickly react to discover and prosecute such actions. With regard to the aforementioned drawing of parallels with the infamous events in Srebrenica in 1995, it is enough to reiterate that the representative of the Evangelical Christian Church (who also acts in the capacity of the elected representative of registered religious communities which do not have directly appointed members in the Council) spoke up at the session and said that the representative of the Islamic Community in the Republic of Slovenia went too far with such a comparison, and that regardless of the representative's reasons, he was personally offended as a Slovenian patriot, as viewpoints expressing potential comparability of the situation in Slovenia with events in Srebrenica express either a misunderstanding of those events or a misunderstanding of the situation in Slovenia.

As mentioned before, the Ombudsman is the target of criticism concerning our attitude towards religious people or communities, which is also expressed by politicians, including those from the elected representative body with legislative powers. The most prominent case of this kind in 2017 happened on 21 June at the 31st regular session of the National Assembly of the Republic of Slovenia, where a proposal for the ZVarCP-B amendment was being discussed under Item 11. One of the deputies, on behalf of the New Slovenia-Christian Democrats Deputy Group, expressed a very general complaint that the Ombudsman *"is not performing its tasks in accordance with expectations"* and added that they never see *"information about discrimination with regard to religious and political beliefs, which is on the rise in Slovenia."* Not only did her statement lack any kind of concrete data to substantiate the claimed discrimination, but the unfounded nature of this and similar claims is also evident from concrete facts. Starting with the Ombudsman's Annual Report for 2013, when the current Ombudsman took office, we can draw attention to a case in which two petitioners contacted the Ombudsman because the general manager of Radio Slovenia had failed to respond to their expectations with regard to the setting up of a religious newsroom (reported in detail on p 30); or the Ombudsman's processing of the suspicion of indirect discrimination in determining the price of leasing a burial plot – the petitioner claimed discriminatory pricing on the basis of religion (pp 57-58). The deputy further tried to enhance her statement by claiming that they do not see the Ombudsman's response even when we are dealing with *"vandalism and desecration of religious symbols."* This reproach again has nothing to do with the facts. In this respect, see the aforementioned response of the Ombudsman concerning the damaged statue of the Mother of Sorrows and her predecessor's critical opinion of graffiti. We add that the previous Ombudsman publically condemned graffiti which expressed unambiguous hatred for Christians (*"Christians – we slaughtered you in 1945 – we will slaughter you in 2013"*) and stated her expectations that the police would do all in their power to discover the perpetrator(s) and that other measures for the implementation of the criminal proceedings would be adopted (more on pp 38, 347, and 348 of the Annual Report for 2013). The Ombudsman also reacted to the attempted burning of the Quran (p 381 of the 2015 Annual Report), and so on.

Since we are on the subject of the Ombudsman's attitude towards religious people – the Ombudsman responds to invitations from all the churches and religions in Slovenia if her work obligations allow it. In her first year in office, she attended the ceremonious laying of the cornerstone of the Islamic Cultural Centre in Ljubljana. She also responded to the invitation of the President of the Slovenian Conference of Catholic Bishops, who invited her to attend the Holy Mass for the homeland held at St. Nicholas' Cathedral in Ljubljana on 24 June 2016 marking Statehood Day (on a side note, one of the papers later protested the attendance of state representatives at church masses, and so such actions by the Ombudsman are also not regarded positively by everyone). Our report last year (p 73) clearly states that the freedom of expression of religion and religious beliefs and the convictions of all individuals and members of religious communities must be observed, regardless of whether this is Christianity, Islam, Judaism, or any other religion. We believe that respect for all religions in Slovenia

means that a person such as the Ombudsman respectfully responds to invitations from church dignitaries, and in this way contributes to facilitating intercultural and interreligious dialogue and progress in mutual respect and understanding.

The Ombudsman wishes to emphasise that the aforementioned criticism of the Ombudsman's work is primarily seen as a manifestation of freedom of expression or of pluralism of thought or opinions, which is required in every democratic society, and is still within constitutionally permissible bounds. However, in the light of the concrete and undisputable facts, we see them as completely unconvincing and publicly respond to them also by this report.

The Ombudsman also deals with sensitivity to people expressing their religious beliefs. This is evident from a short description of the following two cases from 2017.

We received a letter drawing our attention to statements made in a newspaper, i.e. *"Is Radio Slovenia Afraid of Religious Content and Music?"* published on 19 May 2017 in the readers' letters segment of the Dnevnik daily. The petitioner was convinced that the letter constituted *"hate speech and expulsion of the religious community from public life"*, which he sees as inadmissible, and expressed his expectation that the Ombudsman would react and provide her opinion on the matter. In addition to our explanation that the Ombudsman, in consideration of the ZVarCP, acts only in relation to state and local authorities and holders of public powers, and therefore does not have the authorisation to intervene with natural or legal persons without public powers or authority (as was the case with the writer and the medium publishing the letter), we also informed the petitioner that it was our belief that the content of the letter did not show any evident violation of prohibition of incitement to discrimination, intolerance, violence and war under Article 63 of the Constitution of the Republic of Slovenia. We considered it to be an expression of the welcome pluralism of thought or opinions which is required in every democratic society (the petitioner stressed that *"religious content cannot be part of public space, nor a part of state or local authorities"*). As the petitioner also claimed that the letter in question had hurt his *"religious feelings and dignity"*, we also pointed out Articles 134 and 179 of the OZ. We do not know whether the petitioner decided to pursue that option.

In the second case, we were contacted by a person who wanted to know whether the Ombudsman planned to publically respond to the construction and activity of the mosque in Ljubljana, focusing on the participation of women in religious ceremonies, the language of religious ceremonies, financing of the construction, and the role of the mosque as a political centre (his terminology). Again, there was no subject involved against which the Ombudsman could intervene according to the ZVarCP; however, we provided the petitioner with explanations which might also be interesting to other members of the public.

With regard to his claim that *"women are not allowed to participate in religious ceremonies in the mosque"*, we initially emphasised that the first paragraph of Article 41 of the Constitution ensures freedom of professing religious and other beliefs in private and public life, while Article 7 stipulates that religious communities can freely pursue their activities. The Abstract of the Decision of the Constitutional Court of the Republic of Slovenia No. U-I-92/07 of 15 April 2010 states: *"The principle of the freedom of action of religious communities entails a guarantee of the independence of religious communities in their internal affairs, and is, at the same time, also an independent constituent element of the human right determined by the first paragraph of Article 41 of the Constitution."* Item 90 of the Decision further states: *"Religious association is characterised by the internal organisation of a religious community. Such internal organisation entails that a religious community is more than just a collection of individuals. The right to freedom of association presupposes an organised association of individuals who operate internally by their own rules. The freedom to establish religious communities thus also implies the right of religious communities to independently and autonomously regulate their internal affairs concerning their activities and the internal position of their members."* In Item 91, the Court continues that freedom of conscience is also ensured to religious communities *"as the right to freely and in accordance with their own rules profess religious beliefs and carry out religious practices"*. Item 106 further states that autonomy of religious communities *"ensures religious communities in particular the freedom of establishment, organisation, implementation, the performance of religious rites, and the enactment of other religious matters. This entails that they may organise themselves freely and decide independently on their internal structure, composition, internal competence, the functioning of their bodies, the appointment and duties of their priests and other representatives, the rights and obligations of their adherents related to the exercise of religion, and on connecting with other organisations or religious communities."* In the light of the above, the participation of women in religious ceremonies can be seen as related to the exercise of religion and the rights and obligations of the community's adherents related to the exercise of religion. It relates to the religious beliefs of this community, its internal organisation, and the internal position of its members, a matter in which the broadest autonomy is held by every religious community.

With regard to the petitioner's statements on *"whether religious ceremonies will be held in Bosnian, even though Bosnian is not equal to other languages within the EU and Bosnia and Herzegovina is not a EU member state"* we answered that the fundamental rules on the public use of Slovenian as the official language in the Republic of Slovenia are stipulated by the ZJRS and the fourth paragraph of Article 2 of this Act explicitly stipulates that this Act does not apply to the language of religious ceremonies and activities. The use of a specific language in the performance of religious rites and the enactment of other religious matters can also be regarded as an internal matter of the religious community and its associated autonomy.

The petitioner further asked *"how is it possible to construct a religious, cultural, and POLITICAL centre, which the mosque is, within a democratic political structure when the politics of this political centre clash with democratic values at a number of points"*. We also explained that the individual and collective realisation of religious freedom, the legal position of churches and other religious communities, their registration, and the rights of churches and other religious communities and their members was governed by the ZVS. According to the first paragraph of Article 26 of the ZVS, churches and other religious communities have the right to construct and maintain facilities and buildings for worship services and other religious ceremonies and assemblies and have the right to freely access them. The first paragraph of Article 29 of the ZVS stipulates that registered churches and other religious communities are predominantly financed from donations and other contributions made by natural and legal persons and from its other assets, as well as from contributions made by international religious organisations that they belong to. The measures, competent authorities, and procedures for discovering and preventing money laundering and the financing of terrorism are stipulated by the ZPPDFT-1. The tasks associated with the prevention and discovery of money laundering and the financing of terrorism are conducted by the Office for the Prevention of Money Laundering. This means that the religious community has the right to construct buildings and to be financed from contributions made by international religious organisations in consideration of the rules and regulations, including those governing the prevention of the financing of terrorism.

With regard to the questioning of the compliance of Islam with the legal system of the Republic of Slovenia, it needs to be said that the state, in accordance with the fifth paragraph of Article 2 of the ZVS, must ensure the unhindered realisation of religious freedom, and the same Act also stipulates the prohibition of church or other religious community activity in the event of a severe violation of the Constitution and other laws. The activities of a church or other religious community are prohibited by a court decision, if: its actions seriously violate the Constitution, or incite national, racial, religious or other inequality, violence or war, or inflame national, racial, religious or other hatred or impatience or persecution; if its purpose, objectives or manner of carrying out religious instruction, religious mission, religious rites or some other activity is based on violence or uses violent forms, threatens life or health, or threatens other rights and freedoms of church members or members of other religious communities or other people in a manner seriously violating human dignity; and if it is established that its exclusive activity is achieving lucrative purposes or implementing a lucrative activity. The procedure for the prohibition of activities of a church or other religious community is initiated by the State Prosecutor at the administrative court if the prosecutor assesses that reasons are presented.

2.1.2 ETHICS OF PUBLIC DISCOURSE

As is evident from our previous Annual Reports, every year the Ombudsman processes a number of cases connected with freedom of expression.

This time, so as to illustrate the content of such cases, we start with a description of a case processing a letter from the SDS Councillor Group focusing on the words of a member of the Zoran Janković List and Secretary General of the Islamic Community in the Republic of Slovenia: *"We will of course remember all who were against it and who voted and hindered the project for the construction of the mosque today."* The sender of the petition also claimed that it had never before happened *"that a representative of a group/community/religion would threaten those who think differently, saying that the community will remember them, whatever that means"*. The petitioner expressed his expectation that the Ombudsman would provide her views on these controversial words *"from the viewpoint of acceptability and appropriateness"*.

The Ombudsman is often called upon to provide her views on various statements or publically condemn certain opinions. If the Ombudsman agreed to do so, her opinions would be lost in the multitude of other opinions appearing in daily society. The criteria of response would be lost, as each petitioner believes that their case is worthy of the Ombudsman's condemnation. When assessing whether the Ombudsman should react in such situations, it needs to be considered whether the highlighted cases present the opinions and assessments of

the social and political situation which are protected in the context of the constitutionally and internationally protected right to freedom of expression. In this respect, the European Court of Human Rights has repeatedly emphasised that freedom of expression concerning political discussions must specifically be protected. This is required by pluralism, without which there is no democratic society. The same court has also reiterated that freedom of expression does not refer only to information and ideas towards which we are inclined, but also those which can hurt, shock, or upset individuals or individual groups in society. Of course, freedom of expression is protected only up to the limits of protection of other human rights and freedoms and the rights of others.

In the case at hand, as stated by the petitioner himself, the statement *"could mean whatever"*. Mainly for this reason, and due to the fact that this was a political session, it did not seem that, in this situation, standards of freedom of expression had been violated.

It needs to be added that **the Ombudsman has repeatedly expressed her conviction on the importance of self-regulating mechanisms in the area of ethics of public discourse.** In this respect, we have already recommended that deputies and other politicians adopt a code of ethics and form a tribunal to respond to such cases of speech in politics (see p 74 of last year's Annual Report). We are unaware of whether this has happened.

Expressions of intolerance due to ten unaccompanied minors in a town of several tens of thousands of people

In 2017, the Ombudsman paid several visits to Nova Gorica Student House which the Government of the Republic of Slovenia, by Decision No. 21400-6/2016/8 of 28 July 2016, selected as one of the two public student houses to *"provide appropriate accommodation"* to unaccompanied minors (hereinafter minors) *"who reside illegally in the Republic of Slovenia or hold the status of an applicant for international protection or the status of a person enjoying international protection"* for the period from 1 August 2016 to 31 July 2017, in the form of a pilot project. On these occasions, we also conducted interviews with the minors staying in the student house. During one such visit, some of them were distraught over expressions of intolerance seen across the town, e.g. *"Refugees not welcome"* and *"Fuck Islam"*. When we took a walk around the city ourselves, we came across numerous messages of this kind on public surfaces, municipal and traffic infrastructure, and public lighting on the way from the student house to the famous Borov gozdiček city park of Nova Gorica, a fact which has been correspondingly documented. The minors also told us that they had repeatedly removed such messages themselves. The Ombudsman reiterates that the Republic of Slovenia is a signatory of the Refugee Convention and the Protocol Relating to the Status of Refugees (Official Gazette of the Federal People's Republic of Yugoslavia, IT No. 7/60, Official Gazette of the Socialist Federal Republic of Yugoslavia, No. 15/67, Official Gazette of the Republic of Slovenia, No. 35/92, IT, No. 9/92 – hereinafter the Geneva Conventions). Furthermore, under Article 63 of the Constitution of the Republic of Slovenia, any incitement to violence or war, to national, racial, religious, or other discrimination and the inflaming of national, racial, religious, or other hatred and intolerance are unconstitutional. **The Ombudsman believes that due to this fact alone, it cannot be acceptable for any holder of public powers or authorisation in any territory under its jurisdiction to tolerate messages such as the ones presented in this report.** On the basis of Article 7 of the ZVarCP, we recommended that the mayor of the Municipality of Nova Gorica do everything within his power to have the documented messages in Nova Gorica removed as soon as possible (some of these messages are presented below as an example:

- **REFUGEES NOT WELCOME** – which, among others, is in clear contradiction of the commitments under the Geneva Conventions

- **ISLAMISTS NOT WELCOME,** which, in a municipality with approximately 32,000 inhabitants, and with most of the time only six or seven, but never more than ten, minors in a student house, can implicitly communicate to members of this vulnerable and small category that this environment equates their identity with Islamic militancy or fundamentalism

- **FUCK ISLAM,** a vulgar expression of religious intolerance.

The response to the Ombudsman's recommendation was praiseworthy. The Municipality of Nova Gorica immediately reacted and came to an agreement with the holder of the concession for the upkeep of public surfaces that its employees, following an additional order, would remove the stickers and messages expressing intolerance. We saw that this had been implemented the next time that we visited the city.

Are inspection services which monitor the enforcement of the right to correction lacking?

In one of the processed cases, the petitioner focused on the lack of action from the Culture and Media Inspectorate of the Republic of Slovenia (the IRSKM) with regard to his report against a newspaper company which failed to print his correction and did not reject his publication in accordance with the provisions of the ninth paragraph of Article 27 of the ZMed. In this respect, the Ombudsman addressed two enquiries to the IRSKM.

In the first enquiry, we emphasised that we were not convinced by the IRSKM's explanation as to why inspection supervision was not commenced on the basis of the petitioner's report. The ninth paragraph of Article 27 of the ZMed stipulates: *"If the editor-in-chief rejects the publication of the correction, such a decision must be justified in writing. The explanation must clearly and unambiguously say which statements in the corrections gave rise to such a rejection."* We believe the refusal to publish the correction which the petitioner received from the newspaper could be in contradiction with this provision as 1) it was not provided by the editor-in-chief, but by his deputy; 2) the decision on rejection is not clearly and unambiguously explained; 3) the explanation does not clearly and unambiguously state the reason for the rejection under Article 31 of the ZMed; and 4) the explanation does not include the statements which gave rise to this rejection. The official note attached to the notification sent to the petitioner on the decision of the Inspectorate also did not show that the inspector had provided his opinion on the circumstances; we therefore asked him to do so. The Inspectorate also stated in the official note that *"assessing whether the editor-in-chief's reasons for refusal were justified was not the responsibility of the Inspectorate, as this would mean that the Inspectorate assesses or establishes the existence or non-existence of the right to correction or reply in the case at hand, which is in the exclusive jurisdiction of the court and is established in a court proceeding as indicated by the provisions of Article 33 of the ZMed."* We were further interested in the regulation on which the Inspectorate based this statement, as the provision of Article 148a of the ZMed (A fine of EUR 2,100 to EUR 62,600 shall be imposed on a publisher if the editor-in-chief fails to publish the correction received within the specified deadline or refuse it in accordance with the provisions of this Act (Articles 27 and 31)) explicitly states that jurisdiction refers to all provisions of Articles 27 and 31.

The IRSKM responded to the Ombudsman's questions by referencing Article 4 of the ZIN, which grants inspectors independence in the performance of inspection duties. The Inspectorate explained that, in the light of this independence, an inspection procedure was managed but not started in the present case. With regard to this decision, it again referenced the explanation from the official note which was attached to the notification sent to the petitioner about the decision of the Inspectorate, but failed to provide answers to four of the Ombudsman's questions. In its answer to the Ombudsman, the Inspectorate also said: *"As explained in the official note, the Inspectorate does not decide on whether the reasons for refusal are justified, as this would, in contradiction of Article 6 of the ZMed, encroach upon the programme of the medium and its freedom of expression, and the autonomy in creating programme concepts on which media activity is based."*

In our second enquiry, we agreed with the IRSKM that inspectors were independent in their work; however, we alerted it to the fact that their independence was related to the context of their powers (Article 4 of the ZIN), while they are also bound by the law when performing their duties, concretely by the ZIN (as stipulated by Article 1 of the ZIN), by specific laws (as stipulated by the first paragraph of Article 3 of the ZIN), and by the ZUP as stipulated by the second paragraph of Article 3 of the ZIN. An important principle deriving from the ZUP (Article 6), and also applying to inspectors, is the principle of legality, which means that the administrative body decides on administrative matters according to statute, executive regulations, local community regulations, and general acts adopted by statutory authorities. A similar principle is also evident from the second paragraph of Article 120 of the Constitution: *"Administrative authorities perform their work independently within the framework and on the basis of the Constitution and the law."* We emphasised that with the provision contained in Article 148a, the legislator clearly and unambiguously authorised inspectors to implement control over the enforcement of the right to correction, and, explicitly, also in control over the implementation of all provisions of Articles 27 and 31 of the ZMed. With this provision, the legislator had already weighed the freedom under Article 39 and the right under Article 40 of the Constitution, and it is therefore unacceptable and in conflict with the principle of legality for the IRSKM to state that it does not perform individual authorisations and duties stipulated by Article 148a of the ZMed, as it believes that its actions would encroach upon the freedom of expression and autonomy of the media.

We again recommended that the IRSKM provide its views, in accordance with its powers, on the highlighted four irregularities concerning the refusal of the petitioner's correction. We were further interested in how many reports on a violation of the right to correction in the media the IRSKM had received in 2016 and 2017, how many

inspection procedures had been started on this basis, what the findings had been, and how many fines had been imposed on the basis of Article 148a of the ZMed.

The Inspectorate again failed to provide clear answers on the four alleged irregularities concerning the refusal of the petitioner's correction. In this respect, it referred to its previous answers. The IRSKM also said that in 2016 and 2017 a total of 19 reports on an alleged violation of the right to correction and reply had been received. By the end of January 2018, no inspection procedures had been commenced on the basis of these reports, as, with the exception of the report by the petitioner, no report had even been processed. The Inspectorate said that this was due to staff shortages and the massive number of reports requiring priority treatment.

The IRSKM 2015 Annual Report also shows the poor practice of the Inspectorate in this area. The Report states that in 2015 *"individual reports were processed with regard to the right to correction and reply in the media"* but no inspection procedures had been started. Page 17 of this report also shows that the IRSKM is striving to have its powers, which are granted to it under Article 148a of the ZMed, annulled, so that *"encroachments upon rights which happen through the media will be under the exclusive jurisdiction of the courts"*.

The IRSKM's performance of tasks concerning the supervision of the enforcement of the right to correction is very poor and raises doubt as to the legality of its actions in this area. Its processing of the case at hand also shows that the Inspectorate tried to close the petitioner's report as soon as possible, without even assessing whether the refusal of the publication of the correction even contained all the components which are stipulated by the ninth paragraph of Article 27 of the ZMed. The Inspectorate failed to do so even after receiving the Ombudsman's recommendation, a fact which we are especially critical of. **The fact that an inspector fails to provide their views on an alleged violation and interprets their authority so that they reduce the powers granted by the law, cannot be part of the inspector's independence under Article 4 of the ZIN** to which the Inspectorate is referring. Such actions are more the result of their autocracy or arbitrariness. (1.2-28/2017).

2.1.3 ASSEMBLY AND ASSOCIATION

In this section, we must first draw attention to p 79 of last year's report, focusing on the processing of a case concerning the organisation of a public assembly in a public area without the consent of the owner. We highlighted the fact that the Ombudsman had sent her opinion to the Municipality of Celje that the Ordinance on the Public Use of Public Areas in the Municipality of Celje was not harmonised with the third paragraph of Article 14 of the ZJZ, which stipulates that the consent of the owner or manager of the land or building is not required if an assembly is organised on public land which is characterised as a constructed public amenity, and which is intended for people to gather and for the land to be freely used; the implementation of the assembly was not in conflict with the purpose of this land and so this consequently constitutes a violation of the right to assembly and association referred to in Article 42 of the Constitution. The Municipality responded with a commitment to propose the disputed Ordinance to be amended at the next session, which would harmonise it with the provisions of the ZJZ. In this respect, we can report that the Town Council of the Municipality of Celje, at its 17th regular session held on 7 February 2017, adopted the Ordinance Amending the Ordinance on the Public Use of Public Areas, which eliminated the violation (1.3-8/2016).

Discriminatory provision of the Articles of Association of an association

In this section, we also want to report a case which examined the discriminatory provision of the Articles of Association of an association. We were contacted by a petitioner who claimed that Ljubljana Administrative Unit (AU) was violating the principle of equal opportunity by allowing the entry of amendments to the main document of the Association of Cycling Commissaires of Slovenia (the DKSS) in the Register of Associations to enforce an age limit for awarding a commissaire's licence to commissaires over the age of 70 (amendment of Article 10 of the Articles of Association of the DKSS). The petitioner corroborated his statements with the opinion of the Advocate of the Principle of Equality, which also states that the case at hand represents a *"suspicion of the violation of the right to equal treatment in accessing a specific type of work or with regard to work."*

After studying the decision by the Ljubljana AU allowing the entry of the amendment into the Register, the Ombudsman decided to recommend that the Ministry of the Interior assess whether it could be annulled by supervisory right, as it clearly violated a material rule. We believe that the provision of Article 10 of the main document of the DKSS constitutes discrimination on the basis of age and is therefore in contradiction of the legal system of the Republic of Slovenia, i.e. with the provision of the second paragraph of Article 4

of the ZVarD. We believe that the AU should have warned the DKSS of this fact during the procedure for the registration of the amendment, and set a deadline by which itshould have harmonised the main document with the provisions of protection against discrimination.

We argued that, in the disputed decision, the AU did not even mention the legal groundwork regulating the protection against discrimination (the ZVarD and Article 14 of the Constitution), even though it was alerted to it, at least by the opinion of the Advocate of the Principle of Equality; that with regard to the assessment of the compliance of the main document with the ZDru-1 and the legal system of the Republic of Slovenia, the AU obviously believes an administrative body cannot make such an assessment of the *"rules of operations of an association"*, even though insufficient legal grounds exist for such a viewpoint; and that in the disputed decision, the AU wrongly established that *"all members of the association, in consideration of their diversity (depending on their interest or ability and the established rules) have an equal opportunity of participating in the association's activities"*, as the provision of Article 10 of the main document of the DKSS unmistakably indicates that association members over the age of 70 cannot be awarded a commissaire's licence and the possibilities of their participation depend on their age, which represents direct discrimination on the basis of age (the first paragraph of Article 6 of the ZVarD). An additional argument that the rules on the age limitation for commissaires are a form of discrimination can be found in two comparable decisions which relate to the activities of referees, i.e. the decision of the Belgian Labour Court No. A.R. 62733/03 of 2 December 2005 and the decision of the International Federation of Association Football (FIFA) of 31 July 2015 to cancel the previously valid age limit of 45 years for international football referees (both cases refer to football referees; however, their tasks or physical fitness are not less demanding, on the contrary, commissaires perform their work on a motorcycle or in a car (as the co-driver) or standing at the finish line. The Ombudsman therefore believes that limitations for the work of commissaires should not be based on age but on the person's psycho-physical capacity, as this is the only objective criterion which can represent a significant or decisive vocational requirement (second paragraph of Article 13 of the ZVarD).

The MNZ did not follow our recommendation, stating that there were no reasons for annulling the AU's disputed decision by supervisory right. The Ministry further explained that they have studied the main document of the DKSS and established that commissaire's licences are not awarded by the DKSS but by the Slovenian Cycling Federation. The Ministry therefore believes that the conditions which an individual must meet in order to be awarded a commissaire's licence should be stipulated by the Slovenian Cycling Federation and not the DKSS, which could merely summarise such conditions, including them in its main document, but not stipulate them, as this would interfere with an area outside the Association's jurisdiction. It further believes that the potential discriminatory nature of the conditions for being awarded a commissaire's licence must be disputed in the document which directly stipulates these conditions (e.g. the Rules and Regulations of the Slovenian Cycling Federation, if they exist). However, in this respect, we need to **emphasise that in the case at hand, the Ombudsman highlighted the disputed actions of the AU which failed to verify the compliance of the amendment to the main document of the DKSS with protection against discrimination. We did not focus on the procedure of awarding the commissaire's licence** (with regard to this procedure, the petitioner said that the licence can only be obtained with the consent of the DKSS, which means that for him the provision of Article 10 of the main document **actually represents an obstacle** in the procedure of being awarded a commissaire's licence.

In addition to referencing the authority of the Slovenian Cycling Federation for awarding commissaire's licences, the MNZ also assessed the disputed amendment to the main document of the DKSS, in case, as stated by the Ministry, *"the stated conditions or the age limitation for commissaires are actually stipulated only by Article 10 of the main document of the Association of Cycling Commissaires"*. It assessed that the amendment was not in contradiction of the principle of equality and based its decision on the principle of independence of associations, the rules of the International Cycling Union and equality of DKSS members over the age of 70. **The Ombudsman was not convinced by these reasons,** as every association, even if it is in principle a voluntary one, must have a main document which is in line with the ZDru-1 and the legal system of the Republic of Slovenia (Article 4 of the ZDru-1). **Protection against discrimination, which encompasses the prohibition of undue unequal treatment of members of an association on the basis of their age (the second paragraph of Article 4 of the ZVarD), a prohibition relevant to this case, is an important part of the legal system of the Republic of Slovenia** which the AU, when establishing compliance of the main document of the DKSS with the legal system, should not have overlooked. In its response to the Ombudsman's recommendation, the MNZ unfortunately did not provide its viewpoints on the claimed discrimination and the extent of protection against discrimination – the Ministry's explanation of the decision does not even mention Article 14 of the Constitution and the ZvarD. Exemptions from the prohibition of direct discrimination are stipulated in Article 13 of the ZVarD; however, in its response, the Ministry also did not state any circumstances surrounding the concrete cases which would justify an exemption from the prohibition of discrimination. **Protection from discrimination**

cannot be excluded on the basis of a general provision on the independence of association or on the basis of international associations or the fact that *"members of the Association of Cycling Commissaires of Slovenia over the age of 70 have all the rights of membership except being awarded a commissaire's licence from the Slovenian Cycling Federation."*

The Ombudsman therefore firmly advocates the viewpoint that the Articles of Association of the DKSS, due to the provision of Article 10, which represents discrimination of people over the age of 70 when accessing a specific type of work, is in contravention with the provision of Article 4 of the Zdru-1. We recommended that the petitioner considered whether, despite the disputed provision of the Articles of Association of the DKSS, he could nevertheless file a request for being granted a commissaire's licence, as in this way, if he is refused or his request not examined, he would have internal possibilities of filing a complaint (Article 14 of the ZDru-1), and later also the possibility of judicial protection, including from discrimination (1.3-2/2017).

2.1.4 THE RIGHT TO VOTE

In last year's Annual Report (p 82), the Ombudsman provided the recommendation that voting legislation should be amended so that people who have been unforeseeably deprived of their liberty less than ten days prior to election day, or who have been admitted for treatment to a hospital or care in a social care institution (e.g. remand prisoners, people being treated in departments of a psychiatric hospital under special supervision, etc.) can have the effective exercise of their voting rights enabled. The Ministry of Public Administration (the MJU) responded to the recommendation in the Government's Response Report to the 22nd Regular Annual Report of the Ombudsman (No. 07002-1/2017/25 of 27 July 2017, p 69), explaining that the Government had adopted a proposal for a ZVDZ amendment (EVA 2009-3111-0027) already, in 2011, which included the required solution under which the election commission would visit a voter, who, on the day of election, was detained by the police, had been deprived of their liberty on the basis of a court decision, or was in prison, a hospital or in a social care institution, provided that the voter was admitted to these premises following the deadline by which voting by mail from Slovenia can be requested. The same solution was also proposed by the draft ZVDZ amendment from 2015 (EPA 483–VII), which was submitted for legislative procedure by National Assembly deputies; however, the legislative procedure for both proposed amendments, i.e. from 2011 (at the 29th session of 16 June 2011) and 2015 (at the 25th session of 15 December 2016) was unsuccessful. We also reported (p 83 of last year's Annual Report) on the MJU's expectations that the required amendment would be adopted in 2016; however, nothing happened after its discussion in the National Assembly. The ZVDZ-C amendment was adopted in 2017 (EPA 1806-VII); however, its primary intent was to implement two decisions of the Constitutional Court of the Republic of Slovenia (No. U-I-156/11-29 of 10 April 2014 and No. U-I-7/07-22 of 7 June 2007) and as such did not address the issue highlighted by the Ombudsman.

In its response to the Ombudsman's recommendation, the MJU concluded that if a ZVDZ amendment was prepared, they would try to eliminate the legal vacuum which had been highlighted by the Ombudsman. The Ombudsman believes that such a response by the state to a recognised deficiency cannot be deemed sufficient or acceptable. It has been more than half a decade since the first attempts were made to rectify this problem and, if matters continue, it will soon be almost a decade talking about a situation which is completely inadmissible for a legal state. The Ombudsman reiterates that this represents an encroachment upon the active right to vote without appropriate legal grounds – even though a person has not been stripped of their right to vote, they cannot vote, and the reason for this violation is systemic. **The Ombudsman still holds the same viewpoint that election legislation should provide these people with effective enforcement of their right to vote and that amendments to election legislation are urgently required. The Ombudsman therefore repeats its recommendation to the authorities to do everything in their power to ensure that these amendments are adopted as soon as possible.**

In its 2016 Annual Report, the Ombudsman wrote about the violation of petitioners' rights to participation in the management of public affairs stipulated by Article 44 of the Constitution, with regard to the convening of working bodies of the Municipal Council (case numbers 1.5-1/2016 and 1.5-3/2016). A similar case was examined in 2017. The Ombudsman was contacted by the president of the Statutory and Legal Committee of the Municipal Council of the Municipality of Kostanjevica na Krki, stating that he wished to convene a meeting and had referred to the municipality twice to assist him with the convocation, but the municipality had failed to respond.

The municipality's explanation to the Ombudsman's enquiry stated that this was a case of a Municipal Councillor bending his powers and jurisdiction and consequently unjustified use of public funds. The proposed item on

the agenda was pointless with regard to the date of the convocation of the meeting, as in accordance with the provisions of the Rules of Procedure of the Municipal Council of the Municipality of Kostanjevica na Krki, the petitioner should have submitted the budget proposals for 2017 and 2018 eleven days earlier. The municipality further added that the petitioner convened up to three meetings a day at 30 minutes' notice, and attached the record of meetings of the Municipal Council attesting to the petitioner's inactivity in the Municipal Council.

The Ombudsman reacted by repeating its viewpoints from the aforementioned cases of last year, i.e. that the first paragraph of Article 62 of these Rules of Procedure clearly stipulates that the meetings of the working body are convened by its president, and that neither these Rules of Procedure nor any statutes or legislation provide legal grounds which would grant the municipal administration or its director or the mayor the power to refuse a convocation of a meeting of a working body proposed by the said body's president.

With regard to the municipality's claims that in the present case the Municipal Councillor was abusing his authority and powers, we could only confirm that in the enforcement of any right (at least theoretically) its abuse is possible, and alerted them to individual standpoints concerning the concept of the abuse of rights as arising from case law (e.g. the decision of the Constitutional Court of the Republic of Slovenia No. U-I-85/16, Up-398/16; or the decision of the Information Commissioner No. 090-117/2012/3 of 20 June 2012). However, we believe that in the case at hand, no circumstances were (yet) evident which would indicate an abuse of rights. The highlighted lack of cooperation of the petitioner at Municipal Council meetings could indicate a stance taken by the petitioner, but could not be considered sufficient proof of using the right to participation in the management of public affairs contrary to its purpose. The same applies to convening several sessions on the same day. The proposed agenda of this Committee of the Municipal Council also did not indicate, as the municipality stated in its letter, that the purpose of the proposed agenda item was to discuss the amendments to the 2017-2018 budget proposal, but a discussion concerning the rejection of resolutions provided by the petitioner at the 12th regular session of the Municipal Council and the related interpretation of the Rules of Procedure.

In light of the above, we assessed that the actions of the Municipality of Kostanjevica na Krki constituted a violation of the petitioner's right to participation in the management of public affairs under Article 44 of the Constitution, and recommended that the municipality invites the petitioner in writing to propose a new date for the meeting of the Statutory and Legal Committee, and that in this respect, the director of municipal administration should provide the necessary assistance in accordance with the second paragraph of Article 53 of the Rules of Procedure of the Municipal Council of the Municipality of Kostanjevica na Krki. The Municipality finally considered the Ombudsman's recommendation (1.5-1/2017).

2.1.5 PERSONAL DATA PROTECTION

In the specific area of personal data protection, the Ombudsman (in accordance with the first paragraph of Article 59 of the ZVOP-1) can perform its tasks and duties only in relation to state and local authorities and holders of public powers, and in accordance with the (ZVarCP). Due to the latter, the ¸ancillary nature of the Ombudsman's interventions again prevails. Even though the processing of such cases can often end with explanations about as yet unused legal remedies which the system offers for the administrative or judicial protection of the relevant rights, every year the **Ombudsman's other cases from this area show that our office is itself an important guarantee which manages to significantly contribute to ensuring the protection of personal data in this country.** The provision that *"the Ombudsman shall report in her Annual Report to the National Assembly on the conclusions, proposals and recommendations, and on the situation in the area of personal data protection"* (Article 60), which was already included in the original text of the ZVOP-1, does not seem any less current now than it was in 2004, when the legislator explicitly included the Ombudsman (as the first one) in the chapter on cooperation and external supervision in the area of personal data protection.

With regard to what we experienced in 2017, the Ombudsman can say that two new circumstances have raised a lot of concern, i.e. the adoption of the ZNPPol-A amendment (as such), and the entry into force of Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 and the associated practices of banks and post offices.

The Ombudsman believes that, with regard to the possibility of data processing, the new police legislation is, at least in some aspects, in contravention of constitutional and convention standards on the protection of privacy.

At its session of 17 February 2017, the National Assembly of the Republic of Slovenia adopted the Act Amending the Police Tasks and Powers Act (ZNPPol-A), which was also published in the Official Gazette of the Republic of Slovenia, No. 10 of 27 February 2017. The Ombudsman also provided comments to the amendment before the end of inter-ministerial coordination (in this respect see Section 2.5.4, Police Tasks and Powers Act, on p 189 of the Annual Report of the Ombudsman for 2015) and drew attention to the comments provided by the Information Commissioner. The Ombudsman also proposed that a stand be taken with regard to these comments and that they be considered in the drafting of the Act. The Legislative and Legal Service of the National Assembly of the Republic of Slovenia was also critical of numerous aspects during the legislative procedure (in this respect see Opinion No. 210-01/16-17 of 12 January 2017 (EPA: 1567 – VII) and the Ombudsman received an appeal from the Group for the Safety of Citizens (which describes itself as *"a civil society initiative wanting to protect citizens from the consequences of repressive laws adopted by the Government"*) to challenge this Act before the Constitutional Court, and a proposal by the Information Commissioner to consider filing a request for the review of constitutionality.

We studied the regulation enforced by the ZNPPol-A in detail. We also considered the viewpoints expressed by the European Court of Human Rights that greater attention must be paid to respecting private life when handling new communication technologies which enable the storage and reproduction of personal data, and that the development of surveillance methods using the latest technologies must be simultaneous with the development of legal safeguards; and by the Constitutional Court of the Republic of Slovenia that the legislator, when dealing with personal data processing for police operations, must carefully study the weight of the measure which encroaches upon the sensitive area of privacy without the consent of the individual. We finally decided to file a request for a review of constitutionality in accordance with Article 23a of the ZUstS. We decided to challenge the ZNPPol in three main directions: with regard to the optical recognition of vehicle registration numbers, the use of unmanned aerial vehicles (UAV), and data on airline passengers.

In accordance with Article 41 of the ZNPPol-A, a new, fourth paragraph, was added after the third paragraph of Article 113 of the ZNPPol, i.e.: *"So as to establish the conditions of participation of the driver and the vehicle in road transport and to search for people and objects, police officers may use technical devices in or on police vehicles for the optical recognition of vehicle registration numbers. These technical devices must be used in a manner which does not allow mass surveillance or facial recognition."* Technical devices for optical recognition of vehicle registration numbers take a picture of the licence plate, its markings are submitted for optical recognition, and the recognised combination is compared to the data in the selected database. The system can alert a potential match of parameters (i.e. that the markings from the photographed licence plate match the ones from the chosen databases). Technology allows immediate implementation of this process. The Ombudsman believes that the highlighted fourth paragraph of Article 113 of the ZNPPol excessively encroaches upon the right under Article 38 of the Constitution, as the benefits of the pursued objective are not proportionate to the multiplicity of encroachments upon this human right which can actually occur in the implementation of surveillance allowed by this technology. This means that it enables mass surveillance to the police without indicating acceptable legitimate benefits to society. The crux of the matter is the use of this efficient technology which the police will be allowed to use in or on all police vehicles. The highlighted paragraph does stipulate that mass surveillance will not be enabled by these technical resources for optical recognition of vehicle registration numbers; however, the term 'mass surveillance' is not defined. The law therefore does not clarify what it actually prohibits, and it is in the domain of the police to assess when and how to limit itself in the use of tools for the optical recognition of vehicle registration numbers, so that its activity does not become what it itself deems to be 'mass surveillance'. Furthermore, the Ombudsman believes that the current 22nd indent of the first paragraph of Article 128 of the ZNPPol also excessively interferes with the right under Article 38 of the Constitution – the currently stipulated seven days of retaining the data collected in the manner described above (i.e. in relation to all registered vehicles while using these technical resources) does not meet the demand for proportionality with the benefits of such invasion of privacy. This is how long the date, time, and place of the creation of the data, the photo of the licence plate, and the licence plate markings will be stored for every registered vehicle (Item 32 of Article 125), regardless of whether there is a subjective connection with the pursued objective of using this technology. Generally, no such connection will exist, as the large majority of drivers and vehicles meet the conditions for participating in road traffic and will not be relevant to the search for people or objects.

Article 42 of the ZNPPol-A added a new Article, Article 114a (method of using technical resources when collecting data for the performance of police tasks) to the ZNPPol. Under this Article, technical resources which are used by the police on the basis of this or any other Act for reasons of performance of police tasks, can be *"used directly or from a vehicle, vessel, aircraft (including unmanned), building or other facilities" and the police may also use unmanned aerial vehicles for "proving criminal and minor offences and identifying offenders or perpetrators (the first paragraph of Article 113 of this Act)"*. In consideration of the possibilities offered by the

use of UAV, the Ombudsman believes that the law allows the invasion of the constitutional right to privacy, defining it in such a general manner that the constitutional demand for proportionality with benefits can no longer be met. Each use of an UAV will allow the possibility of claiming that it refers to proving a criminal or minor offence. It needs to be mentioned that the police start their investigation when there are reasons for suspecting that a criminal offence has been committed for which the perpetrator is prosecuted ex officio, and that these are conventional police powers which the police can execute directly on the basis of Article 33 of the ZNPPol without a court order. It is therefore not difficult to imagine that the use of UAV could (too) easily turn into an invasion of privacy of a person who is of operational interest to the police for whatever reason, including all others present in the area covered by this technology at the time.

On the basis of the newly added Article 112a of the ZNPPol (Article 40 of the ZNPPol-A), the police can also collect *"data on passengers on all commercial, scheduled or unscheduled flights of air carriers performing their activity from third countries or from EU member states in the territory of the Republic of Slovenia and vice versa, or with a stop in the territory of the Republic of Slovenia"*. With regard to using passenger name records (PNR), we can summarise that the police have the possibility of collecting passenger data from air carriers which receive these data from passengers when making a reservation or buying a ticket. These data should be used for 'strategic and operational assessment of risk posed by individuals involved in criminal activities'. As evident from the text of the Act, data can be collected for all passengers on all commercial, scheduled, and unscheduled flights (it needs to be highlighted that Article 58 of the ZNPPol-A stipulates that the provision of the new Article 112a, in the part which stipulates that the collection of data under Items 30 and 31 of the second paragraph of Article 123, for scheduled and unscheduled flights of air carriers performing their activity from EU member states in the territory of the Republic of Slovenia and vice versa, or with a stop in the territory of the Republic of Slovenia, shall begin to be applied one year after the entry into force of this Act, and the collection of these data from flights of air carriers performing their activity from third countries in the territory of the Republic of Slovenia and vice versa, or with a stop in the territory of the Republic of Slovenia, shall begin to be applied six months after the entry into force of this Act). The Ombudsman sees this regulation to be in contravention of the Constitution in several aspects.

The Ombudsman believes that the data which may be processed in police records of passengers from the database of a computer reservation system under Item 31 of Article 125 of the ZNPPol do not meet the conditions stipulated in Article 38 of the Constitution on the definition of which data may be collected and processed. More specifically, these are 'frequent flier data' and 'potential other special characteristics associated with the passenger's flight'. The possible meaning is too broad (and in this respect we also need to point out the similar viewpoint of the Court of Justice of the EU in its recent Opinion No. 1/15 of 26 July 2017 on the Draft Agreement between Canada and the European Union on the Transfer of Passenger Name Record Data from the European Union to Canada). The Ombudsman further believes that the inconsistencies with the Constitution derive from the catalogue of 'terrorist offences and other serious criminal offences' from the eighth paragraph of Article 112a for the purposes of whose prevention, detection, and investigation the police is allowed to collect and process data. In this respect, legislative documents explained that this was a list of severe criminal offences which represent a serious threat to public, national or international safety. However, the Ombudsman believes that this catalogue of criminal offences cannot be limited only to the collection and processing of data which are objectively comparable to the purposes of detection, investigation, and prosecution of 'terrorist offences and other serious criminal offences', as this list also includes criminal offences such as the violation of the principle of equality under Article 131 of the KZ-1, which is, in its main form, punishable by a fine or imprisonment of up to one year. With regard to data processing, we need to emphasise that the amendment to the previously valid Article 128 of the ZNPPol (Article 49 of the ZNPPol-A) has resulted in a regulation under which the data in the aforementioned police records (i.e. records under Items 30 and 31 of Article 123) are kept for *"nine months after obtaining them"* and after this deadline has expired, they are blocked but further *"kept for 21 months"* (other in reference to the first paragraph of Article 129 of the ZNPPol).

As mentioned before, these data will 'serve for the strategic and operational assessment of the risk posed by individuals involved in criminal activities' and will be automatically checked (a match will be searched for using the assessment criteria of the police or 'prescribed measures' from police databases or 'specific operational information'). Even if the processing of all this passenger information is allowed in the name of the fight against 'terrorist offences and other serious criminal offences', this can be acceptable only up to the point of these passengers entering the country. The Ombudsman believes that the situation changes drastically once these people, after being checked 'under precaution', have been allowed access to the territory of the country. Any further processing of these data would fulfil the constitutional principle of proportionality only if it were proven, with tangible facts, that such passenger data could actually contribute to the implementation of the objective of the fight against terrorist offences and other serious international criminal offences (in this respect, we again point out the recent Opinion of the Court of Justice of the EU, No. 1/15, of 26 July 2017). All

of this applies even more strongly once these people leave the country, which will mostly happen before the expiry of the deadline for storing the obtained data.

In its request for the review of constitutionality, the Ombudsman also recommended that the Constitutional Court processes this case as a priority, and that the implementation of the relevant segments of Articles 112a, 113, and 114a be stayed until the final decision, and, if it decides that the challenged regulation was not in accordance with the Constitution, the challenged Articles should be annulled.

2.1.6 THE RIGHT TO PETITION

The Ombudsman was also contacted by a petitioner who claimed that he had not received an answer to a petition which he had addressed to the Government of the Republic of Slovenia (the Government) and the Ministry of Education, Science and Sport (the MIZŠ).

Our enquiries showed that the petitioner received a substantive answer to his petition from the competent ministry almost six months after filing the petition. In order to receive an answer from the MIZŠ, the petitioner, the Ombudsman, the Government, and even the administrative inspectorate had to intervene several times. The Ombudsman found that the content of the answer which the petitioner finally received (also through our intervention), did not even partially justify its lengthy preparation. **The Ombudsman therefore found that the MIZŠ's actions represented a violation of the petitioner's right to petition.**

In the processed case, we were also critical of the Government's actions. While the Government acted in accordance with its commitment, which was presented in detail on p 39 of our 2015 Annual Report (the letter by which the resolution of the petition was turned over to the MIZŠ and the Ministry of Culture was also sent to the petitioner for information, while it also gave a deadline by which it expected the ministries to respond), it has been shown as a major deficiency that it did not monitor whether the ministries had actually fulfilled the assigned task. **The Ombudsman cannot find convincing reasons for the potential standpoint that the Government, simply by forwarding the letter to be resolved to the competent ministry and informing the petitioner of this fact, fulfils its obligation under Article 45 of the Constitution to provide its standpoint as the addressee of the petition.**

Using teleological reasoning, the Ombudsman recognises the meaning of the provision of the first paragraph of Article 7a of the Rules of Procedure of the Government of the Republic of Slovenia (hereinafter the Rules), which stipulates that the competent ministry must also provide the answer to any unauthorised proposer for information to the Secretary-General, in this case monitoring and supervising the course of action with regard to answering the proposer's petitions or letters. Any other explanation of this standard questions the rationale behind its use. The Ombudsman also believes that the Government's obligation to follow the course of answering petitions or letters by proposers originates in the principle of good administration (and the basis for this is also provided by the provision of the first paragraph of Article 7a of the Rules). (1.0-2/2017).

In another case, the Ombudsman was contacted by the President of the Association of Sinti of Slovenia (a Roma group of people of Central Europe) with regard to the *"issues of the Sinti population in the Municipality of Jesenice"*. He also submitted a letter addressed to the mayor concerning the 'Setting up of a special working body for monitoring the situation of the Roma community', which was, in terms of content, a reasoned petition for the *"setting up of a special working body for monitoring the situation of the Roma community in the context of the Municipality of Jesenice"*. In this respect, the petitioner also attached the mayor's answer entitled 'Answer to the Petition' which, in addition to expressing thanks for receiving it, also (and only) stated that it would *"be kept on record and the proposed committee established if necessary"*. The petitioner labelled the mayor's response as lacking in content, a fact with which we agreed.

Article 45 of the Constitution stipulates the right to petition as a human right. This right means that every citizen has the right to file petitions of general significance. This right becomes hollow if it is permitted that the addressees of the petition do not provide their opinion on the content of the received proposal within a reasonable time and in the context of their powers, and if their answer fails to include the reasons for their decision. The right to petition is a human right under the constitutional catalogue of human rights and fundamental freedoms. For years now, the established constitutional case law has stipulated that these rights and freedoms must be met not only formally and theoretically, but that their actual effective enforcement must be ensured. The right to information concerning the reasons for the decision on a petition is also associated with the principle of good administration, and its foundation lies in the principle of the rule of law. Under this

principle, the decisions of public authorities must state the reasons justifying such a decision, as this prevents arbitrary decisions by the authorities and ensures equal treatment of all petitioners. In a democratic system, where the people must have a decisive effect on the implementation of powers, the public authority expressing its opinion on the content of a petition is of special importance.

The Ombudsman therefore decided to send the mayor of the Municipality of Jesenice its critique of the response to the aforementioned petition for the setting up of a special working body for monitoring the position of the Roma community. This response was insufficient, as it did not provide any substantive viewpoints on the received petition. It only expressed that the proposed committee would be set up *"if necessary"*, which allows us to infer that it is obviously believed that it is currently not necessary to establish such a committee. However, the reasons for such a viewpoint have not been provided. In consideration of the explanation of the petition which the municipality received, we believe that the petitioner's right to petition under Article 45 of the Constitution had been violated in this case. This is of even greater importance if we consider the fact that, according to the Office of the Government of the Republic of Slovenia for National Minorities, the greatest number of the Sinti population is located exactly in Jesenice, and consequently the need for processing their petitions, regardless of their format, is the greatest in this municipality.

The Ombudsman also recommended to the mayor that the office sends the petitioner a new answer to his petition which will include all the reasons for the decision on the petition. So as to avoid any misunderstanding we, also referring to Article 41 of the ZVarCP, specifically emphasised that our criticism, opinion, and recommendation under Article 7 of the ZVarCP do not relate to the question of whether such a committee should be established, but only to the aspect of informing the sender of the reasons for the decision on this petition. The mayor's response was positive and the petitioner received a substantive explanation concerning his petition. (10.1-9/2017)

2.2 DISCRIMINATION AND INTOLERANCE

	Cases processed			Resolved and well-founded		
Area of work	2016	2017	Index 17/16	No. of resolved cases	No. of well-founded cases	Proportion of well-founded cases among those resolved (in %)
2. Discrimination	**65**	**68**	**104.6**	**56**	**10**	**17.9**
2.1 National and ethnic minorities	29	27	93.1	24	6	**25,0**
2.2 Equal opportunities by gender	2	3	150.0	3	1	**33,3**
2.3 Equal opportunities in employment	2	4	200.0	4	0	**-**
2.4 Equal opportunities relating to sexual orientation	3	7	233.3	5	0	**-**
2.5 Equal opportunities relating to physical or mental disability (invalidity)	14	11	78.6	9	2	**22.2**
2.6 Other	15	16	106.7	11	1	**9.1**

2.2.1 NATIONAL AND ETHNIC MINORITIES

On the so-called *"Roma issues"*

The Gordian knot of the so-called Roma issues remains uncut. Of course it would be unreasonable to expect that all the necessary solutions would be found overnight. It looks as if the authorities still consider the status quo as a more or less necessary evil, i.e. as something that is everlasting and simply inevitable. The issue at the centre of it all has really arrived at boiling point, and is of course strongly spiced up with complex legal and factual issues, political interests and calculations, social consequences of long-term isolation and marginalisation, informal hierarchy and mutual relationships within the Roma communities themselves, and so on. However, the decision of the European Court of Human Rights in the case of Hudorovič and Novak and others v. Slovenia (No. 24816/14 and 25140/14), in which the complainants, from the Roma settlement of Goriča vas in Ribnica and Dobruška vas in the municipality of Škocjan, problematised the conditions relating to drinking water and sanitation, remains an important unknown in the equation. The decision of the ECtHR will clearly have a significant impact on the resolution of the so-called *"Roma issues"* in the state – not only in the aforementioned settlements, but indirectly also elsewhere. At the same time, we should also not forget that this judgement cannot miraculously cure this cancerous social issue. Even in the event of the possible conviction of the state for a violation of the convention, the ECtHR will not introduce any concrete measures to resolve the situation, such as, for example, the ones shown below in this section. In order to introduce them, a genuine interest and sufficient determination of the authorities at the national and local level is inevitably required. It seems there was a lack thereof on (too) many occasions so far. We believe that this was also shown in the prepared proposal for the Roma Community in the Republic of Slovenia Act (ZRomS-1) towards the end of 2017, which is reported in more detail below.

As we wrote last year (p 105), **the Ombudsman is of the opinion that the legal and communal disorder of Roma settlements endangers the fulfilment of the human rights and special rights of the Roma community on the one hand, and the fulfilment of the human rights and fundamental freedoms of citizens living in the vicinity of illegal Roma settlements on the other hand – so that both one and the other can rightly feel affected in their dignity, personal rights, property rights, equality before the law, and, ultimately, in their confidence in the rule of law.**

At the same time, the Ombudsman believes that in this undoubtedly specific area we should, in principle and at the bottom line, consider the fact that in practice, other authorities in the field of human rights protection also recognise the members of the Roma community as a particularly vulnerable social group (for example, the same was stated mutatis mutandis by the Constitutional Court of the Republic of Slovenia in paragraph 19 of the recent decision No. U-I-64/14-20 of 12 October 2017, or even before that, for example, by the Grand Chamber of the European Court of Human Rights in paragraph 147 of its judgement in Oršuš and Others v. Croatia (Appeal No. 15766/03) of 16 March 2010, to list just two). This should also be appropriately reflected in the relevant regulations and in the decisions of the competent authorities in specific cases. There are of course also those who believe that their *"Roma"* status is the decisive factor for everything bad that they experience in their lives. For example, one of the petitioners in this reporting year tried to convince us in the following way: *"Let me tell you that I am always guilty because I am Roma and for this reason I spend a lot of time in prison."* Obviously, with such a generalised reference to ethnicity it was not realistic to expect that the petition on the violation of rights would be successful, which also follows from national constitutional practice (e.g. point 14 of the Decision No. Up-85/2000 of 29 March 2000: *"Merely by claiming that the complainant was placed in custody because of his Roma origin and on the basis of a discriminatory procedure that did not guarantee the same protection of rights, the complainant does not prove violation of Articles 14 and 22 of the Constitution."*). To sum up, **the provision of special protection to the Roma community and its members should not be equated with protection against any responsibility for unlawful conduct.** This aspect has also been highlighted on different occasions – for example, during a working visit with the Secretary General of the Government, her deputy and secretary in the Cabinet on 2 October 2017, the Ombudsman drew attention to the urgency of the presence of the police in Roma settlements, where various violations of law and order and other misdemeanours and offences still take place (which we had already noted in the press release at that time). Next to the aforementioned aspect with regard to the ECtHR, we should mention that the Council of Europe's Commissioner for Human Rights arrived in Slovenia in March and also visited Dobruška vas. On 11 July 2017, he issued a report on his visit (CommDH (2017) 21), in which one of the sections is dedicated specifically to the human rights of the Roma, and in some parts he also referred to the Ombudsman's position. In September, the European Commission against Racism and Intolerance (ECRI) published its conclusions on the implementation of its recommendations in their report on Slovenia (CRI (2017) 39:

Conclusions on the implementation of the recommendations with respect to Slovenia, subject to interim follow-up). Their conclusion on the Roma issues was that, despite some efforts made by the authorities (the preparation of a new National Programme of Measures for Roma, a public call for projects relating to communal infrastructure in Roma settlements, €30,000 earmarked for ensuring access to drinking water at some locations), they are concerned that access to drinking water in practice remains a problem for many Roma – and therefore they consider that their recommendation from the fourth monitoring cycle (CRI report (2014) 39), i.e. that the Slovenian authorities should take immediate action to ensure that all Roma have practical access to a safe water supply in or in the immediate vicinity of their settlements where this is still a problem remains unimplemented (the Ombudsman also referred to this recommendation when describing the specific case on p 68 of the Annual Report for 2014 and on p 61 of the Annual Report for 2015). This decision of the commission also coincides with the Ombudsman's repeated criticism and recommendations (see pp 105-106 and 110 of the Ombudsman's Annual Report for 2016 and further references therein). The Congress of Local and Regional Authorities of the Council of Europe, which also assesses the application of the European Charter of Local Self-Government (in which Slovenia has a national delegation at both levels) stated in point 7 of its Resolution (333) (2011), adopted on 19 October 2011, that the local authorities have a *"responsibility to protect and promote the human rights of their citizens"* and consequentially also *"a duty to take effective action at the local level and* ***must show leadership and vision, as well as winning support from all sections of the community for addressing Roma issues*** *in order to remedy the situation of the social exclusion of Roma"* - and further recognised that (point 8) ***"as the public authorities closest to citizens, local and regional elected officials are best placed for devising policies to facilitate Roma access to rights, and for combating 'anti-Gypsyism', prejudice, discrimination and racist violence"*** (compare, e.g. with the example on pp 66-67 of the Ombudsman's Annual Report for 2014 on the decision of the Municipal Council on immigration of the Roma; or with p 47 of the Ombudsman's Annual Report for 2013 on the so-called village guards, who are supposedly also willing to use violence in the forced eviction of the inhabitants of the Roma settlement; etc.).

Of course, we should also not forget the state authorities – last year, the Ombudsman wrote (p 106) that *"the state is not effective enough in protecting and exercising the human rights and fundamental freedoms of the residents of legally unregulated Roma settlements and, as a result, in the surrounding area of these settlements."* Similarly, in the 2014 Annual Report, we pointed out (on p 64) **that the burden of solving Roma settlement issues should not (only) be placed on the municipalities** – and also that *"it is clear that political survival with such priorities in the local environment is difficult and thus* ***the state should help municipalities by providing financial assistance, and also by making necessary decisions at times when local politicians cannot or do not want to for various reasons".*** We already reported there that *"at the local level, the readiness to make long-term arrangements to improve conditions depends on the (political) will of mayors and majorities in municipal councils"* (see, for example, p 107 of the Annual Report for 2016 – and for a specific case, p 47 of the Annual Report for 2013, where we wrote that the municipality does not intend to adopt an action plan for the spatial arrangement of the Roma settlement, because they supposedly do not have the personnel and financial resources for such a plan), while at the same time *"the readiness to speed up the resolution of Roma issues is also lacking at the State level"* (see e.g. p 62 of the Annual Report for 2015). Improvements are thus barely recognisable or do not exist at all (for example, on p 107 of the last year's report, we wrote that *"The Ombudsman has been monitoring the Municipality's long-term plans for regulating this settlement since 2002; however, we are critical of the fact that, in all these years, there has been no visible progress".*). Sometimes **we even note a setback instead of the urgently required progress** (on p 110 of the same report, for example, we also stated that *"In the Ombudsman's opinion, providing drinking water through a water tank is a step backwards with regard to the opinion of the Government of the Republic of Slovenia dating back to 2011, stating that, the observance of the right to drinking water arising from Slovenian and international legislation constitutes the provision of public access or access through a public connection"* – at the time, the Government of the Republic of Slovenia also committed to finding a solution for installing a water supply connection itself, if the local community in the Roma settlement failed to provide access to drinking water. Anyway, this year we can provide another exemplary description of the situation.

Example:

Illustration of the (pretty much) hopeless situation by way of example – poor living conditions in the Roma settlement of Krušče

The Ombudsman was contacted by members of the Roma community from the Roma settlements of Krušče and Gazice in the municipality of Brežice. The petitioners stated that their settlement had been placed in this location by the state at the beginning of the 1960s. They also claimed that the land was then owned by the state, but was later returned to beneficiaries of denationalisation. Since then, nobody has regulated their position, so they live in poor living conditions without access to electricity, which means they are unable to machine wash their clothes, have problems with heating, and do not have refrigerators or the lighting that is essential to their school-age children for studying and doing homework. They also stated that they cannot obtain building permits because the land is not theirs.

The Ombudsman has been monitoring the problems of legally and communally unregulated Roma settlements for many years – in the case of the procedures for regulating the Roma settlements of Gazice and Krušče, since 2011. Since then, the Ombudsman has addressed a number of queries and suggestions to **the municipality. The documents we were acquainted with show that the municipality (and its legal predecessor) has been trying since at least 1992 (i.e. roughly for 25 years – a quarter of a century!) to regulate this Roma settlement, without success.** The Ombudsman has addressed this issue already in the Special Report for 2012 (p 24), where we pointed out that the **unregulated legal status of the Roma settlement of Krušje is not only a violation of the rights of the members of the Roma community, but also an interference with the property rights of the co-owners of the land on which the Roma settlement is located.** We also warned the municipality about the human rights violations in 2013. In 2015, we once again reminded the mayor about the seriousness of the human rights violations due to the unregulated legal status of the Roma settlement of Krušje, especially from the point of view of the extremely lengthy problem-solving process. Furthermore, we proposed two possible solutions for the elimination of the identified violations of human rights: according to one, the municipality would relocate the inhabitants of the Roma settlement of Krušče to another suitable location, where they could set up their residences; in the other, the municipality would need to regulate the relationships with the (co-)owners of the land on which the Roma settlement stands as soon as possible. The municipality replied to our letter (with letter no. 95-1/2011) in November 2015 and explained that since their last reply to the Ombudsman in October 2013, the municipality had adopted a *"Municipal Spatial Plan defining the Roma settlement of Krušče as construction land, which will enable the purchase of the land."* In their reply, the municipality explained that it would be necessary to define the extent of the land purchase and to initiate the succession of the three deceased co-owners.

On the basis of the received petition, in 2017 we asked the Municipality of Brežice to inform us of important developments since November 2015 towards the regulation of the legal status of the Roma settlement of Krušče, and to provide a substantive reply to the Ombudsman's proposal to move the inhabitants of the Roma settlement of Krušče to another suitable location, since it is evident from the long-standing efforts so far that it is not possible to legalise and provide utilities to the current location of the settlement. This time, the municipality replied that they insisted on managing the existing settlement, as they did not have a suitable location available to relocate the settlement. In their opinion, the responsibility for regulating the Roma settlement is now entirely the responsibility of the heirs, who should submit *"applications for additional decisions on inheritance"* to the court, but the municipality also realises that there are no prospects for the heirs to initiate such proceedings, *"because they assume that the costs will be greater than the value of the estate"*. In addition, the municipality points out that there is no legal basis for the purchase of land, and they also do not have the funds to carry out the purchase.

The described response of the municipality is not unreasonable. However, **in terms of the rights of the members of the Roma community, as well as from the point of view of the property rights of the co-owners of the land on which the Roma settlement stands,** the Ombudsman is still extremely concerned about the position from which it follows that the regulation of the settlement is obviously drifting away into an undefined future that may be decades from now, since it is completely left to the will of individual heirs. According to the municipality, the heirs have already said that they do not intend to initiate the necessary proceedings. The municipality also states that it does not have the legal basis for the purchase nor the required funds. On the one hand, it is understandable that the municipality cannot interfere with the relationship between heirs, but on the other hand, the Ombudsman believes that this does not relieve the municipality of its responsibility to ensure the full implementation of the special rights of the Roma community in the area of spatial planning from Article 3 of the ZRomS-1.

Since the Brežice municipality's reply stated that the ascertained irregularities will not be remedied within a reasonable time, we turned to the **Office of the Government of the Republic of Slovenia for National Minorities** in the processing of the petition, and pointed out the problem of legal and communal management of the Roma settlement at Krušče. However, this body, which is inter alia in charge of dealing with issues related to the exercise of the special rights of the Roma community, implied in its response that the municipality is addressing the regulation of the settlement of Krušče in the right way, but the legal system does not provide effective solutions to speed up the long-lasting procedures of legal and communal management of the settlement, which the Office regrets.

The Ombudsman's position, which has been repeated several times (last on p 105 of the Annual Report of the Ombudsman for 2016), is that in cases where the human rights of the members of the Roma community are being violated, and it is clear from the conduct of the municipality that it does not intend to eliminate the violations, the implementation of human rights must be provided for by the government. This duty also arises from Article 5 of the Constitution of the Republic of Slovenia: *"The state shall protect human rights and fundamental freedoms."* In the regulation of Roma settlements' spatial planning issues, this possibility (and duty) is imposed on the Government in the third paragraph of Article 5 of the ZRomS-1. In further addressing the petition, we **therefore turned to the Government of the Republic of Slovenia** and pointed out the present case of the long-lasting urban planning of the Roma settlement of Krušče, where further procedures depend on the will of the heirs of the land on which the Roma settlement stands, and the related wider issues of Roma settlements which cannot be legally and communally managed on the existing location for various reasons (for example, because they stand on flood areas, under power lines, or because the owners of the land on which they are located do not want to sell). Page 7 of the National Programme of Measures for the Roma for the 2010-2015 period stated that about one tenth of *"approximately 130"* Roma settlements would ideally need to be relocated. In addressing petitions, the Ombudsman has often dealt with the issues of settlements for which municipalities have argued that their legalisation is not possible (for example, on p 65 of the 2014 Annual Report of the Ombudsman, we reported on the Ponova vas case in the municipality of Grosuplje, and on p 67 of the same report, on the case of Goriča vas in the Municipality of Ribnica).

However, it was evident from the government's reply that on the basis of practical experience in regulating Roma settlements, the government is against the relocation of Roma settlements to other locations, except in cases where the existing location presents a risk of pollution of the drinking water source, flood risk, risk of landslides, etc. With regard to the presented cases of Roma settlements, the government only commented on the management of the Roma settlement of Krušče. In this regard, it stated that by adopting a municipal spatial plan and by classification of construction land, the municipality of Brežice established the basic conditions for the further management of the settlement, i.e. the preparation of a detailed municipal spatial plan, dividing up the land, a property development plan, and so on. In the context of these efforts, it is also necessary to conduct

the procedures for the purchase of land, taking into account the succession procedures. The interested Roma people should be actively involved in these procedures and should co-finance the purchase and development of the land on which they reside.With regard to the problem of successions of deceased people who were (co-) owners of the land on which the Roma settlement of Krušče is placed, the government explained that in private law issues such as the acquisition and other rights of immoveable property, the conduct and thus the success of resolving these issues mostly depends on the parties involved, while the state and the local communities can only intervene in exceptional, legally defined circumstances (expropriation, forced easements), and the acquisition and disposal of real estate by the municipality is also controlled by the regulations that apply to the functioning of local self-government. It is apparent from the above that the Government also estimates that the further course of the regulation of the Roma settlement of Krušče depends on *"the will of the participants"*, i.e. the heirs.

The Ombudsman reiterates once again that while we understand that the municipality cannot interfere in the relationship between heirs, this does not exempt it from its responsibility to ensure the full exercise of the right to dignity and special rights of the Roma community in the area of spatial planning from Article 3 of the ZRomS-1, as these rights are being violated due to the absence of legal and communal management of the Roma settlement of Krušče. The established violations are particularly serious because of the extremely lengthy and unsuccessful remedying procedures so far and the associated poor prospects for the future. **The exercise of human rights cannot and must not be left to the will of individual heirs. When legal and communal management of the existing settlement is not possible, it is necessary to find other solutions.** Since the municipality has long been ineffective in regulating the Roma settlement of Krušče, resulting in serious violations of the human rights of its inhabitants and of the special rights of the Roma community members, the Ombudsman believes that the Government of the Republic of Slovenia is also responsible for remedying the established violations as soon as possible.

Unfortunately, **the mediation of the Ombudsman at the Municipality of Brežice, the Government of the Republic of Slovenia, and its Office for National Minorities with regard to the issue of the Roma settlement of Krušče has not been successful.** As we have already written on p 108 of last year's report, we can state again that many years of effort invested by the Ombudsman and appeals to the competent authorities to observe the human rights of the members of the Roma community in illegal Roma settlements have not yet been sufficiently fulfilled. **On the basis of this experience, it seems that positive steps towards the effective assurance of the exercise of human rights in this context are to be expected only after the possible conviction of the state before the ECtHR** (10.1-1/2017).

Unfortunately, the authorities sometimes do not take appropriate action even when it comes to further vulnerable people (last year, for example, on pp 108-109, we reported on a case where, in addition to belonging to the Roma community, there was at least one more personal circumstance to be considered for each affected person – old age, serious illness, child – but our proposal to allow them at least to use the sanitary block was rejected). In 2017, we also addressed a case with these kinds of affected people. The conclusion was more encouraging here, as is evident from the example below. **With regard to enhanced vulnerability, we also want to emphasise that, in our experience, the elderly should be specifically mentioned** – not only because of the reduction in their psycho-physical abilities as such and the related health risks, but also **because they may be exploited by others.** Let us recall the case of an older Roma woman (on whom we reported last year, on pp 108-19), who was illiterate and who showed us a pile of unpaid bills addressed to her, some of them for internet services (even though it was obvious that she could not use the internet herself).

Example:

Difficult living situation of Roma family

A member of the Roma community sent a letter to the Ombudsman describing her family's difficult living conditions. She stated that **she lived with her husband and four children, the youngest of whom was only two months old, in a camping trailer without water or electricity;** that her two school-age **children are often absent from school because she cannot guarantee their appropriate hygiene;** that she has asthma and **she uses a cooker in the household whose smoke causes serious health problems to her** as well as to her son with bronchitis, and that the baby's health is also poor due to their living conditions. The petitioner also wrote that the social work centre had been informed about their situation but had not provided sufficient assistance.

The Ombudsman sent an inquiry to the Social Work Centre of Metlika, in which we asked whether the petitioner had really asked them for help, and what kind of help they had already offered to the petitioner and her family. We were particularly interested in **how the social work centre addressed the issue of family's access to drinking water and electricity.** Furthermore, we wanted to know **how the social work centre dealt with the protection of the rights, interests and benefits of the children of the said family,** in particular with the fundamental rights, such as the right to dignity (Article 34 of the Constitution) and the related right to drinking water, the right to social security (Article 50 of the Constitution), children's rights (Article 56 of the Constitution), and the right to education (Article 57 of the Constitution). At the end, we also asked the social work centre what kind of references and explanations had it already provided to the family in order to enable them to manage their living situation, where it saw the possibilities for their improvement, and whether it had already issued an opinion on the basis of the second paragraph of Article 29 of the Rules on the Rental of Non-profit Apartments on the exceptional rental of non-profit apartments to protect the interests of children.

The social work centre replied that they had been monitoring the petitioner and her family for several years, while cooperating with the neighbouring social work centre from the place where the petitioner had lived for a long time and which was still her declared place of residence. It informed us that the family was currently living in the territory under its responsibility, namely in a Roma settlement in a camping trailer, which was placed on a plot owned by the municipality without permission, which was the reason why they could not get access to water and electricity and also why they could not declare it as a place of residence. According to the social work centre, the petitioner could get water and electricity with the help of her neighbours. Since they did not have a place of residence in the municipality where they actually live, they did not meet the conditions for non-profit apartment rental, and according to the social work centre, the municipality was also lacking in such apartments. On safeguarding the children's best interests, the social work centre explained that it regularly reminded the petitioner of her parental duties. The social work centre also assessed that the petitioner had the possibility to provide for the hygiene of her children in the primary school, and that she satisfactorily covered the most basic care of her children. It also stated that the action of the social work centre was aimed at promoting the family's own activity, as they were young and without any particular health issues.

On the basis of the response received, the Ombudsman sent an opinion with a proposal to the social work centre. We initially highlighted our concerns about some of the social work centre's positions, which related primarily to the situation and rights of the children in the affected family. **We could not understand how it was possible for the social work centre to estimate that the mother's care for the children was satisfactory when they did not have access to drinking water and electricity (as we reported on p 108 of last year's report, there were also cases where the government took no stance on the violation of the rights of children pointed out therein).**

Access to drinking water is a human right under the national legal system (Article 34 of the Constitution) and under the international legal system (e.g. United Nations General Assembly Resolution A / 64/292). **We considered that the social work centre's suggestion that the family could get access to drinking water through their neighbours was unfounded** – the mere findings of the social work centre indicated that the family was in conflict with their neighbours, and the Ombudsman had been informed several times when addressing similar issues that the **provision of access to basic goods in the Roma community often results in mutual blackmail.** The possibility of providing hygiene on the primary school premises indicated by the social work centre is also not an appropriate way of ensuring access to drinking water, as in this way, the family can only cover one part of its need to access drinking water, and even this is limited to when the school is open. It is also questionable because of the distance between the family's residence and the school, since access to drinking water must be guaranteed within reasonable distance of the household, according to the standpoint of the United Nations Committee on Economic, Social and Cultural Rights, set out in General Comment No. 15 from 2002.

We also pointed out that **according to the Ombudsman, access to electricity is an essential condition for ensuring decent living conditions of individuals and their families, since it is one of the essential utilities, is sometimes indispensable for preventing the endangerment of the life and health of individuals, and also has a special importance in providing the basic conditions for schooling and acquiring education.**

Furthermore, we expressed the opinion that **cases where the lack of access to drinking water or electricity affects the children, who are not to blame for their life situation, should be addressed with particular sensitivity.** Due to the violation of their rights, these children are confronted with serious threats to their health and the health of the people they come into contact with (e.g. at school) and with a serious obstacle to growing up and education, which will permanently mark their personality and future lives. It is very likely that children who live in such unworthy conditions, without hope for a better future, will repeat the life story of their

parents. According to the Ombudsman, the lack of access to drinking water and electricity for these children also constitutes a violation of Article 56 of the Constitution, under which children enjoy special protection and care, and a violation of Article 24 (2) (e) of the Convention on the Rights of the Child, according to which a State Party must ensure support in hygiene to the children.

We additionally commented on the social work centre's claims that the family has no health problems, as they were not in line with the claim of the petitioner that she has asthma, her son has bronchitis and her baby is also in poor health due to their living conditions.

The Ombudsman took the view that in this case, the rights of the petitioner, her partner, and especially their four children are being violated. According to the Ombudsman, the lives of six family members, half of whom are experiencing health problems, in a non-isolated camp trailer measuring 6x2 metres, without access to water and electricity, certainly demonstrates social and health threats to children, and we believe that the social work centre should adopt measures in cooperation with the municipality in order to improve the situation of the family. On the basis of these findings, the Ombudsman suggested to the social work centre (1) to immediately ensure access to drinking water to the family, (2) to arrange for the family to apply for permanent residence in accordance with the provisions of the Residence Registration Act (ZPPreb-1), and (3) to issue an opinion on exceptional rental of a non-profit apartment to protect the interests of the children in the shortest possible time, according to the second paragraph of Article 29 of the Rules.

The social work centre followed the Ombudsman's proposals and responded to us within the set deadline that it had already agreed with the family on the temporary provision of drinking water, and stated that it had cooperated with the municipality on the registration of permanent residence of the affected family. The social work centre also issued an opinion on the exceptional rental of a non-profit apartment to protect the interests of the children and proposed to the municipality to lend a suitable non-profit apartment to the family within the limits of its resources (10.1-19 / 2017).

We have already written about some detected positive developments in the past, for example on p 68 of the Annual Report for 2014 and on p 107 of the Annual Report for 2016 (the municipality's efforts in this particular case are also evident from the content of p 63 of the Annual Report for 2015). In this context, the Ombudsman can, in principle, support the statements from the first interim report of the Interdepartmental Working Group for Resolving Spatial Planning Issues of Roma Settlements, which was established by the Government of the Republic of Slovenia by Decision No. 01201-5 / 2017/6 on 11 May 2017, and which should operate at the latest until 31 May 2018 (i.e. a little more than one year), **that there are no clear criteria and definitions of what constitutes good practice in the regulation of spatial planning issues of Roma settlements** (therefore they decided to use the term *"practices of planning of Roma settlements"*). According to the commission, the term *"Roma settlement"* describes *"a settlement unit with a predominantly Roma population"*, and the minimum for addressing a *"Roma settlement"* is a compact settlement with at least 3 houses, which is spatially separated from others. However, individual locations or houses in settlements where the Roma people are mixed with non-Roma or the civil population are not considered as a *"Roma settlement"*.

The Ombudsman also gets a picture of the situation in the Roma settlements during field trips

Following an initiative of a Roma councillor from the municipality of Novo mesto, we attended a joint meeting with non-formal representatives of some Roma settlements and two municipal representatives in the first month of 2017. The participants mainly **questioned the operation of the social work centre of Novo mesto – they said it is supposed to cover approximately 1500 to 1600 Roma from three municipalities (Novo mesto, Škocjan and Šentjernej), but only two employees were assigned to that.** As a consequence, it does not work enough with the Roma and their families, and no one monitors the actual use of social assistance benefits. They claimed that the social work centre also estimated itself to be understaffed in this area. As we heard at the time, the **position of the Ministry of Labour, Family and Social Affairs is that the work of the social work centre will be intensified,** but it is still to be decided in what way – either by an information system or by additional employment.

With regard to electricity, we heard different views at that time, including that it could be provided by *"some improvisation"* within 5 kW installations for hen houses and rabbit hutches, which are permitted by the new regulations (one of the Roma women present commented that *"it is unacceptable that domestic animals can get electricity while the Roma cannot"*). The most often asserted solution was the construction of

a transformer station in Brezje, from where both Brezje and Žabjak could be supplied. Its installation was planned that same year. We were also told that the municipality was trying to provide electricity from the military barracks in the short-term – they would lay one kilometre of cable and add five distribution cables. At a meeting with the Minister of Labour, Family, Social Affairs and Equal Opportunities on 21 October 2016 **everything had already been agreed in this respect, but when the project was ready to be implemented, the Ministry of Defence apparently informed them that there was no appropriate legal basis.** This was followed by a meeting with a representative of the Prime Minister's Cabinet in order to draft a corresponding change in the legal bases. Special regulation in this area should consider the following: the provisional nature of such supply; the fact that the municipal spatial plan is under preparation; that the current state of regulation poses a threat to human and animal life; the protection of children's benefits under the Convention on the Rights of the Child; and the protection of rights under other international conventions. They contacted the Ministry of Infrastructure with this justification and the request for the drafting of a regulation, but had not received a reply up to then (let us recall in a similar context that we reported on pp 48-49 of the Annual Report for 2013 that we proposed to the ministry to *"study the possibilities for adjusting the conditions for the temporary connection of the illegal buildings in Roma settlements to the electricity grid. With regard to the high costs of the project documentation, we proposed that the ministry study the possibility of following the example of a public tender for the co-financing of basic communal infrastructure in Roma settlements, and draft a public tender to co-finance the documentation in the procedures for obtaining building permits for facilities in Roma settlements. The ministry replied that it planned to renew all secondary legislation based on the Energy Act. In the framework of this renovation, the Ministry would also consider the possibilities of more flexible connection to the electricity network, with temporary connections or construction connections."*). Allegedly it was also said that the Ministry of Finance had already provided EUR 60,000 for this project, that the electricity distributor was also interested in its implementation, and that the Ministry of Labour, Family and Social Affairs would also prepare a computer application for the automatic charge of social transfers as soon as the construction work within the project started. To the best of our knowledge, and in spite of all this, the objective set in 2017 was not actually achieved.

We should point out that at this meeting, it was emphasised that **it is impossible to expect the successful education of Roma children if they had to study at home and do homework without supplying their homes with electricity** (whereby giving an example of the Roma settlement of Trata in Kočevje and the settlements of Grosuplje, which have electricity despite their illegality). The Ombudsman has been pointing out similar views for quite some time (e.g. on p 108 of the last year's Annual Report). The Roma people present also claimed that the **primary schools have low expectations for Roma – as Roma children can progress even to the seventh grade without learning the multiplication table** (one of the attendees also shared his personal experience and said the Roma children were told they could draw during the multiplication table class). These claims were quite similar to those of the President of the Roma Union of Dolenjska, who also warned us last year that *"the vast majority of Roma children in the upper grades of primary school do not know the alphabet or the multiplication table, which indicates that the teachers do not teach the children the required content, but let them progress them into higher grades without the required knowledge just to get rid of them as soon as possible"* (p 106 of our annual report).

It was also obvious on this occasion that there were many quarrels present among the Roma representatives themselves – for example, we heard sharp criticism at the expense of (non) transparency in the use of funds of the aforementioned Roma Union of Dolenjska, stating that in spite of the allocated EUR 70,000, its results were anything but satisfactory. We have already written about a similar situation regarding the Council of Roma Community of the Republic of Slovenia and the connected unfortunate solution provided by Article 10 of the ZRomS-1, which the Ombudsman already pointed out in 2007 (see e.g. pp 15 and 45 of the Annual Report for 2013).

We also visited four Roma settlements on our own initiative (with the cooperation of a Roma councillor) in the second half of September, all of which were located in the Municipality of Novo mesto (see e.g. p 44 of the Annual Report for 2013 or pp 60-61 and 64 of the Annual Report for 2015). We had already visited the first two settlements in the previous year (see p 107 of last year's Annual Report), while it was our first visit to the other two. This fieldwork was carried out despite the heavy rain. Below we present some selected aspects of what we saw and heard to illustrate the situation.

In the settlement of **Žabjak,** we visited a family living in a nicely arranged house that was built without a building permit on land owned by the Ministry of Defence. A Roma woman living in a neighbouring hut said she was having a hard time without electricity – she did not have warm water or lighting at night and she also had to cope without a refrigerator in the summer. She thought that it was high time for the municipality to provide at least a temporary connection to electricity. The Roma councillor said that people in such situations

often find a solution by getting a generator (at the aforementioned meeting, it was said that this was also a cause of conflict, because the generators were noisy and *"woke up the entire settlement"* at night), or they get illegally connected to cables, which are occasionally cut off by others, supposedly out of envy or various kinds of resentment (this kind of *"cable pulling"* has already resulted in fatal consequences – some time ago for one of the dogs, and before this even for one of the children). The Ombudsman had already pointed out on p 48 of the Annual Report for 2013 that getting electricity by means of illegal extensions from neighbouring houses is questionable both from the security point of view and from the point of view of the possibility of mutual extortion of the inhabitants of the settlement posing a threat to human rights (arbitrarily switching off the electricity can have difficult consequences in providing decent living conditions of the family; for example, the health and conditions for the education of children can be endangered). Similarly, as reported on p 110 of last year's Annual Report, the Roma councillor and the president of the Roma Union of Slovenia have already agreed that by settling the costs for the supply of electricity from social assistance benefits, some bad practices would be prevented, *"e.g. when Roma people obtain electrical power illegally through their neighbours, who, in turn, charge them an unreasonably high amount for this."* The provision of electricity supply in this settlement and the one listed below is described under a separate heading.

Example:

Provision of electricity in the Roma settlement of Brezje-Žabjak

On p 110 of the Ombudsman's Annual Report for 2016, we reported on a meeting with the Director of the Government Office for National Minorities, the Director of the Novo Mesto Social Work Centre, and a representative of the Municipality of Novo Mesto, the aim of which was to find solutions for the regulation of a safe electricity supply in the Roma settlement of Brezje-Žabjak. We reported that an agreement on the topic had in principle been reached – but in 2017, there were none of the expected results in relation to it.

The Ombudsman has repeatedly highlighted the **importance of an electricity supply, which is a prerequisite for regulated living conditions,** on many occasions (e.g. on p 48 of the Ombudsman's Annual Report for 2013). **Electricity is one of the essential utilities, sometimes indispensable for preventing the endangerment of the life and health of individuals, and it also has a special importance in providing basic conditions for schooling and acquiring education.** According to the Ombudsman, the illegal electricity extensions from the neighbouring houses in the Brezje-Žabjak settlement are inadequate both from a security point of view (deaths due to cable laying by non-professionals) and from the point of view of possible mutual extortion of the inhabitants (payment of unreasonably high amounts for the illegal connection, arbitrary switching-off the electricity which can have difficult consequences for health, conditions for the education of children, and decent living conditions).

One of the petitioners told us that the Director of the Government Office for National Minorities had assured them that Brezje-Žabjak settlement would get electricity in 2016 and that, according to his information, the Ministry of Finance had already provided EUR 60,000 for this purpose. The Prime Minister also announced while visiting Novo mesto in the autumn of 2016 that electricity should be brought into the settlement from the nearby military barracks as a short-term solution. The petitioner claimed that there was no progress despite all these promises, as the competent ministries had established that there was no legal basis for the temporary connection of illegal Roma facilities to the electricity grid. He also claimed that they were **treated unequally in comparison to the inhabitants of some illegal Roma settlements in a similar situation** who have electricity (in Kočevje and Grosuplje).

On the basis of the previous replies of the Government Office for National Minorities, and the assurances given at the aforementioned meeting in 2016, the Ombudsman had also understood that electricity would be installed in the Roma settlement that very year. We therefore inquired at the beginning of 2017 why this had not happened. Based on the response received from the Office, we could conclude that the specific tasks of individual competent bodies and deadlines for these tasks with regard to the electricity supply in the Roma settlement Brezje-Žabjak were not defined. We informed the Office that this deficiency could be regarded as a violation of the principle of good governance, especially taking into account the fact that the **provision of electricity to members of the Roma community had already been promised in 2016.** We also proposed that, as an authority responsible for monitoring and encouraging competent authorities to ensure electricity in the Roma settlement, it should develop an operational plan for the implementation of this project, which would identify the individual stages of the procedure, the bodies responsible for their implementation, and the deadlines for carrying out their tasks. However, the Office did not follow the proposal of the Ombudsman – based on its answer, the main obstacle to the regulation of the temporary connection of electricity is the legal basis for the implementation of the connection.

The proposal for the amendment of the ZRomS-1, which was published by the Government Office of the Republic of Slovenia on 20 November 2017 on its website, did not include legal bases allowing the members of the Roma community living in illegal settlements to effectively and efficiently exercise their human rights and fundamental freedoms, such as access to drinking water, sanitation and electricity. In the present case, we are not critical of this issue only from the point of view of the protection of human rights, but also from the point of view of the principle of good governance – **it is unacceptable that representatives of the government give promises to members of the Roma community and then do not fulfil them. This is also a bad example and a poor message for relationships and trust between the majority population and the Roma community** (10.1-5 / 2017).

In the settlement of **Brezje,** we first looked at the place near the bus station where the transformer station mentioned in the second paragraph above should have been set up by November at the latest. We continued towards a multifunctional building in which there is a kindergarten. As we moved forward along the settlement, we encountered a representative of the social work centre and two teachers who came to meet the school-age children. We visited a family living in their own house, which was legally built at the beginning of the 1980s. However, the foundations of the house have been undermined by rainwater for some time now and there were also several cracks in the walls. The floor was also visibly sagging in some parts. It was not hard to believe that its residents were afraid that everything would soon collapse. They told us that they were trying to reach an agreement with the social work centre in order to receive dedicated funds for urgent work, and this investment would be partially covered by their social assistance benefits, which would be agreed by signing a special agreement. According to the Roma councillor, there are about ten such houses in the settlement. We also visited an old lady in a built house that had recently been in a fire, so the beams supporting the roof were weak – in this case too, discussions were taking place with the social work centre with regard to dedicated funds for reconstruction. We then visited a minor with a baby whose father was in prison (we had already encountered similar cases in this settlement during the previous year's visit (see p 107 of last year's Annual Report), when the Ombudsman 's representatives *"learned the details of the living conditions of three families, who truly lived in severe conditions. In all three cases, mothers were living alone with several children (4-6) in living conditions that seemed unsuitable even at first glance (two decrepit holiday caravans and a wooden hut); their partners had been imprisoned. Allegedly, access to water supply was provided to these families with the help of their neighbours; they had no access to toilet facilities or electrical power"*) – she lives in a modest wooden cottage, which was otherwise orderly, but not insulated and with a leaking roof. The Roma councillor said that they already had an agreement with the municipality to provide a residential container home this year. At the end, we briefly stopped by a slightly older Roma woman who had obtained a new residential container home last year (after Ombudsman's mediation) – and was happy with it. With regard to this type of approach, we would like to note in principle that the Interdepartmental Working Group for Resolving Spatial Planning Issues of Roma Settlements, established by the Government of the Republic of Slovenia, also stated in its first interim report that it was agreed that *"an optional temporary solution to improve housing conditions is to provide individual Roma families with residential container homes or other temporary accommodation units in accordance with the Rules on Minimum Technical Requirements to be met by Residential Units Intended as Temporary Solutions to Housing Needs of Economically Deprived People (Official Gazette of the Republic of Slovenia, No. 123/04)."*

In the settlement of Otočec, we visited a man who lives in a built house, which, if we understood correctly, was built by the municipality on the land of one of the religious communities. The man had serious health problems and was trying to somehow obtain funds to at least equip his bathroom (bathtub, tiles, pipes, toilet). A municipal representative had also examined the house a while before. The funds for the bathroom amenities were planned to be provided by debiting the social assistance benefits.

In the settlement of **Poganci,** we learned that they were trying to make an arrangement with the farmland fund to purchase the land on which three residential buildings were standing. They showed us a hut where a family with a promising young footballer from the Football Club of Krka was allegedly living – and said they were trying to obtain a residential container home from the municipality for this family as well.

Roma, house numbers and housing registrations

In 2011, the Ombudsman dealt with the problem of determining the house numbers and the related registration of permanent residence of the Roma – we reported on this on p 26 of the Special Report on the Living Conditions of the Roma in the area of south-eastern Slovenia. We pointed out that the registration of residence was

provided within the framework of the constitutional right to free choice of residence and freedom of movement (Article 32 of the Constitution) and is inseparable and fundamentally related to the establishment of a range of civil and social rights. **Those who cannot register their residence are thus obstructed in their exercise of human rights and fundamental freedoms, for example, the right to vote, the right to education and schooling, the right to social security and health care and so on, as well as in the delivery of postal items.**

At the meeting held at the beginning of the year that was mentioned at the beginning of the record under the separate heading above, it was stated that as many as 338 Roma are registered at one single address and 60 are registered at the address of the social work centre. Somewhat later, a Roma councillor also addressed us and pointed out the issue of the registration of permanent residence of the Roma living in the settlements of Žabjak and Poganci (Poganški vrh). He stated that the majority of the Roma from the first settlement were registered at the same address in the settlement of Brezje, with some also at the headquarters of the Novo mesto social work centre, while the majority of the Roma from the second settlement are registered at one of the other addresses in Novo mesto. Of course **these were not their actual addresses, because they live in buildings without assigned house numbers.** The petitioner claimed that they had already tried to solve the problem, but this was not possible because the owners of the land, i.e. the Ministry of Defence (MORS) and the Farmland and Forest Fund of the Republic of Slovenia (SKZG) did not give consent for the process of assigning house numbers.

In response to the Ombudsman's inquiries, MORS initially explained the problem of the lengthy procedures for the legal regulation of the Žabjak Roma settlement. According to the Ministry, the municipality of Novo mesto is responsible for the solution. It needs to adopt the amendments and annexations to the existing spatial planning act – they are said to be currently pending, and provide for a change in the land use from military defence land under the competence of the state, to the control of the municipality of Novo mesto for its spatial planning. On this basis, the municipality should be able to autonomously plan the arrangements that would ensure further possibilities for settlement, as well as the possibility of business activities by the Roma community. Consequently, it should be possible to regulate the ownership of individual land on which the buildings and facilities are standing and also enter them into the Building Cadastre, which is a prerequisite for obtaining a house number and an address.

Concerning the consent for the assignment of house numbers, MORS explained that the details required for the entry of objects into the Building Cadastre can only be confirmed by the owner of the land and the land manager, and consequently the buildings on the land are transferred to his property and management. In the present case, **the Republic of Slovenia would take the property into possession, and MORS would manage the illegally constructed facilities, including the obligations arising from this, i.e. the removal of illegal constructions.** They also stressed that in the light of the above, they are not the authority responsible or competent for the entry of buildings into the Building Cadastre, for the legalisation of buildings and for the assignment of house numbers.

In response to the Ombudsman's inquiry, the SKZG explained that in 2013 **it issued a consent for the registration of three buildings, and then three years later, it received a notice from the geodetic operator to extend this consent** for the assignment of house numbers and the registration of an additional five buildings. The SKZG did not agree with this, because the preliminary procedures had not yet been implemented – it insisted on completing the procedure for which the consent was issued in 2013, and the consent for the assignment of house numbers on the additional five buildings seems completely premature in their opinion.

The Ombudsman also informed the petitioner and the Municipality of Novo mesto of the answers provided by MORS and SKZG. The responsibility for regulating the spatial problems of the Roma settlements thus lies with the municipality (second paragraph of Article 5 of the ZRomS-1). (10.1-4/2017).

Otherwise, we noted in the first interim report of the Interdepartmental Working Group for Resolving Spatial Planning Issues of Roma Settlements that the aforementioned issues of residence registration had already been addressed – one of the listed proposals that applied to the area of housing conditions was *"to amend the Residence Registration Act so that it will not allow the registration of permanent residence at the address of social work centres (consequently, unplanned settlements of Roma present a problem for the municipalities)"*.

The proposed amendment to the ZRomS-1 was disappointing

Towards the end of November, we noted some information from the Government Office for National Minorities on the preparation of the Act Amending the Roma Community in the Republic of Slovenia Act (EVA 2016-1540-

0001). We then voluntarily studied the proposal of the Act, concluding that the long-standing recommendations of the Ombudsman concerning the provision of effective and real exercise of the human rights of members of the Roma community in illegal Roma settlements, such as access to drinking water, sanitation and electricity, are not considered in this Act. We also estimated that **such an amendment to ZRomS-1 would most likely not enable the urgently needed steps towards improving the status of the members of the Roma community.** Therefore, we decided, on the basis of Article 7 of the ZVarCP, to express our concerns to the Government Office for National Minorities.

The Ombudsman initially presented her essential findings and the resulting recommendations:

(1) The finding that the communal and legal disorder of Roma settlements threatens the exercise of a number of human and special rights of the Roma community on the one hand, and the exercise of the human rights and fundamental freedoms of citizens living in the vicinity of illegal Roma settlements on the other (this conclusion is derived from the Special Report on the Living Conditions of the Roma in the area of south-eastern Slovenia from May 2012 (hereinafter: the Special Report), which was last repeated on p 105 of the Ombudsman's Annual Report for 2016);

(2) Recommendations regarding the provision of access to drinking water and sanitation, first addressed to the Government of the Republic of Slovenia (hereinafter: the Government) in the Special Report of the Ombudsman;

(3) The problem of access to electricity in illegal Roma settlements (conclusions on p 48 of the Ombudsman's Annual Report for 2013);

(4) The problem of Roma children who are victims of human rights violations (findings on p 108 of the Ombudsman's Annual Report for 2016);

(5) The position of the Ombudsman that whenever the human rights of the inhabitants of the Roma community are violated due to inadequate living conditions, and that it is evident from the conduct of the municipality that it does not plan to eliminate the violation, the exercise of human rights should be guaranteed by the Government (written e.g. on p 47 of the Ombudsman's Annual Report for 2013).

By listing the actual responses of the Government and its Office for National Minorities relying on deficient legislation in rejecting the Ombudsman's proposals and recommendations, we have demonstrated that so far it has been repeatedly proven that the existing deficient legal bases do not enable the efficient and effective exercise of the human rights of the Roma community members – but despite that, the drafting of the amendment to the ZRomS-1 did not take this fact into account. The issues of guaranteeing rights to drinking water and sanitation, access to electricity, and the necessity for quick legal and communal arrangements of the Roma settlements were completely ignored, and a disproportionate amount of attention was devoted to the regulation of (substantively empty) concepts of special rights and special measures and the listing of the objectives of special measures. Such proposed amendments do not in themselves provide the basis for effective and genuine exercise of human rights, nor a guarantee that the established human rights violations in illegal Roma settlements will be remedied within a reasonable time. There is nothing binding in these amendments that would impose certain obligations on the municipalities or the state (or would provide them with appropriate bases) in ensuring the implementation of even basic human rights, such as access to water and sanitation.

We were also critical of the provision of Article 5a of the ZRomS-1 Amendment Act, which (compared to the applicable ZRomS-1) would suspend the State's fall-back action and replace it with the adoption of intervention action programmes. No sanctions were foreseen in the event that the municipality did not implement the intervention programme. The unregulated situation may thus remain indefinitely unsolved and the state cannot interfere, except by adopting an intervention action programme. We were unsure whether it would be possible to adopt an intervention action programme if individuals were not provided with access to drinking water and sanitation, and what leverage the state would have for the (forcible) implementation of remediation measures.

We were also **critical of the abolition of certain special rights of the Roma community members, e.g. in the area of spatial planning, whereby the Constitutional Court of the Republic of Slovenia has recently addressed the special rights of the Roma community in spatial planning in Decision No. UI-64 / 14-20 from 12 October 2017** – specifically, see paragraph 19 of that Decision. We would also like to recall that we reported e.g. on p 46 of the Annual Report for 2013 that in the reply of the **Ministry of Infrastructure and Spatial Planning at that time to the Ombudsman's proposal to consider the difficult situation of the members of the Roma**

community in the illegal and unregulated Roma settlements, it was stated that *"the regulation of the Roma issue is not foreseen in the planned amendment of spatial planning and construction legislation, because the special rights of members of the Roma community are regulated by ZRomS- 1".* We were also critical of the planned territorial restriction of special rights of the Roma community, which **would affect groups such as the Sinti in Gorenjska and the Roma in the municipalities of Škocjan, Ribnica and Brežice, including their possibility of participating in the Council of the Roma community of the Republic of Slovenia.** In our opinion, the concept of special measures is also vague and arbitrary, since it does not provide a tangible basis for the effective exercise of the special rights of the Slovenian Constitution. In addition, it might not even be possible to adopt such measures, because they would need to be based on prior analyses of the existence of a less favourable position, and as reported on p 90 and 91 of our Annual Report for 2016, there are no legal bases for this yet.

We concluded that the proposed amendment of the ZRomS-1 is disappointing with regard to the Ombudsman's long-standing recommendations in this area. We repeated what we had already told the Government Office for National Minorities in 2014, namely that *"the readiness to speed up the resolution of Roma issues is also lacking at the State level"*, and that *"the protection and exercise of human rights is an obligation of the state authorities, which cannot and must not depend on the arbitrary will of the respective authorities"*. **We assessed that the proposed text of the ZRomS-1 Amendment did not indicate that the state seriously intended to eliminate the established violations of human rights and fundamental freedoms of the inhabitants of illegal Roma settlements** (0.2-28 / 2017).

Separately on the Sinti

We have occasionally reported on the experience with identified issues related to the Sinti (see, e.g. pp 46-47 and 59 of the Annual Report for 2008, p 50 of the Annual Report for 2009, pp 62-63 of the Annual Report for 2010, pp 66 and 72-73 of the Annual Report for 2011, pp 13 and 52 of the Annual Report for 2012). The Constitutional Court of the Republic of Slovenia stated first in Decision No. U-I-134/07 of 2 October 2008, and subsequently repeated in Decision No. UI-15/10 of 16 June 2010, that the term *"Roma community"* also includes the Sinti people, who represent only one of the relevant social groups (similarly it is also mentioned that in the Council of Europe, the term *"Roma"* also includes the Sinti and some other similar groups – see e.g. Note 2 in Recommendation 315 (2011) and in Resolution 333 (2011) of the Congress of Local and Regional Authorities). The Ombudsman's raising of the issue of the Sinti community position in the light of their (non) representation in the Council of the Roma community of the Republic of Slovenia, in the procedure for assessing the constitutionality of the first paragraph of Article 10 of the ZRomS-1, initiated at the Ombudsman's request (Case UI-15/10), was not successful, because it was decided that these reasons were not unconstitutional. Despite this, we remain attentive to the complaints of the Sinti position specifically.

We met with their representative in 2017 (and on some occasions before – see, e.g. p 19 of the Annual Report for 2004 and p 316 of the Annual Report for 2008), i.e with the President of the Association of Sinti of Slovenia. After this, **we successfully intervened with one of the mayors** who then provided a substantive reply to a petition to set up a special working body to monitor the situation of the Roma community in his municipality. This was of particular importance in this case, given that, according to the Government Office for National Minorities, the Sinti are the most numerous in this very municipality, so the need for properly addressing their petitions is the most present there, regardless of the form in which these petitions are presented to the competent bodies. This case is discussed in greater detail in the section entitled Constitutional Rights (subsection Other, the title Again without Answers to Petitions).

We also pointed out the position of the Sinti in our criticism of the proposal for the ZRomS-1 amendment – see this matter above.

* * *

On the basis of developments in 2017 regarding the so-called 'Roma issues', the Ombudsman concluded that the situation in Slovenia remains in line with the still relevant indications of the Congress of Local and Regional Authorities of the Council of Europe under point 4 of Recommendation 315 (2011) stating that local authorities *"have been criticised for inaction or for failing to carry out central government policies on Roma issues"* (compare e.g. with the Ministry of Infrastructure and Spatial Planning statements on p 46 of the Ombudsman's Annual Report for 2013); *"in practice we are faced with a lack of interest of the municipalities populated by the*

Roma to address the spatial problems of Roma settlements in their area") – but also *"government policies have not always included provisions for translation into local action and the division of competencies between the different levels of government is not always clear"* (see e.g. p 107 of the Ombudsman's Annual Report for 2016: *"in its response, the Municipality warned of the poor cooperation between the local and state governments, which prevents any coordinated preparation of plans for development programmes led by the Government and the Municipality."*).

In the situation presented above, there are not enough solid foundations that could be relied upon if we were to undermine the findings that the state and local authorities *"fail to express sufficient (political) will and readiness to undertake long-term activities leading to the arrangement of conditions in certain critical areas and the integration of the Roma into the social environment"* (p 63 of the Annual Report for 2014).

Italian and Hungarian national communities

We acted in a proactive manner in this area in 2017 (see also p 59 of the Annual Report for 2015 and pp 111-113 of the Annual Report for 2016). We received some petitions – we report on them below. Let us start with the encouraging part – as stated on p 4 of the REPORT ON THE IMPLEMENTATION OF THE PROGRAMME OF MEASURES OF THE GOVERNMENT OF THE REPUBLIC OF SLOVENIA FOR THE IMPLEMENTATION OF REGULATIONS ON BILINGUALISM FOR THE 2015-2018 PERIOD FOR 2016 (No 61400-2/2015/26 of 31 August 2017), the sub-working group in charge of the preparation of a programme of measures for the implementation of regulations on bilingualism took into account **the Ombudsman's inquiries from 2016 in the preparation of their current report, and paid special attention to obtaining responses from the competent departments regarding the translation and accessibility of forms in the language of the national communities**. Some steps forward have already been made based on this.

Indigenous national communities and consumerism

The Ombudsman does not have the competence or power under the applicable legislation to intervene directly with companies, as they are not the holders of public authority or power. This is not the case for the Market Inspectorate of the Republic of Slovenia, which is a state body that has the power to monitor the implementation of the Consumer Protection Act (ZVPot) and impose measures in accordance with the law.

The first paragraph of Article 2 of ZVPot states that in the areas populated by indigenous Italian or Hungarian national communities, a company must operate bilingually – in Slovenian and in the language of the national community. According to the second paragraph of the same article, the business processes in which a company must also use the language of the respective national community must be specified in detail by the minister responsible for the economy. Specifically, Article 3 of Decree on the Use of Minority Language of Companies in Communication with Consumers in Areas Populated from the Italian and Hungarian Minority lists the following processes: provision of basic information regarding the characteristics, terms of sale, purpose, composition and use of the product or service; price lists, if they are prescribed by a special law; operating time notifications.

Some parts of the annual reports of the Market Inspectorate of the Republic of Slovenia apply to the work of inspectors linked to the aforementioned normative basis. For example, p 114 of the Business Report of the Market Inspectorate of the Republic of Slovenia for 2013 announces that *"since the objective of the Market Inspectorate is to ensure not only the consistent use of Slovene, but also the use of the languages of the national communities, special attention will be paid in 2014 to the use of minority languages in the areas of indigenous national communities"*. In relation to this, p 112 of the Business Report of the Market Inspectorate of the Republic of Slovenia for 2014 actually reported that, in accordance with the ZVPot, *"in the areas where the Italian and Hungarian national communities live, special emphasis was given to the respect of the languages of the national communities, with the inspectors finding that in the coastal region where the Italian minority lives, their language is regularly used in dealing with consumers, and a similar conclusion was reached by the inspectors in the area where the Hungarian national community lives. In two cases, it was established that companies had incomplete information on websites in Hungarian and did not cover all areas of work. Having regard to the fact that the websites were immediately adapted, a warning was issued in both cases."*

The Ombudsman asked the Market Inspectorate of the Republic of Slovenia for some additional explanations for a better understanding of the whole picture – we wanted to know how many inspections of the implementation of the ZVPot clause or the provisions of the Decree were carried out by the inspectors in 2016; how many violations were established, and how many petitions, reports, complaints, messages or other applications

(including anonymous ones) had been filed and addressed by the Inspectorate in 2016 relating to the operation of companies (also) in the language of the Italian or Hungarian national communities or to the business processes in which the companies must also use the language of the national community. At the end of 2017, we asked the same questions for the current year, and after receiving the response, we established the following.

With regard to the provisions of the ZVPot and the Decree, 53 supervisions were carried out in 2016 in the areas where the members of the Hungarian and Italian national communities live (18 supervisions were carried out in shops, where 6 violations were established – in all 6 cases, the operating time notifications in the language of the national community were missing; 35 supervisions were carried out in catering establishments, where 12 violations were established with regard to missing operating time notifications, price lists and range in Hungarian or Italian as appropriate). In 2017, 35 supervisions were carried out in catering establishments – none of the supervisions resulted from a report, complaint or other similar message (violations were established with regard to missing operating time notifications, price lists and range in Hungarian or Italian as appropriate). In the first year, the inspectors issued warnings and one reprimand, and in the second year, they issued two reprimands next to the warnings. According to further explanations of the Inspectorate, the offenders promptly resolved the identified irregularities. No major violations were established in the use of the languages of national communities, and the established violations were in fact due to ignorance of legal requirements and not due to deliberate evasion.

With regard to our question on the number of petitions, reports, complaints or other applications relating to the operation of companies (also) in the languages of the Italian and Hungarian national communities, the Market Inspectorate of the Republic of Slovenia informed us that it did not keep a record of this data. It elaborated that it receives *"only a couple of reports a year"* on this subject.

Since the right to use the language of the national community needs to be ensured in the proceedings itself, the Market Inspectorate of the Republic of Slovenia has systematised jobs from the area where the said national communities live that require knowledge of the language. There are two such jobs in the Murska Sobota area (one inspector and one administrator with a higher level of knowledge of Hungarian – whereby the second job was not filled in 2016 and was later abolished *"due to the reduced need for administrative technical staff"*). In the municipalities of Koper, Izola and Piran there are five jobs (four inspectors with a higher level of knowledge of Italian, and one inspector with a lower level of knowledge of Italian – one of the first four jobs was not filled in 2016 and in 2017).

The forms for reporting violations are available on the website of the Market Inspectorate of the Republic of Slovenia in the languages of the national communities.

We also learned that the Head of the Inspectorate met with the Deputy of the Hungarian national community elected to the National Assembly in September 2016. They reviewed the outstanding issues and the functioning of the Inspectorate, and found that it was doing a good job in this area. The Inspectorate explained that they had also tried to organise a meeting with the deputy of the Italian national community throughout 2017, but the meeting did not take place due to his many engagements. However, he talked to the Head of the Inspectorate by telephone and they established that the use of the language of the Italian national community is not problematic in terms of regulations within the competence of the Inspectorate. The Head also informed the Deputy that a new Consumer Protection Act would be prepared in 2018 and that he would also have the possibility to submit any proposals for amending this Act.

Based on the above, the Ombudsman concluded that the Market Inspectorate of the Republic of Slovenia is doing a good job in the consumer field of the use of the languages of the Italian and Hungarian national communities.

Indigenous national communities and police operation

The Ombudsman also contacted the Ministry of the Interior with regard to the Italian and Hungarian national communities. Among other things, we wanted to find out if there were any complaints against the work of police officers in 2015, 2016 and 2017 related to the circumstances of bilingual police operations or to a police officer's failure to comply with the regulations on the use of Italian or Hungarian as official languages in the municipalities where the indigenous Italian and Hungarian national communities live.

The Ministry explained that during these years there were no complaints against police officers directly related to circumstances of bilingual police operations or to a police officer's failure to comply with the regulations on

the use of Italian or Hungarian. Prior to 2015, some individual complaints of this kind had been recorded, but it was later established that they were mostly filed for other reasons (e.g. disagreement with the result of the alcohol test). The Ministry also identified complaints that the police, as a misdemeanour authority in the first instance, only issues decisions in Slovene, which was verified by the two police administrations and found that this was true. However, if a person states in the procedure that they are a member of the Italian or Hungarian national minority, the decision is also translated into the minority language. We received an explanation for 2017 that the police inspectors of the Koper Police Directorate conducted one administrative proceeding in Italian, and the decision was issued in Italian shortly afterwards; in the Murska Sobota Police Directorate, translations were made into Hungarian in three administrative proceedings.

We also asked the Ministry for some information concerning the Programme of Measures of the Government of the Republic of Slovenia for the Implementation of Regulations on Bilingualism for the 2015-2018 period (No 61400-2 / 2015/5 from 23 July 2015). On its p 39, it was announced that the Police *"at the two police administrations in the nationally mixed areas will organise meetings with the representatives of national communities"*, where they *"shall jointly verify the implementation of the adopted measures in the past, establish the problematic areas of police work and prepare measures for even better cooperation in the future"*. We wanted to know how many such meetings between the Police and the representatives of national communities had actually occurred so far; specifically, which areas of police work were established as problematic at these meetings, what kind of problems were established, and which measures for even better cooperation in the future had been prepared so far, and if the Police still assessed that cooperation with the representatives of the two national communities was good. In this regard, the Ministry of the Interior informed us that they had regular contacts with the representatives of the Hungarian and Italian national communities in the Koper and Murska Sobota Police Directorates in the areas where the representatives of the national communities live. Such meetings were said to be held several times a year at the levels of community policing officers, police station commanders, and the directors of the police directorates. No problems were reported in 2016 and they estimated that cooperation was very good. Since they did not perceive any difficulties in the cooperation with the national communities at the level of the General Police Directorate in the areas where these minorities live, they did not organise a joint meeting with the representatives of the Italian and Hungarian national communities, but apparently the representative of the General Police Directorate was in personal contact with the heads of national communities at the meetings of the Commission of the National Assembly Commission for the two National Communities and at the meeting of the Government Commission for the two National Communities.

When asked if they could list at least one meeting with the representative of the Hungarian or the Italian national community in 2017 and explain which issues were addressed, the Ministry of the Interior informed us that the Koper Police Directorate cooperated with representatives and institutions of the Italian national community at the levels of police stations and the police directorate. At the beginning of the school year, police inspectors and community policing officers provided the parents and pupils of the first grades of Italian primary schools in the regions of Izola, Koper and Piran with information on traffic safety. In October, Izola Police Station organised a visit for the children from an Italian kindergarten and presented the work of the police officers. In December, they organised lectures on the abuse of pyrotechnic products for the pupils of Italian primary schools in the regions of Izola, Koper and Piran. There were no formal meetings at the level of the police inspectorate; however, the Head of the Service of the Director General of the Police personally contacted the president of the Italian national community on several occasions regarding the request for consent to changes in the systematisation of bilingual jobs, which must be issued by the national community in accordance with Article 80 of the Police Organisation and Work Act (ZODPol) (in 2016, there were 6 such requests issued: 3 for the Koper Police Directorate and 3 for the Murska Sobota Police Directorate). The Director of the Police Directorate was also in contact with the aforementioned representative. The representative did not raise any particular issues.

The explanations of the Ministry did not reveal any obvious problems in police operations in relation to the indigenous Italian and Hungarian national communities. This finding is also consistent with the fact that there have been no petitions submitted to the Ombudsman by the affected individuals themselves.

Indigenous national communities and the operation of administrative units

The second paragraph of Article 4 (official language of the administration) of the State Administration Act (ZDU-1) determines that: *"In those municipalities where Italian or Hungarian indigenous national communities reside, the official languages of the Administration must also be Italian and Hungarian respectively. In these areas, the administration must also operate in the language of the national community. If the party in the*

procedure uses the language of the national community, the administration must conduct the proceedings in the language of the national community and issue legal and other Acts in the proceedings in Slovene and in the language of the national community. The body shall inform the party of this right prior to the commencement of the proceedings". We also turned to the administrative units of Koper and Lendava to ask if this legal provision causes any problems in practice (e.g. longer procedures because of the need for translation etc.).

According to the explanations of the Head of the Administrative Unit of Koper, the administrative body fully conducts the administrative proceedings in both official languages with every citizen of the Republic of Slovenia who is a permanent resident of an area designated as bilingual by the Statutes of the Municipality of Koper, if the citizen initiates their request in the language of the national community. However, the members of the national communities often do not exercise this right. These cases are mostly summary declaratory proceedings followed by a document or certificate that is always issued in both official languages. There are only two or three annual cases where the proceedings are initiated in both languages and fully conducted in them, mostly for public gatherings or registration of associations. The proceedings last approximately a week longer because of the need to translate the documents into the language of the national community. The Head also explained that officials communicate with members of nationalities and with Italians in their language on a daily basis.

Similarly, the Head of the Lendava Administrative Unit informed us that they consistently implement the legal provisions on bilingual operation for the needs of the municipalities populated by the indigenous Hungarian national community. Prior to initiating the proceedings at the request of a party, the authority should inform the parties of this right. The administrative unit also has an official translator for Hungarian. In accordance with the second paragraph of Article 223 of the Decree on Administrative Operations, the translator translates all parts of official documents in the case of bilingual declaratory proceedings, and in addition, the majority of the civil servants at the headquarters of the administrative unit in Lendava are proficient in Hungarian. If required, the translator also participates in oral hearings. At the local office in Dobrovnik, which operates in the nationally mixed area of the municipality, the employed registrar also has a high level of proficiency in Hungarian. The proceedings do not last longer because of the translation – apparently when an administrative act (decision or order) is prepared, it is immediately translated into Hungarian and served to the parties to the proceedings and to the notice parties in both official languages. Over the past few years, all bilingual declaratory proceedings have been decided substantially before the expiry of the statutory deadline for deciding on administrative matters, and thus no backlogs have been recorded. On the basis of the above, the Head assured us that in practice they did not perceive any problems regarding the consistent exercise of the special legal rights of members of the Hungarian national community. They also analysed questionnaires on customer satisfaction with the work of the administrative unit and did not detect any such problems. They even received several compliments from their clients for the exemplary provision of special rights to the members of the Hungarian national community.

Since there were no petitions filed with the Ombudsman that would suggest otherwise, the Ombudsman has no reason to doubt the explanation of either Head of the Administrative Unit.

Indigenous national communities and the operation of the courts

Paragraph 2 of Article 5 of the Courts Act (ZS) determines that: *"In the territories in which the indigenous Italian and Hungarian national communities live, the business of the court shall also be conducted in Italian or Hungarian, if a party who lives in that territory uses Italian or Hungarian."* With regard to this, we asked the District Court in Koper and the District Court in Lendava if this legal provision causes any problems in practice (e.g. longer procedures because of the need for translation, envelopes for service under the Contentious Civil Procedure Act (ZPP) or under the Criminal Procedure Act (ZKP), etc.).

The President of the Court in Koper informed us that they encounter very few such cases. Certain judges in the court's annual work schedule are assigned to the cases that require bilingual proceedings. In practice, the proceedings are longer, *"but not significantly"*.

The President of the Lendava Court replied that being located in a nationally mixed area, the court also operates in Hungarian in accordance with the second paragraph of Article 5 of the ZS. Since none of the judges meet the requirements for the conduct of bilingual proceedings, they are conducted with the help of an interpreter for Hungarian, who is permanently employed by the court. The President explained that, as it is necessary to translate the documentation submitted by the parties into both languages in the bilingual proceedings, these are *"correspondingly longer"*, depending on the scope of the documents that need to be translated.

The Ombudsman did not receive any petitions regarding the operation of these two district courts which would undermine the explanations of its presidents.

However, the President of the District Court in Koper also stated that all *"invitations and forms ... have not yet been translated into Italian"*; similarly, the President of the District Court in Lendava wrote that *"envelopes for service in both languages or in Hungarian under the ZPP or the ZKP have not yet been provided"*, which the court has apparently been addressing *"all the way back to 2014"*. We received these explanations after the assurances of the Ministry of Justice (letter No. 012-19 / 2015/10 of 9 January 2017) that it *"and the Supreme Court of the Republic of Slovenia will verify once more whether the forms are appropriate, and cooperate with the courts from the areas of the indigenous Italian and Hungarian national communities in order to prepare proposals for translations of the forms that have not yet been translated and which are often used by the members of the national communities."* The Ministry has already explained to us (letter No. 012- 19/2015/26 of 8 January 2018), that *"after reviewing the regulations from its jurisdiction, it has identified the forms which were then forwarded for translation. The identification of the forms was based on the fact that there is still no clearly adopted position on the authenticity of the forms that have been or will be translated, as they were not published in the Official Gazette of the Republic of Slovenia as such (i.e. in a translated version). Therefore, the identification was based on the following assumptions: (1) the form must be laid down and published in the Official Gazette; and (2) the form must be intended for the parties to use and exercise their rights in the court proceedings."* **However, according to the presidents of these two district courts, it appears that in practice, the courts still face difficulties due to some forms and envelopes.**

Conservation of the cultural heritage of the Italian national community

A member of the Italian national community in the Republic of Slovenia addressed the Ombudsman about the issue of the conservation of the culture, tradition and cultural heritage of the Italian national community in the Republic of Slovenia. In this regard, he presented the Ombudsman with a response from the Ministry of Culture to the petitioner's proposal to supplement the text of the Decree declaring Traditional Production of Sea Salt a Living Masterpiece of National Importance (hereinafter: Decree). In its reply, the Ministry rejected the petitioner's proposal to supplement the wording of the Decree in the part that lists the values which justify the proclamation of a living masterpiece and expressly states, inter alia, that this is a *"special terminology that is related to the method of salt production (naming of tools and equipment, natural phenomena, parts of the salt pans, toponymy, place names, channel names)"* with the wording *"and testifies to the indigenous nature of the Italian national community in Slovenia"*.

The Ministry's explanation of the grounds for this rejection did not convince us, so we addressed a criticism to the Ministry based on Article 7 of the Human Rights Ombudsman Act (ZVarCP). In the letter to the Ministry, we initially summarised the essential legal framework of the protection of the indigenous national communities in the Republic of Slovenia, as defined by Articles 5, 11, 14 and 64 of the Slovenian Constitution, the Framework Convention for the Protection of National Minorities of the Council of Europe (FCNM) and the European Charter for Regional or Minority Languages. As already written by the Constitutional Court of the Republic of Slovenia in point 10 of Decision UI-218 / 04-31, the protection of national minorities is ensured in two forms: prohibition against discrimination on the basis of national, linguistic, religious, and racial affiliation, and the guarantee of special rights that only pertain to a minority or its members – the *"positive protection"* of minorities. Under the same point, the Constitutional Court continues: *"Positive protection entails positive discrimination, since the members of a minority are ensured rights that the members of the majority do not have. Such measures entail a high degree of protection of national minorities which is recognised to them by the majority, and which thereby emphasise the democratic character of the society."* In this regard, it is important that the Slovenian Constitution allows the legislator to provide special national protection to the indigenous national communities and their members (see the aforementioned Decision of the Constitutional Court, point 12). Under Article 5 of the Slovenian Constitution, the state is obliged to protect and guarantee the rights of the indigenous Italian and Hungarian national communities. In the areas where these two indigenous national communities reside, the Constitution ensures their members a high degree of protection of their rights (Point 13 of U-I-218 / 04-31).

The second paragraph of Article 4 of the FCNM also determines that: *"The Parties undertake to adopt, where necessary, appropriate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between people belonging to a national minority and those belonging to the majority. In this respect, they must take due account of the specific conditions of the people belonging to national minorities."* In the third paragraph of the same article it is stated that the measures adopted under paragraph 2 must not be considered to be an act of discrimination. Article 5 of the FCNM is important with regard to the protection of the cultural heritage of national minorities: *"The Parties undertake to promote the*

conditions necessary for people belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage."

The second paragraph of Article 153 of the Slovenian Constitution stipulates that laws must be in conformity with generally accepted principles of international law and with valid treaties ratified by the National Assembly, while the secondary regulations and other general Acts must also be in conformity with other ratified treaties.

It is evident from the aforementioned provisions that **the state is obliged to take positive measures that contribute to the conservation of the cultural heritage of the national minority.** An important part of the traditional production of sea salt, which will be regulated by the (pending) Decree, relies on the cultural heritage of the indigenous Italian national community. This is also evident from the substantive reasoning of the Decree, which states: *"The history and development of the salt pans and the ethnological and linguistic particularities of the salt-making heritage and culture in Slovenian Istria are closely connected to the local Istrian-Venetian culture and the indigenous Italian community, especially in Piran, where the Community of Italians, in cooperation with other societies, carefully carries out the tradition and the linguistic particularities of the old salt-makers."* Traditional production of sea salt thus represents the cultural heritage of the indigenous Italian community.

In view of the above, we could not fully agree with the Ministry's reply to the petitioner that *"from the historical point of view, emphasising only one national community in the text of the Decree is discriminatory against all the others."* Such a position is inconsistent with the statements in the substantive reasoning of the Decree. In fact, the drafter of the text of the Decree clearly highlighted the indigenous Italian community as the only expressly mentioned nationality. Moreover, the Ministry did not address the legal aspects of the protection of minorities in its reply, which, in our opinion, should not be ignored in the drafting of the Decree. From a legal point of view, the mention of the indigenous Italian national community in the Decree is not only permissible, but also in accordance with the provision of Article 5 of the FCNM on the commitment of the Parties to promote the conservation of cultural heritage of national communities. As the secondary regulations must be in conformity with ratified international treaties, this also includes the FCNM (second paragraph of Article 153 of the Slovenian Constitution).

Since the drafter of the Decree is not limited by the principle of equality in regulating the special position and special rights of indigenous national communities, we could not agree with the legal aspect of the ministry's response to the petitioner that *"if the decree specifically emphasised the Italian indigenous national community, other indigenous nationalities that were historically present in the salt-pans would also need to be highlighted: Slovenes, Croatians and probably some others..."*. Of course, it also would not be contrary to the legal order to include other nationalities in the text of the Decree.

We therefore considered that the (additional) mention of the indigenous Italian national community in Slovenia in the Decree would be an example of a positive measure by the state intended to conserve an important element of the identity of the national community, in this case cultural heritage. Such a measure would protect the rights of the national community (Article 5 of the Slovenian Constitution), respect the ratified international treaty (Article 5 of the FCNM), and emphasise a high level of democracy in Slovenian society.

The Ministry replied to us that the draft of the Decree *"was discussed at a public presentation, where we took into consideration all the remarks, including the ones of the representatives of various experts of Italian nationality and of Italian civil associations"*. The petitioner was not present at this presentation. The Ministry stated that when preparing the draft, it *"considered the majority opinion of all the experts in the field of history, museums, conservation of heritage and salt-making, and the professional judgement that salt-making and salt pans with their tradition and culture are significantly older than all politically or legally defined national communities"*. After our repeated query, it also submitted the names of the experts involved.

Finally, the Ministry informed us that our opinion *"cannot be taken into account at the moment, because the adoption of the Decree has been paused due to the difficulties in financing the Sečovlje salt pans"*, and that it cannot *"include opinions that do not have expert confirmation and are not based on historical facts"*.

The Ministry also considered the Ombudsman's position stated above as an opinion without expert confirmation – as we understood, this was in particular because salt-making and salt pans with their tradition and culture are significantly older than all politically or legally defined national communities. Consequently, **the Ministry did not even comment on the arguments of the Ombudsman on the protection of minority rights based on the**

provisions of the Constitution and ratified international treaties. The position of the Ministry is weak, mainly because the indigenous Italian community is mentioned in connection with the salt heritage and culture even in the very reasoning of the Decree, as stated above. In addition, the view that only those phenomena which are not older than the political or legal origin of a nation can be considered as traditions and culture, is too narrow. For example, this kind of explanation would also exclude the Freising Manuscripts, Primož Trubar or Valentin Vodnik from Slovenian culture. (10.1-22/2016).

Radio and television programmes for the Italian national community and replying to received letters

The Ombudsman also received a letter from the President of the Coastal Self-Governing Italian National Community, who was critical of the starting point of RTV SLO's programme and business plan for 2018 with regard to the programmes of the Italian national community. The petitioner considered that the starting points constituted a direct and obvious violation of constitutionally determined rights.

The programme and production plan is adopted by the Programme Board of RTV Slovenia on the proposal of the Director General in accordance with the second indent of the first paragraph of Article 16 of the ZRTVS-1. The fifth paragraph of Article 23 of the ZRTVS-1 specifically stipulates that the Programme Committees for ethnic community channels must also address the fulfilment of the programme production plan. Furthermore, the fourth paragraph of Article 23 of the ZRTVS-1 stipulates that the Programme Committees for the ethnic community channels must, among other things, grant their consent to the scope and programme plan, programme standards and programme scheme of the channel. In the light of the above, we had to explain to the petitioner that the warnings about alleged violations of the rights of the national community should be addressed primarily to the Programme Committee for ethnic community channels, as well as to the member of the Programme Board of RTV Slovenia, appointed on the proposal of the national community. The petitioner could furthermore address their warnings to the Office for National Minorities and to the Ministry of Culture.

With regard to the content of the alleged violations, i.e. that the reduction in the number of employees in the editorial offices and in the production units constitutes an infringement of the rights of national communities, **the Ombudsman believes that it cannot be inferred directly that the acquired rights of minorities have been reduced only based on a reduction in the number of employees.** In our opinion, this could only be established if such measures affected the broadcasting of radio and television channels for the indigenous Italian national community (fourth indent of the first paragraph of Article 3 of the Radiotelevizija Slovenija Act (ZRTVS-1)).

Similarly, we were contacted by a petitioner who was a member of the Programme Board of RTV Slovenia, who pointed out an increase in intolerance towards the Italian national community. He stated that this was reflected in the positions of the members of the Programme Board in the materials for the Commission's meeting to prepare the starting points of the programme and business plan for 2018, which according to him *"advocated disrespect and fundamental changes in the guaranteed rights of the indigenous national communities in Slovenia."* In particular, he pointed out the position of one member of the Programme Board, i.e. that *"the rights of the national community should be guaranteed in accordance with the number of representatives of this community"*. He addressed the Ombudsman with a request to take *"urgent measures in favour of respecting the constitutional and legal rights of the indigenous Hungarian and Italian national communities ..."*.

We did confirm that the fourth paragraph of Article 64 of the Constitution does guarantee the rights of both national communities and their members, irrespective of the number of members of these communities. **However, we consider that the current legislation, in particular the provisions of the ZRTVS-1, provides sufficient protection of the rights of the national communities in the area of public information.** For example, the fourth indent of the first paragraph of Article 3 of the ZRTVS-1 stipulates that the public service of RTV Slovenia must comprise the creation, production, archiving and broadcasting of radio and television channels for the indigenous Italian national community; the second indent of the first paragraph of Article 16 of the ZRTVS-1 stipulates that the Programme Board of RTV Slovenia, must, at the proposal of the director-general, adopt a programme and production plan; in the fifth paragraph of Article 23 of the ZRTVS-1, it is specifically stated that the Programme Committee for the ethnic community channels must, among other things, also address the fulfilment of the programme production plan; furthermore, the fourth paragraph of Article 23 of the ZRTVS-1 stipulates that the Programme Committees of the ethnic community channels must, among other things, grant their consent to the scope and programme plan, programme standards and programme scheme of the channel.

In view of the above, we explained to the petitioner that, as a member of the Programme Board of RTV Slovenia, he should continue to point out the alleged violations of the rights of the national community at the meetings

of the Programme Board of RTV Slovenia and its working bodies. He should also try to get the Programme Committee for the ethnic community channel to address this issue.

Example:

The Ministry would not reply to a letter from the Coastal Self-Governing Italian National Community until after the Ombudsman's intervention
The petitioner from the above example also said that he had sent a letter to the Ministry of Culture in October 2016 regarding the status of RTV programmes for the Italian national community, but had not received an answer by the end of January 2017. We addressed a query to the Ministry and asked it to comment on the petitioner's statements. We also pointed out the provision of Article 18 of the Decree on Administrative Operations, which states that an authority must respond to all correspondence received in physical or electronic form, or at least issue a notice of follow-up/action and a realistic deadline, at the latest within 15 days of the receipt of a letter.

The Ministry explained that it did receive the petitioner's letter and addressed it in accordance with its purpose and content within the framework of the public debate on the draft Strategy of the Republic of Slovenia in the area of Media for the period 2017-2025. Specifically, the letter made concrete suggestions for measures concerning the programmes for the Italian national community in RTV Slovenia, which should be addressed by the strategy in question. The Ministry further explained that the draft strategy was still in the stage of coordination between key departments and stakeholders, so the response to the petitioner's letter in terms of how the comments and suggestions had been taken into consideration could not yet be prepared, since the final solutions were not yet known. It also stated that it would provide a *"suitable answer when the final draft strategy to be sent to the Government was prepared."*

The Ombudsman then addressed a criticism to the Ministry because it had failed to reply to the petitioner after four and a half months. We took the view that the **conduct of the Ministry was a violation of Article 18 of the Decree on Administrative Operations,** and proposed that it should immediately send the petitioner at least a notification of the receipt of the letter, and information on the further course of action and on the planned period necessary to provide a substantive answer.

In its further reply, the Ministry accepted the criticism of the Ombudsman with regard to missing the deadline for replying to the petitioner's letter. It regretted the act and undertook to avoid such violations in the future. It also sent us a copy of its reply to the petitioner (10.1-23 / 2016).

We should also highlight a case in which a petitioner pointed out an issue about using Hungarian in the inspection proceedings before the Financial Administration of the Republic of Slovenia (FURS). However, on the basis of the submitted documentation we established that the infringement of the petitioner's rights supposedly occurred during a discussion he had had with the tax inspectors on 21 November 2011 and in the related decision of 17 April 2012. In this case, more than five years had passed since the alleged irregularities. In such circumstances, it was clear that the Ombudsman's addressing of this case could not provide an adequate result due to the time that had passed (indent 6 of Article 30 of the ZVarCP). In addition, we also understood that the petitioner should have initially used an ordinary appeal to complain about the allegedly violated provisions of the ZUP on the use of the language in the proceedings, by lodging a complaint under point 5 of the first paragraph of Article 237. If an appeal had been rejected, the petitioner could still have had access to the judicial protection of his rights relating to the use of the language in the proceedings. Thus, in this case, all ordinary legal remedies had not been exhausted, which also prevented us from addressing this petition (fifth indent of Article 30 of the ZVarCP).

Concerning a meeting with the President of the umbrella Federation of Cultural Associations of the German Speaking Ethnic Group in Slovenia.

We met with the President of the umbrella Federation of Cultural Associations of the German Speaking Ethnic Group in Slovenia at his initiative. He said that the attitude of fellow citizens of Slovene nationality, the media, and representatives of culture and politics towards the functioning of German societies in Slovenia has improved in recent years – which is primarily reflected in the fact that there have been no negative announcements in the Slovene media in relation to cultural activities for a long time. From the very beginning, the Federation has advocated the recognition of the status of the indigenous German national community in Slovenia at a similar level as for the Hungarians, Italians and other successor states of former Yugoslavia. After unanimously

adopting the decision of the Austrian National Assembly, which requires the federal government of the Republic of Austria to advocate the recognition of the German national community in Slovenia in bilateral relations with Slovenia, they are now a minority under the protection of Austria. According to the assurances of Austrian diplomats and politicians, the question of our national community is being addressed at all bilateral meetings – but without success. Therefore, at the initiative of the Federation, the Federal Republic of Germany has been included in this issue. Their federal envoy, Hartmut Koschyk, responsible for national minorities, recently spoke with the Slovenian Ambassador in Berlin.

2.2.2 EQUAL OPPORTUNITIES REGARDLESS OF GENDER OR SEXUAL ORIENTATION

In one of the petitions addressed by the Ombudsman in 2017, a petitioner claimed that there was a **discrimination based on gender in the use of a sauna.** He stated that the sauna was only accessible to women on Tuesdays and that the price for the annual and monthly ticket for men and women is the same, despite the fact that men can use the sauna only six days a week and women can use it seven days a week. He calculated that the men have more than 14% fewer occasions to visit the sauna in comparison to women. The petitioner had initially (in 2016) addressed the Advocate of the Principle of Equality, who responded only after an urgent appeal, and answered by email that the body is in the process of establishment and that addressing of complaints was not yet possible due to staff problems (for more in this direction, see pp 102-103 of the last year's Annual Report of the Ombudsman).

Taking into account the powers of the Ombudsman that enable mediation only in relation to state bodies, local self-government bodies and holders of public authority, we were not able to directly address the alleged discrimination which was supposedly caused by a public institution with its terms of use of the sauna. We therefore addressed a proposal to the Market Inspectorate of the Republic of Slovenia to deal with the alleged discrimination. Specifically, the Protection against Discrimination Act (ZVarD) stipulates that, next to the Advocate of the Principle of Equality, the competent inspections which act as misdemeanour authorities must also carry out inspections over the implementation of the provisions under this Act. We believe that the publicly accessible price list of sauna services justifies the assumption that the service offered by the sauna is violating the prohibition of discrimination (Article 4, Paragraph 2 of the ZVarD), namely: 1) because the sauna is accessible only to women on Tuesdays, and 2) because there is suspicion of indirect discrimination in determining the price of the monthly and annual tickets, which is the same for men and women, even though men can use the sauna for only six days a week while women can use it for seven.

The Market Inspectorate replied that the different treatment in individual cases may be admissible, referencing the opinion of the Advocate of the Principle of Equality that *"the exclusive use of the sauna for women on a given day for the purpose of ensuring intimacy"* is a permissible exception. The Market Inspectorate also considered that *"the availability of the service on one day of the week only to people of one sex does not constitute an infringement of the prohibition of discrimination on grounds of sex, since it cannot be expected that women and men must always share the goods or services offered, but only that the goods are not offered under more favourable terms to people of one sex. Access to the sauna is not offered to women under more favourable conditions than to men, as they only get one day of the week reserved for them."* The Market Inspectorate concluded that *"considering the Advocate's opinion, offering a sauna service only to women one day a week in this case is not to be considered discriminatory."*

This answer covered the first point of the Ombudsman's assessment which applied to the existence of direct discrimination as men are banned from the sauna on Tuesdays. But it was not clear from the answer whether the Market Inspectorate established the existence of indirect discrimination in determining the price of monthly and annual tickets, which is the same for men and women, even though men can use the sauna for only six days a week and women can use it for seven. For this reason we again addressed the Market Inspectorate and asked it to establish whether access to the sauna is offered to women under more favourable conditions than to men.

This time, the Inspectorate notified the Ombudsman that it had reviewed the prices of the monthly and annual sauna tickets under the provisions of the ZVarD. We have been informed that the public institution has eliminated the detected irregularities by withdrawing monthly and annual tickets from sale and instead introducing a package of 100 non-transferable tickets. The duration of ticket validity was also extended for male holders of valid annual tickets taking into account all the working Tuesdays in the period of the extended validity. The

notice of the Market Inspectorate also revealed that due to the established violations of the provisions of article 6 of the ZVarD, a decision on the administrative offence was issued to the public institution.

In this case raised by a petitioner, **discrimination on grounds of sex in the provision of services was actually established by the Market Inspectorate after the Ombudsman's intervention and was eliminated after the supervision was carried out.** (10.2-1/2017).

2.2.3 EQUAL OPPORTUNITIES REGARDLESS OF PHYSICAL OR MENTAL DISABILITY

Continued discrimination of students with disabilities...

Unfortunately, we must continue this year with an unfinished story. On p 117 of the previous Annual Report, we reported on the issue of **systemic discrimination of disabled students.** Among other things, we pointed out the provision of the second paragraph of Article 11 of the Equalisation of Opportunities for Persons with disabilities Act (ZIMI), which explicitly stipulates that *"Persons with disabilities"* must be entitled to appropriate accommodation for inclusion in the educational or study process and must have the right to have an educational or study process adequately adapted to their individual needs.. The third paragraph of Article 38 of the ZIMI stipulates that *"the time limit for the reasonable accommodation of education and study processes referred to in Article 11 of this Act must not exceed five years after the entry into force of this Act."* This deadline expired on 11 December 2015, and since the entry into force of the ZIMI, special legal regulations in this area have not been adopted. The Ministry of Education, Science and Sport was aware of the issues and announced that the starting point for the new comprehensive Higher Education Act (ZVis), which will systematically regulate the rights of students with disabilities in relation to their studies, would be prepared at the end of January 2017; in 2017, the Act was planned to be discussed by the government and the National Assembly, according to the assurances of the Ministry at the time. Initially we also wanted to point out that another **disabled student contacted the Ombudsman in 2017 and claimed discrimination in transportation from home to college.**

We checked with the Ministry to see if they were in line with their forecasts from the previous year. We were informed that the new ZVis would not be ready in 2017; but the aforesaid Ministry had agreed, together with the Ministry of Labour, Family, Social Affairs and Equal Opportunities, on the joint financing of the call for the transport of physically disabled students, which should be a temporary solution until appropriate systemic arrangements for the transport of students with disabilities can be adopted. Article 7 of the Student Status Act (ZUPŠ), which was adopted in October, supplemented the ZVis with a new Article 69a. In the first paragraph, this Article defines who the students with special needs are. In the third paragraph, it stipulates that students with special needs are entitled to more favourable treatment in the selection procedure in the event of restriction of enrolment, to the adaptation of the implementation of study programmes, and to additional professional assistance in their studies, whereby they can progress and complete their studies over a longer period of time than anticipated by the study programme, while retaining other rights and benefits of students from the first paragraph of Article 69 of the ZVis. The ZUPŠ also stipulates that the procedures and detailed manner of exercising the rights from the previous paragraph must be determined by the Minister in charge of higher education. According to the assurances of the MIZŠ, the authorities have already begun to prepare the Rules.

Enquiring further at the MIZŠ, we found that the **aforementioned provisions of the ZUPŠ do not regulate the problems of the transportation of disabled students,** but that the issue should be legally regulated by the Ministry of Infrastructure. We asked the MIZŠ if the right of disabled students to complete their studies over a longer period of time than anticipated by the study program is also limited due to the above established fact. The Ministry explained that *"the rights arising from ZUPŠ are still being coordinated"* and that therefore, it could not answer the Ombudsman's question. The MIZŠ therefore failed to fulfil its promise to prepare an amendment to the ZVis that would systematically regulate the rights of disabled students. **In this respect, the incompleteness of the ZUPŠ is a disappointment, as the Act does not resolve two main issues concerning the rights of students with disabilities, i.e. the possibility of prolonging their student status, and ensuring transportation for students with disabilities.** By the end of 2017, the National Assembly was in arrears by more than two years in the adoption of appropriate bases for the adaptation of the study process for students with disabilities, which is otherwise its responsibility under the third paragraph of Article 38 of the ZIMI (10.5-8/2016 and 10.5-11/2017).

Failure to act by the Council for Persons with Disabilities of the Republic of Slovenia

When addressing one of the petitions (see example below) in 2017, the Ombudsman also contacted the Council for Persons with Disabilities of the Republic of Slovenia (hereinafter: the Council). We found that **this body, established on the basis of Article 28 of the ZIMI, does not satisfactorily fulfil the tasks assigned to it by the law.**

In the fourth and fifth paragraphs of Article 28,the ZIMI stipulates that the Council must function as a mandatory forum for consultation on disability policy issues. In particular, it must monitor the development and implementation of programmes in the area of the protection of persons with disabilities; participate in drawing up reports on the implementation of national programmes and provide opinions on them; promote and monitor the implementation of the Act Ratifying the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of Persons with Disabilities; and deliver opinions to proposers of laws and regulations applicable to the protection of persons with disabilities during public discussion.

The Ombudsman contacted the Council with questions and proposals with regard to its last listed task above, and found out that the Council had failed to prepare a substantive answer to the Ombudsman's question or to address the Ombudsman's proposals – even though these applied to the implementation of the Council's statutory powers. In response to the Ombudsman's enquiry, the **Council explained that it does not function entirely as an independent body, as it should have been, and does not have employees that could deal in substance with the Ombudsman's letter.** It was explained that even determining the dates for Council meetings presents a problem, as they have to coordinate all of its 21 members. It was further stated that at the moment, its priority is to promote a change in legal status. The Council wants to become an independent legal entity with its own employees, in order to be able to provide quality and timely answers to all urgent disability issues. It also pointed out that by ratifying the Convention on the Rights of Persons with Disabilities, Slovenia committed itself to implementing its Article 33, which stipulates that *"the State's Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor the implementation of the present Convention."* The **Council estimated that it cannot be considered as such a mechanism at the moment, because it has neither its own employees nor the financial resources, and it is not an autonomous legal entity.**

As is evident from the publication on the website of the Ministry of Labour, Family, Social Affairs and Equal Opportunities (hereinafter: MDDSZ) entitled *"The Prime Minister of the Republic of Slovenia, Dr Miro Cerar, hosted a delegation of the Council for the Disabled of the Republic of Slovenia"*, published on 22 June 2016, the Government of the Republic of Slovenia has been aware of the circumstance that the Council *"cannot fulfil the required conditions and professional tasks deriving from the Convention (the preparation of the Action Programme for monitoring, monitoring the implementation and reporting on the Convention, supervision of the preparation of disability legislation, etc.)"* for quite some time.

It should also be noted that the legislator has already foreseen how the Council should perform its legal duties – the sixth paragraph of Article 28 of the ZIMI stipulates that the ministry responsible for the protection of persons with disabilities must carry out professional, administrative and technical tasks for the Council. **The MDDSZ should therefore provide the Council with expert assistance in the exercise of its legal powers.** However, the Council itself did not mention the issue of its relationship and cooperation with the Ministry in its responses to the Ombudsman. We believe that, prior to directing all its efforts into changing its status and obtaining independence, the **Council should demonstrate more specific efforts to fulfil the tasks imposed by the law, including by appealing to the Ministry to provide assistance under Article 28 (6) of the ZIMI** (10.5-15/2016).

Example:

Installation of bath tub in sheltered housing
The Ombudsman was contacted by a disabled person who wanted to apply for housing managed by the Pension and Disability Insurance Real Estate Fund, but the problem was that the bathrooms in such housing are only provided with a shower. This solution was not working for the petitioner due to his specific needs, as he could fall from a chair when showering, and he also needed assistance in order to use a shower. He would not experience such problems if a bath tub was installed and believed that there are approximately 200 people with similar needs in Slovenia. The petitioner had already contacted the Pension and Disability Insurance Real

Estate Fund, who explained that the apartments were built on the basis of the Rules on the Minimum Technical Requirements for the Construction of Residential Care Homes for the Elderly and on Ensuring Conditions for Their Operation (hereinafter: the Rules), which stipulate in Article 14 that the bathroom equipment of the apartments should include a shower but not a bath.

Further addressing the petition, the Ombudsman sent a query to the Council for Persons with Disabilities of the Republic of Slovenia – which should also provide opinions on the protection of persons with disabilities under the ZIMI – with questions and proposals, but it replied that it could not prepare a substantive answer due to its financial and personnel problems (as detailed above). Furthermore, the Ombudsman also turned directly to the Ministry of the Environment and Spatial Planning, which is responsible for preparing regulations in the area of construction. We proposed that the Ministry cooperate with the experts from the Slovenian Paraplegic Association to address the installation of bath tubs in sheltered housing, take a position on this issue, and decide whether and how to deal with this problem in the regulations in the area of construction.

The Ministry informed us that it does not intend to change the relevant regulations, since the existing solutions are appropriate in the opinion of the Slovenian Paraplegic Association. The latter considered that installing an adapted shower in an average bathroom for an unknown person with impaired mobility is a universal solution, and functional for different types of impaired mobility. Furthermore, the Association stated that such a shower can be upgraded by installing a prefabricated bath tub, whereby such an adjustment would not require structural or primary installation intervention in the structure of the living area, but only an additional adjustment detail linked to the specific abilities of a physically impaired individual, similar to technical devices (support bars, lifting mechanical devices, etc.).

Since the Ministry and the Slovenian Paraplegic Association assessed that the current regulation already allows the adequate adaptation of the housing to the specific needs of the petitioner, i.e. the installation of a bath tub next to the shower, we directed the petitioner to seek a specific solution for his housing problem by sending his bathroom adaptation request to the addressee, whereby he can also reference the opinion of the Slovenian Paraplegic Association (10.5-15 / 2016).

Discrimination of a public servant with a disability in the reimbursement of travel expenses to and from work

The Ombudsman was contacted by a petitioner employed as a teacher in a secondary school. The petitioner was a person with a category III disability and was employed part-time based on a decision by the Pension and Disability Insurance Institute of the Republic of Slovenia. Due to her disability, she was unable to withstand major physical strain such as standing for a long time or walking. She carried out her daily work in two school locations, which are approximately one kilometre apart. She stated that the closest bus station to her home was 300 m away and the closest bus station to the school was 500 m away, plus she also had to switch between both locations daily. For these reasons, she drove a car to work. If she used public transport, she would have to walk for up to three and a half kilometres a day, which would present an excessive physical burden for her. She also stated that until September 2016, she received a reimbursed monthly ticket for transport by bus in the amount of 69 euros, which covered the costs of transport by private car. In the current school year, the employer only reimbursed the cost of the cheapest public transport, which no longer covered the costs of car transport.

The petitioner had already contacted her employer and the Ministry of Education, Science and Sport with questions and requests for clarification. She received an answer explaining that *"due to the entry into force of the Fiscal Balance Act (ZUJF) and of the annexes to sectoral collective agreements, only the cheapest possible public transport may be reimbursed as transport compensation"*, and that *"there are no particularities with regard to the reimbursement of the costs of transport to and from work for disabled workers or employees with health problems, so the rules apply in the same way as for all other employees."* Despite this clarification, the petitioner considered that she was discriminated against in the reimbursement of the cost of transport to work due to her disability.

The Ombudsman was also critical of the Ministry's views. First of all, we were not persuaded by the explanation of the Ministry as to why the petitioner may not be paid a kilometre allowance. In the criticism addressed to the Ministry, we pointed out the first paragraph of Article 52 of the Slovenian Constitution, which stipulates that disabled people must be guaranteed protection and work training in accordance with the law, and Article

14, which guarantees equality before the law irrespective of disability. We also pointed out the provisions of Article 27 of the Convention on the Rights of Persons with disabilities (hereinafter: CRPD), the protection of persons with disabilities against discrimination under the ZVarD and ZIMI, and Article 6 of the Employment Relationship Act (ZDR-1), on the basis of which both indirect and direct discrimination of workers on the basis of disability are prohibited during the employment relationship. The first paragraph of Article 130 of ZDR-1 also states the following: *"The employer must ensure reimbursement to the worker of expenses for meals during work, for travel expenses to and from work and of expenses the worker incurs during the performance of certain work and tasks on business travel."* According to the Ombudsman, the applicable constitutional, international and statutory arrangements also ensure the special protection of rights to persons with disabilities in the context of an employment relationship, including the right to reimbursement of work-related expenses. These regulations expressly prohibit indirect discrimination of persons with disabilities (also) in the reimbursement of work-related expenses. We therefore considered **that the viewpoint of the Ministry that *"there are no particularities with regard to the reimbursement of the costs of transport to and from work for disabled workers or employees with health problems, so the rules apply in the same way as for all other employees"* is an indirect form of discrimination,** since the petitioner is in a less favourable position in comparison with people without disabilities due to this seemingly neutral regulation and the practice of the Ministry. A person without disabilities could use public transport in the same or similar situation, and thus all the costs of transport to and from work would be reimbursed, while the petitioner was not able to use public transport due to her (proven) disability, so she had to cover a large part of the costs herself, which put her in a less favourable position.

We were particularly critical of the Ministry's position in the letter No. 6030-2 / 2016/1 of 26 August 2016, in which point 4.2 in the second paragraph specified when public transport is not possible. We considered that this part is discriminatory because it completely ignored the situation of persons with disabilities who could not use public transport due to their impaired mobility. We also considered that the use of public transport is not possible in situations which were not listed in this viewpoint, e.g. when a disabled worker cannot use public transport because he or she cannot access it or cannot fit inside (e.g. with a wheelchair) or cannot access the bus stop (e.g. because of the long walking distance). We also cannot agree with the MIZŠ referencing the interpretation of the Ministry of Public Administration (hereinafter: MJU) in document No. 100-1521 / 2014/2 of 18 December 2014, since the last sentence explicitly states that transport costs *"may be reimbursed differently as stipulated by collective agreements, if this is specified in the regulations governing the special status and rights of persons with disabilities"*.

The Ombudsman thus proposed that in the given case the petitioner should be reimbursed by a kilometre allowance – such a measure would protect the rights of persons with disabilities, ensure their equal treatment before the law (Article 14 of the Constitution), and respect the ratified international treaties (Article 27 of the CRPD) and the prohibition of discrimination (Article 6 of ZDR-1 and the second paragraph of Article 4 of the ZVarD). However, the MIZŠ did not follow the Ombudsman's proposal. It stated that the reimbursement of the costs of transport to and from work for civil servants is regulated in the first paragraph of Article 5 of the Annex to the Collective Agreement for Education and Schooling Activity. They also wrote that they absolutely agree that *"persons with disabilities should enjoy special protection in the employment relationship"* and that they themselves assess that *"it would be appropriate to allow employees with a disabled status to get their transport costs reimbursed by a kilometre allowance if they cannot use public transport to work because of their disability"*. However, according to them, their position is harmonised with both the MJU and the Court of Audit, and, unfortunately, when concluding annexes to collective agreements, the social partners did not leave *"room for manoeuvre"* for a possible (additional) decision of the employer in cases where it could be considered that public transport was not possible, with the exception of the cases set out in Article 5 (3) of the aforementioned Annex. Therefore, the MIZŠ intends to send an initiative *"to the competent Ministry of the Civil Servants System (MJU) to agree on an appropriate solution to the issue with the participation of the representative trade unions."*

The Ombudsman was critical of the Ministry's response, as we believe that the established discrimination against disabled employees could and should have been eliminated already. Among other things, we pointed out that the MIZŠ is an autonomous administrative body. In accordance with the provision of the second paragraph of Article 120 of the Slovenian Constitution, it is bound (only) to the Constitution and the law, and in this particular case, it could not validly rely on coordination with the MJU and the Court of Audit. We again pointed out that in interpretation No. 100-1521/ 2014/2 of 18 December 2014, the MJU expressly stated in the last sentence that transport costs *"may be reimbursed differently as stipulated by collective agreements, if this is specified in the regulations governing the special status and rights of persons with disabilities"*. In our opinion, this indicates the viewpoint of the MJU that employees who cannot use public transport due to their disability should be reimbursed the cost of transport in the form of a kilometre allowance – this is the only

way to prevent legal discrimination against disabled workers in the reimbursement of transport costs in such cases. We also emphasised that in accordance with the provision of Article 4 of the Collective Agreements Act (ZKolP), collective agreements may contain only the provisions which are more favourable for employees than the provisions contained in the law, unless the Employment Relationship Act stipulates otherwise. Employees may not waive the legally stipulated protection against discrimination on the basis of a collective agreement. They also cannot waive the right to reimbursement of costs for transport to work (Article 130 of ZDR-1) on the basis of a collective agreement. Therefore, we can consider in the present case that the Annex to the collective agreement does not regulate the reimbursement of work transport costs of disabled workers, so a direct constitutional provision on equal treatment before the law should be applied instead (Article 14 of the Slovenian Constitution) along with the provision of Article 27 of the Convention on the Rights of Persons with disabilities and the provision on the prohibition of discrimination (Article 6 of the ZDR-1 and the second paragraph of Article 4 of the ZVarD). We again asked the MIZŠ to complete its letter No. 6030-2 / 2016/1 from 26 August 2016 and to expressly indicate that public transport is also not possible when a disabled worker cannot access it or cannot fit inside (e.g. with a wheelchair) or cannot access the bus stop (e.g. because of the long walking distance), and that in such cases, the employee's travel costs should be reimbursed in the form of a kilometre allowance.

In its second reply, the Ministry did not fully take the Ombudsman's proposal into account, but nevertheless announced that, after consulting with the MJU, the public servant in question would be reimbursed by a kilometre allowance, based on the circumstance that the use of public transport would place too much physical strain on her and that changing location could lead to excessive time losses. According to the provisions of the Annex to the Collective Agreement for the Education and Schooling Activity, it is considered that a public servant who, due to the use of public transport, has more than one hour of time loss (disregarding the duration of the journey in one direction), cannot use public transport and is therefore reimbursed by a kilometre allowance (10.5-2 / 2017).

Discrimination of public servants with a disability in the reimbursement of travel expenses to and from work

Above, we reported on the specific case of a public servant with a disability who was unable to use public transport and so drove a car to work, and to whom the employer did not pay a kilometre allowance but only covered the cheapest public transport. We estimated that **this was a case of indirect form of discrimination on the grounds of disability** and proposed that the employer reimburse the transport costs by a kilometre allowance. In the end, the employer did that, but the basis for payment of transport costs was not entirely appropriate, according to the Ombudsman. Therefore, we continued to address this case from the systemic point of view and sent queries and proposals to the Ministry of Public Administration (MJU).

The Ombudsman tried to get the Ministry to supplement its interpretation No.100-1521 / 2014/2 from 18 December 2014. This interpretation refers to the reimbursement of the costs of transport to and from work for disabled people if the distance from the place of residence to the place of work is less than 2 kilometres. In this interpretation, the MJU considered that a public servant whose health problems require the use of a means of transport to get to work is not entitled to the reimbursement of the cost of transport to and from work if the distance between the place of residence and the place of work is too small, because the required distance for the reimbursement of transport costs is more than two kilometres. In this explanation, the Ministry also stated that the costs of transport to and from work may be reimbursed differently as stipulated by collective agreements, if this is specified in the regulations governing the special status and rights of persons with disabilities.

The Ombudsman considers that cases which indirectly discriminate against disabled people fall within the framework of the regulations governing the special status and rights of persons with disabilities, since the protection of persons with disabilities against discrimination is based on several regulations, e.g. on the constitutional provision on equal treatment before the law (Article 14 of the Slovenian Constitution), the provision of Article 27 of the Convention on the Rights of Persons with disabilities, and on the provisions on the prohibition of discrimination (Article 6 of ZDR-1 and the second paragraph of Article 4 of the ZVarD).

We considered that the interpretation of MJU, No. 100-1521 / 2014/2 of 18 December 2014, is too vague in substance with a view to the protection of persons with disabilities against discrimination in the enjoyment of work-related rights, and that it allows interpretations which constitute indirect discrimination against persons with disabilities in the enjoyment of these rights. We proposed that the MJU expressly indicates that public transport is also not possible when a disabled worker cannot access it or cannot fit inside (e.g. with a

wheelchair) or cannot access the bus stop (e.g. because of the long walking distance), and that in such cases, the employee's travel costs should be reimbursed in the form of a kilometre allowance.

The MJU did not follow the Ombudsman's proposal. It reported that the current regulation was based on the provisions of the Annex to the Collective Agreement for Non-Economic Activities (Official Gazette of the Republic of Slovenia, No. 40/12) and in the field of education, also on the provisions of the Annex to the Collective Agreement for Education and Schooling Activity. It explained that the interpretation of collective agreements and annexes is the responsibility of the committee for the interpretation of individual collective agreements, while the MJU only provides explanations within the scope of its work, which can then be used by the professional service and the employer deciding on the rights of public servants under the law, implementing regulation or collective agreement. It stated that the previous regulation in this area was based on the Decree on Reimbursement of Travel Expenses to Civil Servants and High Officials in Public Authorities. This Decree, which expired on June 1, 2012, otherwise regulated the issues of reimbursement of transport costs in cases of disability. A disabled employee was reimbursed for the cost of transport by a kilometre allowance or was reimbursed for the use of another appropriate transport, whereby this decision was adopted by the head in accordance with the regulations.

Nevertheless, the MJU considered that the applicable regulations on the reimbursement of transport costs to and from work in the Annex do not imply that disabled people are discriminated in the reimbursement of transport costs, as, under these regulations, public servants are reimbursed for such costs if the distance between the place of residence and the place of work exceeds two kilometres, regardless of whether they are disabled or not. Regarding the latter, it should be emphasised that the **indirect form of discrimination means that an individual is in a less favourable position on the basis of his personal circumstances precisely because of a seemingly neutral provision, criterion or practice.** We can agree with the MJU that the applicable regulations apply in the same way to public servants with or without disability. But this in fact causes the problem: a public servant without a disability living more than two kilometres away from their workplace receives reimbursed transport costs for work in the amount of public transport and can also benefit from this transport. If the distance between the place of residence and the workplace is less than two kilometres, the cost of transport to and from work is not reimbursed, because the journey can be made on foot. However, a public servant with a disability who is unable to use public transport and is also unable to walk to their workplace, thus has to cover part of the transport costs and is in a less favourable position than a public servant without such a disability. In this way, the public servant's right under Article 130 of the ZDR-1 has been compromised, and the current legislation constitutes an indirect form of discrimination against persons with disabilities in the enjoyment of rights for the duration of the employment relationship.

In accordance with the provision of Article 4 of the ZKolP, collective agreements may contain only the provisions which are more favourable for employees than the provisions contained in the law. Collective agreements and annexes to collective agreements therefore cannot determine a narrower scope of employment relationship rights stipulated by law. An employee may not waive the protection against discrimination with regard to an employment relationship right. We can once more agree with the MJU that it is in fact not competent to interpret collective agreements; nevertheless, taking into account the fact that the described case (at least according to the Ombudsman) is an indirect form of discrimination in relation to the exercise of a legally based right, the Ministry should be able to prepare an explanation to assist the employers deciding on the right of disabled public servants to reimbursement of costs for transport to and from work.

The Ombudsman asked how many such cases the Ministry had detected and it replied that there were only two so far. The Ombudsman will continue to monitor this issue and, when dealing with concrete cases, strive to eliminate possible discrimination of public servants with disabilities. The Ombudsman's proposal to the MJU could have contributed to equal treatment of public servants regardless of their disability, but it was not accepted. Despite this, the Ombudsman's recommendation to the employers deciding on the right of disabled public servants for the reimbursement of costs of transport to and from work should be emphasised: when an employee is not able to use public transport because of a disability, the costs of transport should be reimbursed by a kilometre allowance when using a private car for transport to and from work, or reimbursed for the use of another appropriate form of transport (10.5-2 / 2017).

Entering a shop with a guide dog can still present a problem

We were also contacted by a petitioner who wrote that the Harvey Norman store in Ljubljana had not let her enter with her guide dog, even though the dog was equipped with the appropriate harness with handle and all the appropriate markings. She informed us shortly afterwards that she wanted to withdraw her petition,

because she was already in contact with the store and they were seeking a solution. Nevertheless, this issue is highlighted in this Annual Report as a remainder that we reported on a very similar case ten years ago (p 51 of the Annual Report for 2007), when a blind person with a guide dog was not allowed to enter a public building. Let us initially point out that it is alarming that these things still happen.

This issue also raises all kinds of questions. First of all, **is it a systemic failure that the provision on guide dogs and assistance dogs being able to enter all public places and all means of public transport with their handlers is written in the Animal Protection Act (ZZZiv), when it actually applies to disabled people?** Also, is it not strange that Article 45 of the aforementioned Act states that the legal people or individual sole traders will be fined between EUR 2,400 and EUR 84,000 for offences of failing to allow access to a guide dog or assistance dog, along with its handler, to a public place or a means of transport, but the supervision over the implementation of this Act and its regulations should be directly carried out by the *"veterinary, agricultural, hunting and fishing inspectors and inspectors responsible for preserving nature"*?

2.3 RESTRICTION OF PERSONAL LIBERTY

	Cases processed			Resolved and well-founded		
Area of work	2016	2017	Index 17/16	No. of resolved cases	No. of well-founded cases	Proportion of well-founded cases among those resolved (in %)
3. Restriction of personal liberty	**182**	**157**	**86.3**	**135**	**27**	**20.0**
3.1 Remand prisoners	23	20	87.0	17	8	**47.1**
3.2 Prisoners	88	91	103.4	80	8	**10.0**
3.3 Psychiatric patients	27	15	55.6	12	2	**16.7**
3.4 People in social care institutions	29	19	65.5	17	8	**47.1**
3.5 Youth houses	3	2	66.7	1	0	**–**
3.6 Illegal aliens and asylum seekers	5	4	80.0	2	0	**–**
3.7 People in police custody	0	0	–	0	0	**–**
3.8 Forensic psychiatry	5	5	100.0	5	1	**20.0**
3.9 Other	2	1	50.0	1	0	**0.0**

This section focuses **on the processing of petitions associated with the restriction of personal liberty.** It concerns individuals who have been deprived of their liberty, or whose freedom of movement has been restricted for different reasons. These include remand prisoners, prisoners serving prison sentences (including house arrest and substitute prison sentences), people in the unit for forensic psychiatry, minors in the juvenile prison, correctional facilities, residential treatment institutions and work centres, people with mental disorders or illness who are placed in social and healthcare institutions, and aliens in the Aliens Centre.

2.3.1 GENERAL OBSERVATIONS – PETITIONS BY REMAND PRISONERS AND PRISONERS

In 2017, we processed 20 petitions by remand prisoners (in 2016, 23 cases) and slightly more petitions by prisoners than the previous year (i.e. 91 compared to 88 in 2016). Quite a number of issues were resolved by our associates through phone conversations, and there was no need to process the case in a more formal procedure. In addition to processing petitions in this area, we also visited prisons when implementing the duties and powers of the National Preventive Mechanism (NPM), which is the subject of a special report.

As in previous years, we established whether the rules and standards which the state undertook were being observed, both through the Constitution of the Republic of Slovenia and international conventions, in order to safeguard human rights during deprivation of liberty, especially human personality and dignity.

When serving their prison sentence, prisoners must be ensured all fundamental human rights, except those explicitly taken away or restricted by law. This has also been pointed out by the European Court of Human Rights in its convictions of our state due to violations of the rights of people in custody, and in the latter's lawsuits for the payment of compensation due to inappropriate conditions at the time of serving their prison sentence and/or while being held in a remand prison.

The petitions by remand prisoners and prisoners were verified (in some cases with visits) with the relevant bodies (e.g. courts), particularly the Prison Administration of the Republic of Slovenia (the UIKS), prisons or the Ministry of Justice (MP). Individual topics in this field were also discussed at meetings with representatives of the MP or the UIKS. If a procedure was initiated in a case (e.g. in the event of claimed major irregularities or obvious arbitrariness), the people in custody were informed of the replies to our enquiries with the relevant authorities and of our findings and eventual other measures, e.g. recommendations to the relevant authorities. To establish a basis for further action by the Ombudsman, we asked petitioners, if necessary, to let us know whether the clarifications they had received were suitable, or perhaps inaccurate or insufficient. If the petitioners did not respond, we were unable to continue our enquiries. **Considering the above, and the fact that we intervened only if the responsible bodies failed to present their position on a matter or did not consider it at all, the proportion of well-founded cases among those resolved in the area of processing petitions filed by people in custody is as can be expected.**

It is encouraging to learn that the number of people in custody has reduced; however, there are still prisons which are dealing with the issue of overcrowding. This continues to be true for Ljubljana Prison and its overcrowding. The lack of functionality of the building housing this prison undoubtedly requires the construction of new facilities in Ljubljana, even though (as repeatedly emphasised) the problem of overcrowding cannot be resolved only by building new prisons. It can also be expected that the operations of probation services will contribute to a more frequent use of alternative sanctions, thus reducing the number of people in custody. In this respect, the Recommendation of the Committee of Ministers to Member States on the European Rules on Community Sanctions and Measures, which was adopted on 22 March 2017, might be useful.

We can also mention the poor living conditions of the prisoners in the open unit of Ljubljana Prison and in other prisons, and this requires the adoption of the necessary measures aimed towards ensuring the observance of prisoners' human rights, especially their personality and dignity. Organising activities or providing work to all people in custody who are able and want to work remains a weakness in prisons. The reasons for the dissatisfaction of a number of prisoners are also unfulfilled promises, poor response to their requests and demands, and food (both quality and quantity), as is evident from the protests in 2017.

While being deprived of their freedom due to being in remand prison or serving a prison sentence, people in custody are under the authority of the state, which is obliged to ensure all reasonable measures for the prevention of suicide attempts. We have repeatedly emphasised (including in our Annual Reports) that special attention must be paid to the psychiatric examination and evaluation of people in custody so as to assess potential suicidal tendencies. People with such a diagnosis require continuous psychiatric treatment or at least regular contact with a psychologist. **The state has deprived sentenced prisoners and remand prisoners of their freedom, and it must therefore adopt all reasonable measures, including the prevention of illicit drug trafficking, to prevent the deaths of people in custody.** On the basis of media reports on the sudden deaths of people in custody, we requested a report on the establishment of the circumstances surrounding the death of a remand prisoner in Maribor Prison and a prisoner in Dob Prison from the UIKS and the competent court. In the light of the findings of the competent committee, we were unable to establish a basis for further action.

In this respect, we cannot overlook the repeated **visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)** to three prisons in Slovenia at the beginning of 2017. The CPT provided comments and recommendations in its report, which Slovenia is bound to consider and to eliminate all the established deficiencies (especially those coinciding with our findings), which we will certainly monitor.

2.3.2 IMPLEMENTATION OF THE OMBUDSMAN'S RECOMMENDATIONS CONCERNING THE PETITIONS MADE BY REMAND PRISONERS AND PRISONERS

With Recommendation No. 11 (2016), the Ombudsman expressed the expectation that the comments and considerations of (external) experts will also be studied and taken into account in the procedure for preparing the construction of a new prison in Ljubljana. In this respect, the Ministry of Justice explained that a consultation was organised, entitled *"The Construction of a new prison: recommendations and considerations"*, which the Institute of Criminology at the Faculty of Law organised on 2 June 2017 in the context of the new construction of Ljubljana Prison and Ig Prison, and that the considerations of external experts were considered with regard to the joint planned location of the two prisons (Ljubljana Prison for men and Ig Prison for women). **The considerations of the external experts were taken into account, and only Ljubljana Prison will be built in Dobrunje, while Ig Prison for women will remain in the same location and be refurbished and extended.**

With Recommendation No. 12 (2016), the Ombudsman recommended that the Ministry of Justice govern in greater detail the issuing of permits for visiting remand prisoners by means of amendments to the Criminal Procedure Act. This recommendation has not been implemented and the Ministry of Justice informed us that it would study the recommendation when preparing the next ZKP amendment.

The Ombudsman also recommended that the UIKS take all necessary measures to enable people in detention to have daily showers, as this is the basis of personal hygiene (Recommendation No. 13 (2016)). According to the MP, the UIKS reviewed the possibility of accessing a shower in all prisons and established that a shower was generally available every day in all prisons. Exceptions to this regulation are Celje Prison and Juvenile Prison, as already established by the Ombudsman, Maribor Prison, the Murska Sobota Unit (a shower is available three times a week), and Ljubljana Prison, the Novo Mesto Unit (a shower is available four times a week). Celje Prison and Juvenile Prison has changed its house rules, and now all the people in custody can shower every day. **Furthermore, the UIKS believes that additional human resources will enable the taking of daily showers in the two remaining prisons as well.**

With Recommendation No. 14 (2016), the Ombudsman recommended that the MP and the UIKS ensure that adjusted facilities for prisoners who require additional assistance in meeting their basic daily needs due to age, illness or disability (hereinafter vulnerable prisoners) in the form of care and social care be established as soon as possible. In this respect, part of Department I of Dob Prison has been refurbished. In addition to a lifting platform, the bathroom and toilet have been refurbished so as to be appropriate for use by people with impaired mobility. The UIKS also announced that the position of this group of people in custody will also be taken into account during the construction of the new Ljubljana Prison in Dobrunje, as the terms of reference already anticipate a special department (under Article 60 of the ZIKS-1).

As the majority of the prisons and their remote units are located in older buildings, whose premises were mostly not anticipated for the accommodation of vulnerable people in custody, the Ombudsman, in the role of the NPM, decided to study the conditions for these people in 2017, and to prepare a special thematic report on its findings, including recommendations for improving the conditions of accommodation and treatment of vulnerable people in custody.

With Recommendation No. 15 (2016), the Ombudsman urged that a protocol be adopted as soon as possible by the MP and the UIKS or the MDDSZ with regard to the placement in retirement care homes of prisoners who require more intensive and demanding care, as such an agreement would facilitate the work of all stakeholders in the process of the possible placement of people after they have served their prison sentence into a social care institution. This recommendation originates in the previously perceived problems concerning the placement of people in retirement homes or special social care institutions after serving their prison sentences. We established that there were problems concerning the cooperation of the competent authorities (and have reported on this already in the 2013 Annual Report and subsequent reports). We processed cases where all institutions refused to take in a prisoner who required placement in a social care institution for reasons of special care. This can represent inhuman and degrading treatment, as a prison sentence for a person who requires special care due to their health problems but who cannot receive such care in prison loses its purpose or meaning, as detaining such a person in prison is inadmissible and represents a violation of constitutional rights. The Constitution emphasises the protection of human personality and dignity, as it stipulates that respect for human personality and dignity must be guaranteed in criminal and in all other legal proceedings, as well as during the deprivation of liberty and the enforcement of punitive sanctions.

Furthermore, it prohibits violence in any form against any person whose liberty has been restricted in any way (Article 21 of the Constitution), as well as torture or inhuman or degrading punishment or treatment (Article 18 of the Constitution).

We believed that an agreement between those responsible for this procedure could contribute to eliminating problems in this area. The fact that an agreement was necessary had also been confirmed by the response to our recommendation, as the conclusion of such an agreement had already been announced for 2014. The agreement had been prepared, but in 2017, the Social Affairs Directorate of the MDDSZ, after reviewing it, assessed that concluding such an agreement would not contribute to changes or potential improvement concerning the placement of people in the event of the suspension of their sentence or after serving their sentence. At a meeting with representatives of the UIKS and the Association of Social Institutions (the SSZS), an agreement was nevertheless made on 22 March 2017 which is planned to contribute to the unhindered placement of people in social care institutions in the event of the suspension of their sentence or after serving their sentence. It has been agreed that prisons will inform the SSZS of each case separately, and the SSZS will appoint a special group which will cooperate in the placement procedure.

With Recommendation No. 16 (2016), the Ombudsman recommended that the obligation to enable access to a doctor to all people in custody at any time be consistently observed. The UIKS agreed with the Ombudsman's viewpoint and warning that people in custody must have access to healthcare. It emphasised that the role of health centres (and other entities, especially the Ministry of Health) must not be overlooked in the enforcement of this right. It therefore continued to encourage the implementation of the activities of health centres which must provide healthcare to people in custody in accordance with Article 59 of the ZIKS-1. In 2017, we additionally warned the UIKS that people in custody must have confidential access to health services in accordance with Article 45 of the Rules on the Implementation of Prison Sentences. This also refers to confidentiality in communicating with the doctor, i.e. registering for a visit to the doctor. The UIKS assured us that, in the light of the Ombudsman's warning, Dob Prison, in cooperation with Trebnje Health Centre, will immediately start implementing a more confidential method for registering for urgent medical examinations, thus enabling prisoners confidential communication with their doctor in accordance with Article 45 of the Rules.

2.3.3 REMAND PRISONERS

In addition to the ZKP, the implementation of remand is regulated in detail by the Rules on the Implementation of Remand. The Ministry of Justice prepared a new amendment in 2017, i.e. the Rules amending the Rules on the Implementation of Remand (Official Gazette of the Republic of Slovenia, No. 41/2017). We welcomed these amendments, which are aimed at facilitating fast action so as to prevent conditions which could violate the prohibition of torture, inhuman or degrading treatment or punishment, which is stipulated in Article 18 of the Constitution of the Republic of Slovenia and in Article 3 of the European Convention on Human Rights (ECHR). This would provide an additional measure for preventing similar violations as those established in the judgment of the European Court of Human Rights in the case of Mandić and Jović v. Slovenia. We believe that it is (in the light of its content) a significant legal remedy which must be based on law. We have therefore proposed corresponding amendments to the ZKP, as we do not believe that it suffices to only regulate this by an extension of the Rules. We generally established that the existing regulation of supervision of treatment of remand prisoners under Article 213d of the ZKP and Article 69 of the Rules on the Implementation of Remand is not sufficiently regulated, and does not bring any specific results in practice. We therefore believe that the valid legislative framework does not meet the requirements of an effective remedy and especially does not consider the extensive case law of the European Court of Human Rights with regard to effective remedies within the meaning of Article 13 of the ECHR.

We further emphasised that the proposed amendment does not indicate which measures the UIKS would be able to (quickly) implement in order to eliminate potential inappropriate living conditions (e.g. in the event of overcrowding, with this problem being present in almost all Slovenian prisons). We see it as another deficiency that the possibility of the remand prisoner cooperating in this procedure is not (separately) regulated. We further note that in the light of the case law of the European Court of Human Rights, an effective remedy within the meaning of Article 13 of the ECHR is only such when it is able to prevent a violation or its continuation. If a violation has already occurred, the individual must have appropriate damages recognised.

With regard to our observations, the Ministry of Justice said that the amendment to the Rules also supplements the proposed amendment of Article 212 of the ZKP (proposed by the ZKP-N), which explicitly establishes that the overcrowding of an institution is a reason for transferring a remand prisoner. A special

mechanism for transferring prisoners and remand prisoners in the event of reaching the full operational capacity of the institution has been set up and is being implemented. Remand prisoners have already successfully enforced their right to compensation due to inappropriate spatial conditions on remand. The Ministry further stated that our observations on the additional legislative regulation of an effective legal remedy would be studied from the viewpoint of potential future legislative amendments.

As in previous years, the petitions put forth by remand prisoners in 2017 again mainly referred to the ordering and implementing of remand, which can generally (only) be done in court proceedings with extraordinary legal remedies.

We continued to encourage remand prisoners to use internal complaint channels as enabled by Article 70 of the Rules on the Implementation of Remand, which stipulate that remand prisoners may complain to the president of the relevant district court or the Director-General of the Prison Administration of the Republic of Slovenia if they believe that prison staff are not treating them correctly. We find that the instruction to use the existing legal channels is often enough to resolve a problem.

The Ombudsman also received complaints concerning poor living conditions in remand, problems with fellow remand prisoners, and unsuitable health care. With regard to the latter, the UIKS, in one of the processed petitions, explained that prisons were not authorised to change the decision of the competent doctor concerning the medical treatment of remand prisoners, including the ordering of hospitalisation. Instead, they consistently provide the required treatment options to remand prisoners and ensure the implementation of the associated safety measures.

In the case of female remand prisoners from Celje Prison and Juvenile Prison, as was also confirmed by the UIKS, we established that they actually do have poorer living conditions than female remand prisoners in Ig Prison, as the latter was intended exclusively for women. The UIKS therefore stressed that a refurbishment of Ig Prison was urgently required, as it foresees an increase in the capacity of the remand prison which would implement remand for women from across Slovenia.

Furthermore, the UIKS explained that Celje Prison and Juvenile Prison was trying to make the time spent in remand as easy as possible for female remand prisoners. They have extended one-hour visits, can attend various events in the prison such as sports and cultural events, and leisure workshops are organised once a week in cooperation with the Adult Education Centre in Celje. The UIKS assured us that Celje Prison and Juvenile Prison will continue to strive to additionally improve the conditions in the female remand department, all in consideration of the existing possibilities.

The processed cases also included claims of maltreatment by judicial police officers. We received an anonymous letter in which the author stated that a judicial police officer at the Murska Sobota Unit of Maribor Prison attacked a remand prisoner and used unprofessional procedures, punches, strangleholds and other illicit physical force to try to make the remand prisoner to throw up (from the mouth or stomach) the object which the remand prisoner had previously consciously put in his mouth or swallowed.

2.3.4 PRISONERS

In 2017, we again received petitions from prisoners referring to various aspects of serving their sentence, such as the summons to serve their sentence, the commencement of the sentence, poor living conditions, the regime or relocation from a more liberal to a stricter regime, relocations to other prisons or departments (or premises), suspension or postponement of serving their sentence, endangerment from, or the violence of, fellow prisoners, the possibilities for work, granting (or withdrawing) various privileges, visits and other communication with the outside world (e.g. writing), confiscation of personal belongings, healthcare, inclusion in addiction treatment programmes, urine testing, diet, escort by judicial police officers, use of coercive measures, and parole, among others. There were also petitions which referred to the possibility of doing community service instead of serving a prison sentence.

As in the case of petitions by remand prisoners, prisoners' complaints were, as is customary, also verified if necessary (in some cases with visits) by the relevant authorities, particularly the Prison Administration of the Republic of Slovenia, the Ministry of Justice or the relevant prison.

Prisoners serving their sentences were further encouraged to complain about violations of rights and other irregularities which are not subject to judicial protection in accordance with Article 85 of the ZIKS-1 by a complaint to the Director-General of the Prison Administration of the Republic of Slovenia. According to this Article, a prisoner has, in the case of *"other violations of rights or other irregularities which are not subject to judicial protection"*, also *"the right to complain to the Director-General of the Prison Administration"*. If they do not receive a reply to their complaint within 30 days of its submission or if they are not satisfied with the decision of the Director-General, they also have the *"right to file a complaint with the ministry responsible for justice."*

The ZIKS-1 amendment

The Ministry of Justice prepared the proposed amendment to the Enforcement of Penal Sentences Act (ZIKS-1) in 2017, for which it affirms that it improves the legal framework and ensures a more appropriate legal basis for the enforcement of penal sanctions. The Ombudsman's office provided its observations during the drafting of the proposal. The amendment was prepared on the basis of the findings during the monitoring and assessment of the implications of the valid legislation in practice. An appropriate legal basis had to be ensured for the correct and consistent regulation of powers of judicial police officers, which are now predominantly governed only at a regulatory level. According to the Ministry of Justice, the amendments and annexations were also required to harmonise the Act with legislation on minor offences, which introduces a substitute prison sentence, and with the new probation Act. The competent probation unit will assume individual tasks of the court, the police, and social work centres relating to home detention, community service, and suspended sentences. Individual tasks will be assumed by the probation administration. It is especially important for the amendment to be harmonised with European legislation on the rights, support, and protection of victims of crime. This amendment also governs the procedure for the expulsion of aliens. **The amendment foresees the implementation of some of our past observations, such as ensuring the safety of the victim by providing notification of the temporary release, escape or final release of the offender, and considers other observations, such as the regulation of special accommodation for convicted prisoners when reasons exist for a special, stricter regime of sentence enforcement.**

Strategy of the Prison Administration of the Republic of Slovenia (2017-2020)

In 2017, the Prison Administration of the Republic of Slovenia (UIKS) prepared the Strategy of the Prison Administration of the Republic of Slovenia (2017-2020). **We welcome the adoption of this strategy as we believe it is a useful document for the work of the prison system and the implementation of its mission, in addition to the definition of the purpose of punishment in the KZ-1E amendment.** We explicitly proposed additional consideration of the definition of the purpose of punishment to specifically emphasise the need to give meaning to the time spent in prison, as highlighted in the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) under Rule 4, which states that a period of imprisonment should be used to ensure, as far as possible, the reintegration of prisoners into society upon release so that they can lead a law-abiding and self-supporting life. It is for this reason that prison administrations and other competent authorities must offer educational programmes, vocational training, and work, as well as other forms of available and appropriate assistance, including educational, correctional, moral, spiritual, social, health, and sports programmes. All these programmes, activities, and services must be implemented in accordance with the needs of the individual treatment of prisoners.

We also encourage the announced preparation of the action plan which will define in detail the time schedule for individual measures, the required resources, the monitoring of the planned measures, and the implementation of the objectives. We hope that our recommendations which we provide when reviewing the suggestions of prisoners, and the recommendations provided in the role of the National Preventive Mechanism will be of assistance.

2.3.5 UNIT FOR FORENSIC PSYCHIATRY

General observations

In 2017, the Unit for Forensic Psychiatry of the Department of Psychiatry of Maribor University Hospital celebrated its fifth year of operation. It is responsible for implementing obligatory psychiatric treatment and custody in a health institution and the hospitalisation of remand prisoners and prisoners if they require psychiatric treatment, and, if necessary, it also carries out observations for the purposes of drafting psychiatric expert opinions on a person's sanity or ability to participate in a procedure.

In 2017, we visited the Unit in the capacity of the NPM (more about this visit can be found in the Report on the Implementation of the Duties and Powers of the National Preventive Mechanism). The main purpose of our visit was to verify the observance of the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) during its 2017 visit to Slovenia and the Unit. After its visit, the CPT made 14 recommendations. We found that the Unit has accepted but not yet (fully) implemented nine recommendations. The Unit failed to accept five recommendations. We specifically highlighted this problem in our report on the visit and recommended that the Unit approach the implementation of the recommendations earnestly and make all efforts to implement the CPT's recommendations as soon as possible. **However, we did find that the situation in the Unit is improving, both in terms of shortage of space (which it had to deal with from the beginning of its operation) and patient satisfaction.** In the few petitions sent to the Ombudsman, these patients mainly complained about their disagreement with the planned treatment method. There is of course still room for improvement, as indicated by the CPT's recommendations.

Implementation of the Ombudsman's recommendations

With Recommendation No. 17 (2016), the Ombudsman advocated that the suitability of the current arrangement for mandatory treatment measures be considered, since people for whom mandatory treatment and care in a healthcare institution have been ordered solely because there are no other options available, should not be deprived of milder measures and should not be condemned to having the measure prolonged in a healthcare institution if the same goal could be achieved by other measures. In this respect, the Ministry of Justice explained that the Criminal Code (KZ-1), in addition to the safety measure of compulsory psychiatric treatment and care in a healthcare institution, also stipulates the safety measure of compulsory psychiatric treatment outside prison. The claim that the safety measure of compulsory psychiatric treatment in a healthcare institution was being prolonged because there were no other milder measures available was therefore wrong. In accordance with Article 70a of the KZ-1, the safety measure of compulsory psychiatric treatment and care in a healthcare institution can, in consideration of all other conditions, be ordered only if it is established that, once outside prison, the person could commit a serious criminal offence, and such a danger can only be eliminated by treatment and care in a unit for forensic psychiatry. Every six months, the court must determine whether such a measure is still necessary, and stop or replace it with a measure from Article 70b of the KZ-1 once it establishes that treatment and care in a healthcare institution are no longer necessary. The discussed measure can last no more than five years. Article 70b of the KZ-1 stipulates the safety measure of compulsory psychiatric treatment outside prison, which, in consideration of other conditions, a court orders when treatment outside prison suffices for the perpetrator not to repeat serious criminal offences. The measure can last no more than two years and the court must re-evaluate the continuation of the measure every six months. The Ombudsman's recommendation of course considers the possibility of ordering the safety measure of compulsory psychiatric treatment outside prison; however, as pointed out (also in the Annual Report to which the recommendation refers) it is only the court which establishes that there is no possibility of directly replacing the measure of compulsory treatment with placement in a social care institution. The lack of a greater range of methods of treating people who have been ordered the measure of compulsory treatment is also highlighted by the implementer of these measures, i.e. the Unit. We therefore insist on our recommendation.

With Recommendation No. 18 (2016), the Ombudsman recommended that the MDDSZ ensures that the working group for establishing a specialised unit for treating people with the most severe cases of mental illness begins to operate as soon as possible. We found that this recommendation is being implemented, as the working group met four times in 2017, the last time on 30 November 2017. The group's tasks include studying international best practice and preparing an analysis of the current situation concerning the treatment of people with mental health problems whose severe cases of mental illness cause them to endanger their own lives or the lives of others, make them unable to receive treatment in existing institutional forms (departments

of a psychiatric hospital under special supervision, unit of forensic psychiatry, secure departments of social care institutions, prisons) or be treated in the context of a community. The group must also prepare a report, including on the implementation of the pilot project. The working group is planned to be operational until 2019 or until its tasks have been concluded.

At their first meeting, on 23 February 2017, the group members agreed on the course of work and to initially study international best practice and prepare an analysis of the current situation, which is also being closely followed by the Ombudsman. Special attention has been drawn to it by the newly prepared terms of reference for the setting up of the Unit for Forensic Psychiatry. The group's work is indicative of progress in the search for more appropriate solutions for treating people with the most severe cases of mental illness. Currently, this is the source of numerous problems, as is also evident from the petitions processed by the Ombudsman. We therefore eagerly await the group to complete its tasks as soon as possible. In its 2016 Annual Report, the Ombudsman also expressed its expectation that the Ministry of Health would promptly adopt all the necessary measures for determining the providers referred to in Article 2 of the Rules on the Implementation of Safety Measures Including Compulsory Psychiatric Treatment and Care in a Healthcare Institution and of Compulsory Psychiatric Treatment without Detention **(Recommendation No. 19 (2016)).** Unfortunately, we find that this recommendation has not yet been implemented. According to our information, the Ministry of Health has finally submitted the proposal of the Order on the List of Health Institutions which Implement Safety Measures Including Compulsory Psychiatric Treatment and Care in a Healthcare Institution and of Compulsory Psychiatric Treatment without Detention for inter-ministerial coordination. The Ministry of Justice has provided its observations to the proposal. During our visit to the Unit, the Ombudsman therefore again recommended to the Ministry of Health that it maximise its endeavours for preparing and publishing the list of health institutions which meet the conditions for the implementation of security measures as soon as possible.

Deciding on the duration of the measure without the cooperation of the individual concerned

The ZKP stipulates that the court which pronounced the security measure of compulsory psychiatric treatment and care in a healthcare institution or compulsory psychiatric treatment without detention at first instance must adopt all further decisions in respect of the duration and modification of the measure at a panel session of which the state prosecutor and the defence counsel shall be informed. Before making its decision, the court interviews the perpetrator if necessary and if their condition permits it (Article 496). In one of the cases processed from this area, we acted in the role of amicus curiae and informed Koper District Court that the law has this stipulation so that judges can actually make an opinion on the condition of the person about whom they are deciding themselves, and that they can grant such a person the opportunity to speak their mind. The person in the procedure has the right to speak up in court and the court must study their legally relevant statements and consider them when deciding on further implementation of the ordered measure. The person is entitled to actively participate in the procedure and to protect their rights. Such a hearing was not conducted in the processed case and the court's reasoning of its decision did not include the circumstances which would indicate that no hearing was necessary or that the perpetrator's condition did not allow a hearing.

The reasoning only stated that the defendant and his attorney did not attend the panel session, even though they had been invited, and did not excuse their absence. This is especially worrisome with regard to the attorney, as the court decided to continue with the implementation of the ordered security measure despite the attorney's absence, and even though the ZKP stipulates (Article 496) that the perpetrator must have a counsel assigned to them throughout the procedure of deciding on the continuation or modification of the ordered measure.

The court explained that, in the case at hand, it had used various channels of serving the invitation, and that even though the deadline for notifying the parties was short because of a cancellation and postponement of the session, it nevertheless informed the parties of the session three days prior to its implementation by serving the invitation by fax. The defendant could nevertheless have informed the court that he wished to be present at the session despite the short deadline, in which case the court could have ordered the institution to produce him in court. The attorney's presence is not mandatory and it is not the court's obligation to ensure their presence at the session. The decision on hearing the defendant is reserved for the court with regard to the circumstances of the case, and the court is not explicitly obliged to explain why it did not hear a defendant.

The same issue was highlighted by the CPT during its 2017 visit to Slovenia, recommending that the Slovenian authorities adopt all necessary measures, including legal, to ensure that all patients subject to the security measure of compulsory psychiatric treatment and protection in a healthcare institution be heard in person by the judge in the context of the six-monthly review of the security measure. We will therefore continue to pay attention to the implementation of this recommendation.

2.3.6 PEOPLE WITH RESTRICTED FREEDOM OF MOVEMENT IN PSYCHIATRIC HOSPITALS AND SOCIAL CARE INSTITUTIONS

General observations

With regard to restricted freedom of movement or deprivation of liberty due to mental disorders or illness, 15 cases involving restricted freedom of movement in psychiatric hospitals were processed in 2017 (fewer than in 2016: 27), and 19 petitions were processed involving people in social care institutions (29 in 2016). We continued to visit these institutions in the capacity of the National Preventive Mechanism (more on this can be read in the special NPM report).

In 2017, the petitions again referred to admission for treatment without consent to departments of a psychiatric hospital under special supervision, or the admission and discharge from secure departments of social care institutions and requests for transfer to other institutions, the possibilities for outdoor exercise, permission to go out, and so on. There were also petitions which referred to living conditions, treatment, care, and the attitude of medical and other personnel to patients or residents, and to payment for accommodation costs in secure departments of social care institutions.

The proportion of well-founded petitions remains high in the area of people in social care institutions. The majority of petitions were again associated with the Mental Health Act (ZDZdr) or unresolved systemic issues, such as placement in secure departments of social care institutions on the basis of court decisions. We continued to resolve open systemic issues directly with representatives of the competent ministries, the institution's management, and in inter-ministerial working groups.

On 11 July 2017, the Ombudsman and the President of the Spominčica Association opened the first DEMENTIA FRIENDLY SPOT at the premises of the Ombudsman. Here, people with dementia, especially those in the early phases of the disease when they are still independent and active, their families, and others can gain information on how to help people with dementia.

The Ombudsman pays a lot of attention to processing numerous issues associated with dementia. We find that people with dementia should be granted special treatment. Slovenia has still not set up a special regulation for people with dementia (for now, the legal framework is provided by the ZDZdr). At expert meetings (e.g. at the Mental Health Days in September 2016 in Portorož), the participants emphasised the need to specifically regulate the position of people with dementia, either in the ZDZdr or in a special Act. The Ombudsman further believes that the issue of when an affected person should be helped by a caretaker and when the person should be deprived of their legal capacity as a last resort must be regulated in detail. The ministries have already adopted the Dementia Management Strategy up to 2020 and the Guidelines for Working with People with Dementia; however, the implementation of the Strategy must be carefully monitored and the Guidelines partially supplemented.

Implementation of the Ombudsman's recommendations

We are not satisfied with the level of implementation of our recommendations in this area, as they have mostly not been implemented.

The Ombudsman specifically highlighted this fact in a press release accompanying World Mental Health Day. We pointed out the still unimplemented commitment by the Government of the Republic of Slovenia to prepare a national mental health protection programme within one year of the entry into force of the ZDZdr, i.e. by 12 August 2009, which would also include a development strategy and a plan of action. In 2017, the Ministry of Health finally published the proposal of the Resolution on the National Mental Health Programme 2018-2028 on its website. The Ombudsman supports the adoption of this Resolution which the Government sent for adoption to the National Assembly in January 2018.

The key elements of a society's mental health are education and awareness, coupled with an appropriate support system for those afflicted and their families. The Ombudsman therefore constantly encourages the education of various stakeholders (lawyers, judges, and others) involved with people with mental health problems.

With Recommendation No. 20 (2016), the Ombudsman once again encouraged all those competent to establish a special (closed) department for children and young people with mental health problems who require hospitalisation, so that they are no longer placed in departments for adults. Unfortunately, this recommendation has not been implemented. In its response of 10 October 2017, the Ministry of Health informed us that the facilities intended for the setting up of a secure psychiatric department in the context of Ljubljana Psychiatric Clinic at Poljanski nasip 58 have already been refurbished. At its session of 6 September 2017, the Health Council also provided its consent for the start of the implementation of the programme. At a meeting on 22 November 2017, the Minister explained that the financial resources have been ensured and that the financing and start of the implementation of activities are planned for 1 December 2017; however, nothing had happened by 1 January 2018. We believe that all reasonable deadlines for the start of the implementation of the programme, which the expert public, as well as the Ombudsman, see as urgently required, have expired.

With Recommendation No. 21 (2016), the Ombudsman once again called on the MDDSZ to immediately take all necessary measures to ensure suitable placement for people subject to court orders to be placed in a secure department of a social care institution, and to ensure additional places in secure departments of social care institutions by adopting a clear and more transparent list of (vacant) capacities in social care institutions with secure departments for the placement (relocation) of people, based on the ZDZdr. As no progress has been observed in this area, we prepared a special report on this subject matter in 2017. The report covered the issue of overcrowding in secure departments of social care institutions (especially special social care institutions) and the difficulties faced by people with mental disorders who are placed in these departments, drawing attention to violations of their right to personal dignity. The report has been discussed at the National Assembly of the Republic of Slovenia, which recommended that the Government of the Republic of Slovenia promptly prepare amendments to the Social Assistance Act and the Mental Health Act and adopt measures which will ensure more appropriate involuntary placement and treatment of people with mental health problems in social care institutions, in accordance with the provisions of the ZDZdr. Until a new regulation in this area is adopted or enforced, the National Assembly recommends that the Government ensures appropriate facilities in social care institutions and sufficient staff who are able to provide appropriate social care services (this recommendation was published in the Official Gazette of the Republic of Slovenia No. 60/2017).

Despite our special report and recommendations, social care institutions are still voicing problems associated with the admittance of people on the basis of court decisions. We find it unacceptable that social care institutions, the Association of Social Institutions, the courts, and the Ombudsman have been emphasising the problem of overcrowding in secure departments for years, yet the situation has not improved and has even deteriorated. The Ombudsman therefore again calls upon all the responsible parties to implement the recommendations which the National Assembly of the Republic of Slovenia issued after the discussion of the Ombudsman's special report as soon as possible.

Problems in the implementation of the Mental Health Act

The healthcare and social healthcare system in the area of mental health, the implementers of this activity, the rights of people being treated in departments of a psychiatric hospital under special supervision, and treatment in secure departments of social care institutions and in a supervised hearing are stipulated by the Mental Health Act (ZDZdr).

The Ombudsman has repeatedly recommended comprehensive professional monitoring and analysis of the implementation of the ZDZdr, and used these findings to prepare proposals for systemic changes which will eliminate the established deficiencies, simplify existing legislative procedures, and ensure a high level of safeguard of the fundamental rights of people being treated in departments of a psychiatric hospital under special supervision and in secure departments of social care institutions.

It has also been over two years since the Constitutional Court, in a procedure for review of constitutionality which had been instigated at the Ombudsman's request, by Decision No. U-I-294/12-20 of 10 June 2015 annulled the third sentence of the second paragraph and the third sentence of the third paragraph of Article 74 of the ZDZdr. It further decided that the annulment should become effective one year after the publication of this decision in the Official Gazette of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, No. 46/2015 of 26 June 2015). The Court decided on this solution because the complexity of this content prevented the immediate annulment of the examined part of the ZDZdr. So as to allow the legislator sufficient time to harmonise the procedure of admitting people who have been deprived of their legal capacity to secure departments of social care institutions with the constitution, and in consideration of the reasons for the decision, the Constitutional Court postponed the effect of the annulment for the maximum possible time, i.e. for one year. It is therefore

unacceptable that the legislator did not provide for a timely, constitutionally compliant procedure for the admission of individuals who have been deprived of their legal capacity to secure departments of social care institutions.

Does detention in a psychiatric hospital also permit medical procedures without consent?

During its 2017 visit to Slovenia, the CPT again noted that psychiatric patients should, as a matter of principle, be placed in a position to give their free and informed consent to treatment. Involuntary commitment to a psychiatric institution in the context of a civil or criminal procedure should not represent an obstacle to obtaining that individual's free and informed consent to treatment. Every patient, committed voluntarily or involuntarily, should be informed of their planned treatment. Furthermore, every rational patient must be given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based on the law and only relate to clearly and strictly defined exceptional circumstances.

The relevant legislation should require an external psychiatric opinion in every case where a patient does not agree with the treatment proposed by the establishment's doctors; further, patients should be able to appeal against a compulsory treatment decision to an independent outside authority, and should be informed in writing of this right. On the basis of these findings, the CPT recommended that the Slovenian authorities take appropriate steps to ensure that the aforementioned precepts are effectively implemented at the Unit for Forensic Psychiatry in Maribor. If necessary, the relevant legal provisions should be amended accordingly.

The Ombudsman has repeatedly highlighted the issue that consent must be provided for treatment, which was (again) the recommendation provided by the CPT, also in a paper by the Deputy Ombudsman which was published in the Legal Practice Journal (Issue 18 of 11 May 2017).

The Ombudsman's opinion, which is supported by the opinion of several international organisations (including the CPT which, as stated above, provided a similar recommendation during its recent visit), is that detaining an individual in a psychiatric hospital does not in itself provide (sufficient) legal grounds for treatment or medical care. This is generally permissible only on the basis of consent provided by the patient or other people in accordance with Article 37 of the Patient Rights Act. It needs to be added that the European Court of Human Rights, in the case of L.M. v. Slovenia, found that treatment in a psychiatric hospital, for which the complainant did not provide her consent, encroached upon her right to respect for private and family life within the meaning of the first paragraph of Article 8 of the European Convention on Human Rights, emphasising that every interference with the private life of an individual represents a violation of Article 8, except such as is in accordance with the law and pursues a legitimate cause or causes under the second paragraph of Article 8 of the Convention and is necessary in a democratic society. We therefore expect the Ministry to provide its opinion on this issue when preparing the amendments to the Act, and if necessary eliminate all uncertainties.

Use of special precautionary measures

According to the ZDZdr, a special precautionary measure (SPM) is an urgent measure which must be used so as to enable treatment, or to eliminate or manage the dangerous behaviour of an individual when their own lives or the lives of others are endangered, if their own health or the health of others are threatened, or if such behaviour causes substantial property damage to themselves or others and the threat cannot be prevented by another, milder measure. The ZDZdr further stipulates that SPM are used in departments under special supervision and in secure departments, and distinguishes between two types of SPM, i.e. physical restraint using belts, and restricting movement to a single room.

A substantial number of problems have been perceived when processing the petitions from this area, and during our visits in the capacity of the NPM. Furthermore, this issue has (again) also been pointed out by the CPT. There are also dilemmas when we speak of SPM measures under the ZDZdr and when of precautionary measures for patients. So as to unify practices in this area and observe the protection of human rights in all cases of implementing restriction, the MZ announced that it would strive to include the proposal that precautionary measures be added to the amendments to the ZDZdr, which would not be used as a result of dangerous behaviour, but as special requirements for medical interventions (keeping still when given intravenous infusion, etc.), bodily medical conditions (e.g. back injuries) or threat of falling (from the bed, chair, wheelchair, etc.).

For quite some time, we have also been pointing out the need for updating the professional guidelines for the use of SPM. We welcomed a communication by the Ministry of Health in October 2016 that the Extended Expert Council for Psychiatry (EEC) had appointed a team of experts for preparing and updating the Recommendations and Guidelines for the use of SPM in Psychiatry, and its explanation that the appointed team was planned to present these recommendations at the National Psychiatric Congress in November 2016, as these were matters of national importance.

In mid-2017, the EEC informed us that the team was concluding its work, and that once the team had confirmed the Guidelines, they would be adopted by the EEC for psychiatry and presented to the Slovenian Psychiatric Association. We also received an assurance that we would receive the Guidelines, once these had been confirmed by the EEC. However, we have not received them by early 2018. The latest information (in January 2018) allows us to conclude that the EEC has adopted the updated Guidelines; however, individual amendments have been proposed and the team should submit them by the next EEC meeting, i.e. in February 2018.

2.3.7 MINORS IN RESIDENTIAL TREATMENT INSTITUTIONS AND THE WORK CENTRE

No petitions were received from this area in 2017; however, we visited individual residential treatment institutions and work centres when implementing the duties and powers of the National Preventive Mechanism (more on this in a separate report). Individual topics from this area were also examined directly in discussions with the Minister and other representatives of the Ministry of Education, Science and Sport (MIZŠ).

With Recommendation No. 22 (2016), the Ombudsman advocated that the MIZŠ carry out, as soon as possible, an analysis of the past work with children and adolescents, evaluate pilot projects and the vision for the future, and reform the educational programme and implement the necessary systemic changes. The recommendation is in the phase of being implemented. The MIZŠ reported that it has launched the Comprehensive Treatment of Children with Emotional and Behavioural Disorders in Residential Treatment Institutions project, in the context of the Operational Programme for the Implementation of the EU Cohesion Policy in the 2014-2020 Period (the project commenced its implementation on 1 September 2017). The project will test new work methods and modes in Slovenia, which will ensure the prompt return of children and adolescents with emotional and behavioural disorders from institutions to their home environment and an independent life or, if this is not possible due to family relationships or the child's or adolescent's problems, their placement in one of the housing groups which operate in the context of residential treatment institutions but as an independent unit at a different location. On the other hand, residential treatment institutions will be encouraged to take preventive action so that the number of future placements is as low as possible.

According to the MIZŠ, there is currently one programme in place for working with children and adolescents in residential treatment institutions, while a public tender will allow the range of work programmes to expand and include specialised housing groups which will develop various work formats focused on individual residents, e.g. so that a child or adolescent can transition to a housing group, from the housing group to a specialised housing group, youth flat or the home environment or the labour market, into living independently.

The public tender was concluded in 2017. The MIZŠ further said that after the project had been evaluated, they would update the Educational Programme and prepare the required systemic solutions. We have learned that expert centres have been set up in the context of the project which have (at least some of them) already started operating, and which ensure the cooperation of various support systems in the treatment of an individual child or adolescent. They also provide assistance to public schools and kindergartens, families, and expert workers in these institutions; they provide mobile special education assistance, and intensive treatment and assistance for individual adolescents when transitioning into independent living.

New hope for changes in this, previously such a poorly regulated area, also springs from a resolution adopted at a meeting of representatives from several ministries held on 2 August 2017, i.e. to establish an inter-ministerial working group for monitoring the work of residential treatment institutions.

2.3.8 FOREIGN NATIONALS AND APPLICANTS FOR INTERNATIONAL PROTECTION

General observations

In this sub-field, we discuss potential complaints by foreign nationals dealing with restrictions of movement or deprivation of liberty. Other aspects of petitions filed by foreign nationals (i.e. those that do not refer to restriction of movement or deprivation of liberty) are included in the section on administrative matters – citizenship and foreign nationals, while the visit of the NPM to the Aliens Centre is covered in the Report on the Implementation of the Duties and Powers of the NPM. Individual issues from this area have been processed with representatives of civil society (non-governmental organisations) and refugee counsellors, who are strongly involved in working with refugees or migrants, and representatives of the Ministry of the Interior or the Police, who presented the planned refurbishment of the male section of the Aliens Centre. We support the planned changes, as they will result in improved living conditions for foreign nationals, and represent progress in ensuring safety to the accommodated foreign nationals. The planned refurbishment, which considers best practice from other countries, also implements some of our past recommendations made during the implementation of the duties and powers of the NPM.

With regard to the ordering and duration of restriction of personal liberty, we cannot overlook the demand for these measures to be imposed only exceptionally, especially in the event of restriction of movement or deprivation of liberty of foreign nationals as an especially vulnerable group, when these measures must last no more than urgently necessary and be imposed only if especially justified. We have already previously pointed out individual aspects of this issue (e.g. the placement of minors in the Aliens Centre). **Refugee counsellors have also emphasised other aspects associated with restrictions of movement due to returns of migrants under the Dublin Regulation to the first state.** The warnings by some of these counsellors mostly focus on the slow procedures under the Dublin Regulation, in which applicants for international protection are also deprived of their liberty or have their movements restricted. Other aspects concern the maximum duration of restriction of movement in procedures under the Dublin Regulation, the issue of exceptional risk of flight, and the issue of lacking alternatives when it comes to restriction of movement. Furthermore, the ZMZ-1 has stripped applicants for international protection of the right to file a complaint against a first instance judgement. In 2017, the examination of these issues and problems concerning the supervision of the administrative court over the restrictions of movement or deprivation of liberty of foreign nationals had still not been concluded, so we cannot yet report on this issue.

During its 2017 visit to Slovenia, the CPT visited the Aliens Centre and provided its observations and recommendations which Slovenia is bound to observe, as well as eliminating all the established deficiencies, which we will certainly follow.

In 2017, we received only two petitions to be processed from this area, and we opened one ourselves as a broader issue which is important for the protection of human rights and freedoms and legal certainty. The latter refers to a visit to the Asylum Centre made on 15 December 2017, when there were five foreign nationals in the reception department, i.e. four since 8.50pm on 13 December 2017 and one since 9.37pm on 14 December 2017. According to the received information, people are locked in the reception department without the possibility of going out until after the medical examination or submission of the application for international protection. They are not given the possibility to go out for fresh air, be included in sporting or other activities, or to socialise. Even though these foreign nationals are subject to the conditions of actual (de facto) deprivation of liberty, no decision is issued on the reasons for the deprivation of liberty.

The Constitution of the Republic of Slovenia (Article 19) stipulates that everyone has the right to personal liberty. No one may be deprived of their liberty except in such cases and pursuant to such procedures as are provided by law. Anyone deprived of their liberty must be immediately informed in their mother tongue, or in a language which they understand, of the reasons for being deprived of their liberty. Within the shortest possible time thereafter, they must also be informed in writing of why they have been deprived of their liberty. They must be instructed immediately that they are not obliged to make any statement, that they have the right to immediate legal representation of their own free choice, and that the competent authority must, at their request, notify their relatives or those close to them of the deprivation of their liberty. We asked the MNZ to explain the status of foreign nationals in the reception department of the Asylum Centre until their placement

or submission of application for international protection, and especially for the explanation of legal grounds for depriving them of their liberty.

Implementation of the Ombudsman's recommendations

With Recommendation No. 23 (2016), the Ombudsman recommended that, after a project evaluation is concluded, the Government of the Republic of Slovenia prepare systemic solutions for the suitable placement of unaccompanied minors in our country as soon as possible. At its session of 27 July 2017, the Government of the Republic of Slovenia evaluated the pilot project of placing unaccompanied minors in Nova Gorica and Postojna student houses and recognised the project as a best practice example. The Government further decided that until an appropriate systemic solution is established, the project of placing unaccompanied minors will continue in the Postojna student house. Obviously, there are still problems in this area. This has also been pointed out by non-governmental organisations asking for the elimination of restriction of movement of migrant children, a request sent to the Minister of the Interior on the occasion of World Children's Day. **Non-governmental organisations pointed out that detention of children presents a severe violation of children's rights and is never in the best interests of the child.**

This is an issue also covered by the Ombudsman. In this respect, the MNŽ has already explained that the project of placing unaccompanied minors in Postojna student house is managed and coordinated by the Government Office for the Support and Integration of Migrants (the Office). A working meeting was organised between the Office and the Aliens Centre on 6 October 2017, focusing, among other things, on the possibility of placing unaccompanied minors in Postojna student house. The management of the Office informed the Aliens Centre that no final agreement had yet been reached on the method of placing unaccompanied minors; however, the placement of underage applicants for international protection was running smoothly. The Police did not directly place any unaccompanied minors in either Nova Gorica or Postojna student house during the trial period of the project, or later. The procedures led by the police with unaccompanied minors include expert associates from social work centres (SWC), and later, when decisions are being made to the best interest of the minor, also special guardians. With regard to working with unaccompanied minors, the police are actively involved and participate in the search for the best solutions. On 12 October 2017, Koper SWC organised an expert meeting in Ilirska Bistrica on the subject of unaccompanied minors, which was also attended by representatives of the Police, in addition to representatives of Koper, Postojna, Cerknica, and Ilirska Bistrica SWC. On 16 November 2017, the Aliens Centre hosted an expert meeting of representatives of emergency services of Krško SWC, a meeting which was later also joined by expert associates of Koper and Postojna emergency services. The purpose of both meetings was an exchange of experience and best practice, and especially a search for the best possible benefits for unaccompanied minors. It has also been established that it is often not possible to place an unaccompanied minor in Postojna student house directly from the field after police procedures have been completed. The Police have also not yet received any official notice or information on the actual possibilities and methods of placing unaccompanied minors outside the Aliens Centre. This does not mean that special guardians do not search for possibilities of placement outside the Centre.

Expert associates of SWC, who work directly with unaccompanied minors, recommended that the work methods which have been described in the Protocol on the Cooperation Between the Association of Social Work Centres and the Police be maintained. In this way, unaccompanied minors are ensured maximum health and psychosocial care in the first hours and days; and they are placed in a safe environment where special guardians can immediately become involved and find the best possible solution for the minor.

This issue was also the subject matter of our visit in the capacity of the NPM to the Aliens Centre in December 2017. In the context of this visit, we also prepared special reports aimed at improving the situation, which we expect the addressees to process and implement.

Amendment to the Defence Act

During the procedure for the preparation of the Amendment to the Defence Act (ZObr), we welcomed the amendments to this legislative regulation which more clearly and in detail regulate the exceptional powers of the armed forces with respect to the protection of the border. We nevertheless believe that (in consideration of our findings in our request for the review of constitutionality) it is possible (and necessary) to additionally improve the legislative regulation in this area. We pointed out that the draft Act stipulates that exceptional powers can be implemented by members of the armed forces without additionally defining (or limiting) them. Furthermore, no conditions have been stipulated for members of the armed forces on who are allowed to

implement these powers and under which conditions (e.g. with additional training on the implementation of these powers and similar as stipulated for employees of the Intelligence and Security Services or members of the Special Military Police Unit).

The Ombudsman has repeatedly emphasised that it is important for authorities which have the power to encroach upon the rights and freedoms of individuals to have clear internal complaint channels. **We also saw it as encouraging that the draft Act foresees (internal) complaint channels for individuals who believe that their human rights have been violated during the implementation of powers and authorisations, and saw it as especially encouraging that it has been proposed that a representative of the public be included in the complaints committee.** We noted that in consideration of how the complaint channels against police officers are regulated (Article 136 of the Police Tasks and Powers Act), the proposed regulation was probably under-regulated, which can cause problems in its implementation.

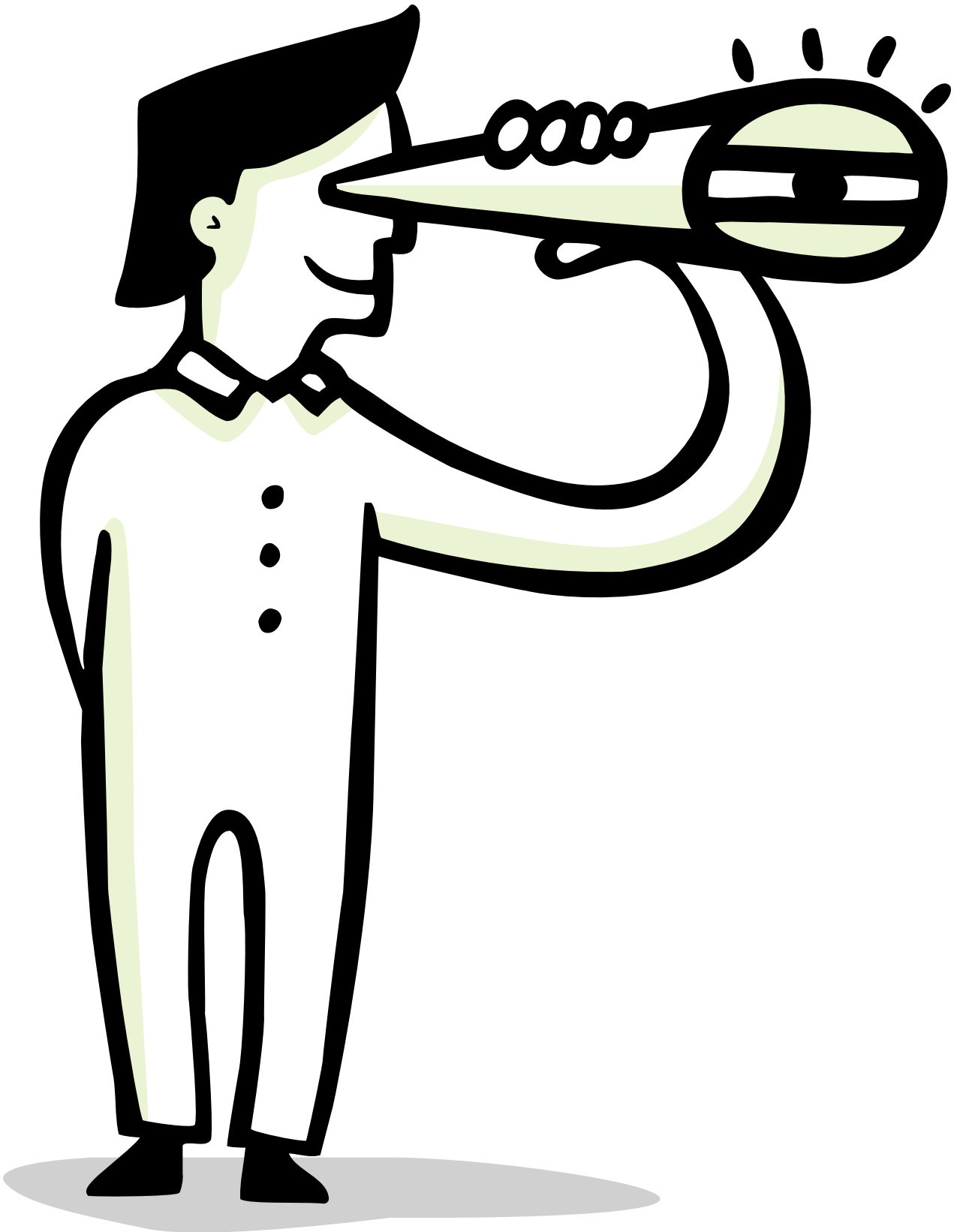
We further believe that when defining the rights and powers of military police officers, it needs to be specifically emphasised that these may be applied only in relations with other military personnel. We also submitted our observations concerning the authorisation that the military police may detain a member of the armed forces who, under the influence of alcohol or psychotropic substances, is disturbing public peace and order or military discipline. This detention may last until they are sober, but no longer than 24 hours.

Amendment to the State Border Control Act (ZNDM-2B)

In 2017, the Amendment to the State Border Control Act (ZNDM-2B) was prepared. We do not process many petitions from the area regulated by this Act, which is also the reason why we have been unable to provide any observations on the previous processing of such petitions. **We welcome the endeavours for clearer and more specific legal grounds for the use of technical resources for the identification of people, vehicles, and objects.** We missed the fact that the provided material on the proposed amendments to the ZNDM did not contain information on whether an impact assessment had been made in this part as to privacy, justified urgency, appropriateness, and effectiveness and proportionality of the new authorisations or use of technical resources. This would enable public debate and the timely anticipation of risks and safeguards for potential unjustified encroachments on human rights in the sense of the Guidelines provided by the Information Commissioner. References only to ensuring the better work of the Police with regard to state border protection cannot suffice for these amendments if no impact assessment has been conducted as to privacy on the basis of the methodology presented in the aforementioned Guidelines.

Furthermore, we also emphasised the problematic lowering of standards with regard to the use of specific police powers. We welcomed the intention to clearly determine the rights of the detained person. As detention is an example of deprivation of liberty, we believe that it would be correct for the law to associate the rights of the detained person under the ZNDM with the rights of the detained person under the ZNPPol. The Ministry of the Interior, as the drafter of the amendment, followed this, since after the amendment, Article 32 now reads:

"A detained person shall have the same rights as detained people under the Act governing police tasks and powers."



2.4 JUSTICE

	Cases processed			Resolved and well-founded		
Area of work	2016	2017	Index 17/16	No. of resolved cases	No. of well-founded cases	Proportion of well-founded cases among those resolved (in %)
4. Judicial proceedings	**497**	**487**	**98.0**	**438**	**27**	**6.2**
4.1 Pre-trial proceedings	26	26	100.0	22	2	**9.1**
4.2 Criminal proceedings	82	63	76.8	57	6	**10.5**
4.3 Civil proceedings and relationships	212	242	114.2	223	6	**2.7**
4.4 Proceedings before labour and social courts	29	17	58.6	13	1	**7.7**
4.5 Minor offence proceedings	55	50	90.9	45	6	**13.3**
4.6 Administrative judicial proceedings	4	3	75.0	3	0	**-**
4.7 Attorneys and notaries	15	22	146.7	15	1	**6.7**
4.8 Other	74	64	86.5	60	5	**8.3**

2.4.1 GENERAL OBSERVATIONS

In the broader field of justice, we processed 487 cases in 2017; in the area of judicial proceedings, 375 cases (382 cases in 2016). Of these, 63 petitions were associated with criminal proceedings (82 in 2016), 242 with civil proceedings and relationships (212 in 2016), 17 with proceedings before labour and social courts (29 in 2016), 50 with minor offence proceedings (55 in 2016), and 3 with administrative judicial proceedings (4 in 2016). Twenty-six cases were processed in the sub-field of pre-trial proceedings (the same as in 2016), 22 in the sub-field of attorneys and notaries (15 in 2016), and 64 cases related to other matters from this area of work (74 in 2016). **In this area, numerous issues and problems experienced by petitioners were resolved by our associates by telephone, so there was no need to file a written petition which would need to be processed in a more formal proceeding for these.**

The data available indicate that there is a slight decrease in the number of processed cases, with a corresponding proportion of well-founded petitions. This is still strongly related to the decrease in petitions due to the lengthiness of judicial proceedings and due to the proportion of well-founded petitions. Nevertheless, despite progress made by the judicial branch in terms of reducing backlogs and shortening the duration of proceedings, the Ombudsman still finds there are cases of lengthy judicial proceedings.

With regard to evaluating the proportion of well-founded petitions, we need to reiterate that it should be taken into consideration that this proportion is very much related to our (limited) powers in relation to the judiciary, and that the review of the correctness and lawfulness of judicial and other legal decisions can be performed

only within the scope of judicial proceedings and by means of available legal remedies, and not with the help of the Ombudsman, as a number of petitioners (still) expect.

We also add that it is not possible to comprehensively assess the situation in the judiciary or take a systemic view merely on the basis of the cases processed by the Ombudsman, as our assessments are dependent on the content of the processed petitions. These assessments and observations are provided below. The chapter on judicial proceedings initially covers the processing of petitions related to the work of the courts, including a review of the implementation of the Ombudsman's recommendations in this area. Other petitions from this area are further presented according to individual sub-fields, i.e. minor offence proceedings, the State Prosecutor's Office, and attorneys and notaries.

The Ombudsman continued to contact the presidents of courts and other competent bodies (e.g. Heads of State Prosecutor's Offices) by way of enquiries and other interventions, and when necessary, the Ministry of Justice (the MP) and the Supreme Court of the Republic of Slovenia, particularly when concerning an issue of a systemic nature or the regulatory framework governing the work of the judiciary, and the Ministry of the Interior (concerning proceedings carried out by the Police as a minor offence authority). **For the most part, the Ombudsman was satisfied with the responses from the competent bodies.** We also met in person with the President of the Supreme Court of the Republic of Slovenia, the President of the Ljubljana District Court and the Director of the Judicial Training Centre.

Unfortunately, the European Court of Human Rights (ECtHR) also established in 2017 that our authorities (and not only courts) violated rights under the European Convention on Human Rights (ECHR), and numerous cases are still pending decision. This includes the judgement on the violation of Article 2 of the ECHR in the case of F. Štefančič v. Slovenia. This case shows the problem of an effective legal remedy in the event of disagreeing with the State Prosecutor's decision, an issue which we have already extensively addressed in the 2012 (pp. 115-118) and the 2013 Annual Reports (pp. 151-152).

It is only right that the MP continues to pay a great deal of attention to the enforcement of judgements passed by this court. The second meeting of the Inter-Ministerial Working Group for the Coordination of the Implementation of ECtHR Judgements took place. The Group is composed of representatives of various ministries and the State Attorney's Office and, as outside members, a representative of the Supreme Court of the Republic of Slovenia and a representative of the office of the Ombudsman. The members of the Inter-Ministerial Working Group were briefed on the activities of the Project Group for the Coordination of the Implementation of ECtHR Judgements in the last year. It is important to note that in 2017 four ECtHR judgements ended with a final resolution by the Committee of Ministers of the Council of Europe, and a few are still in the phase of the examination of action plans or reports. The Council of Europe therefore also recognised Slovenia as a responsible and serious member state.

Substantial progress has been established concerning the enforcement of ECtHR judgements, as is also evident from the updated MP website intended for the enforcement of these judgements. All this indicates that the MP is following one of its priority tasks, i.e. the observance of human rights and ensuring the rule of law. It is also important to be familiar with ECtHR judgements and it is only right that their translations into Slovene are being published on the website of the State Attorney's Office and in the Judicial Bulletin.

2.4.2 JUDICIAL PROCEEDINGS

Implementation of the Ombudsman's recommendations

With Recommendation No. 24 (2016), the Ombudsman recommended that the MP open a dialogue with the judiciary and thereby study the application of the Protection of the Right to Trial without Undue Delay Act (the ZVPSBNO) in practice, and on this basis adopt the necessary amendments; the judiciary should take additional steps towards the consistent implementation of the measures referred to in the ZVPSBNO. The MP adopted this recommendation and said it would study the use of the ZVPSBNO in practice together with the judiciary. In this context, it would study whether additional amendments to the ZVPSBNO were required after two already extensive amendments. The Government, and within its framework the MP, in consideration of the constitutional and legislative limitations, including the division of power and in this context the obstacles and balances (mechanisms of external control), supports the courts adopting all necessary measures to ensure the actual observance of the deadlines stipulated for decision-making under the ZVPSBNO. The MP is also aware

of the possibility that it can independently start a more proactive implementation of the ZVPSBNO, including by exchanging best practice or information on the inappropriate practices of the implementation of this Act, which is undoubtedly welcome. Since being set up, the Service for the Supervision of Court Administration (SNOPS) has been monitoring supervisory appeals and will, after concluding its analysis on the basis of the collected data, be able to provide an assessment of the actual situation in this area. The SNOPS' partial findings indicate that the courts do not follow a uniform practice when processing supervisory appeals and that court decisions, in terms of their content, do not always express the purpose of the ZVPSBNO, i.e. mainly the effective implementation of the party's right to trial within a reasonable time. For this purpose, and so as to strengthen the rights and the position of parties in judicial proceedings, the SNOPS will, after preparing its analysis and inspecting the actual situation, be able to give a pertinent assessment of whether legislative amendments are required and to what extent, which we also encourage.

With Recommendation No. 25 (2016), we encouraged the Supreme Court of the Republic of Slovenia to continue implementing the mechanisms to improve the operation and quality of trials, and the MP to continue to enhance the effectiveness of supervisory authorities' operations in order to ensure the quality of work of courts and of trials. With regard to this recommendation, the **MP, in addition to the already adopted amendments to judiciary legislation aimed at strengthening supervisory bodies, highlighted the new Judicial Council Act** (Official Gazette of the Republic of Slovenia, No. 23/17), which represents a step forward towards greater responsibility and transparency of the judiciary, an important element of the confidence of the public in the Slovenian legal system. **The Ministry emphasised the transfer of jurisdictions concerning disciplinary sanctions against judges to the Judicial Council as an important innovation, expecting it to unify the standards of expected work of judges in all Slovenian courts and to contribute to increasing the general confidence in the judiciary.** The new Act has also changed the structure of disciplinary bodies, determined single-level disciplinary proceedings, and has granted the President of the Supreme Court of the Republic of Slovenia the possibility of requesting the start of disciplinary proceedings. This is also indicative of the responsibility of the President of the Supreme Court of the Republic of Slovenia as the head of the judicial administration for the operation of the entire judicial branch.

With regard to this recommendation, the MP also pointed out the Rules on the Service for the Supervision of Court Administration (Official Gazette of the Republic of Slovenia, No. 79/16), which were adopted in December 2016 and govern the organisation of work of the SNOPS within the Ministry of Justice. The Rules stipulate the types and methods of implementing supervision, the content of the report on the supervision and the method of notifying its addressees, monitoring the elimination of irregularities, the appropriateness of consideration of recommendations for improving the operation of courts, and reports on the conducted supervisions. The SNOPS has already implemented regular and other types of supervision over the work of courts in 2017 on the basis of the Supervision Plan for 2017.

Other general observations from the field of judicial proceedings

As in previous years, in 2017 the petitions processed from the area of judicial proceedings indicated problems that, on the one hand, still refer to the **lengthiness of some (mainly enforcement) judicial proceedings** (although to a smaller extent than in previous years), and to the quality of trials. The claimed (and often also established) violations of rights in the context of these petitions (again) referred to the right to judicial protection, equal protection of rights, right to a legal remedy, legal guarantees in criminal proceedings, etc.

The year 2017 brought numerous changes in the regulatory field of operations of the judiciary. The Collective Actions Act was adopted, facilitating the enforcement of rights in cases of mass damages. Another important document was the amendment to the Civil Procedure Act (ZPP), which contains mechanisms for facilitating proceedings and for a more uniform case law.

We provided our observations on the amendment to the Criminal Code (KZ-1E), which has brought several innovations to the area of criminal liability, including a definition of the purpose of punishment. We find the definition of the purpose of punishment especially welcoming, as we believe it to be essential and useful, especially with regard to the enforcement of penal sanctions. We also proposed additional consideration of the definition of the purpose of punishment to specifically emphasise the need to give meaning to the time spent in prison, as highlighted in the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) under Rule 4, which states that a period of imprisonment should be used to ensure, so far as possible, the reintegration of prisoners into society upon release so that they can lead a law-abiding and self-supporting life. It is for this reason that prison administrations and competent authorities must offer educational programmes, vocational training and work, as well as other forms of available and appropriate

assistance, including educational, correctional, moral, spiritual, social, health, and sports programmes. All these programmes, activities, and services must be implemented in accordance with the needs of the individual treatment of prisoners.

The initial proposal of the amendment also recommended abolishment of life imprisonment; however, this has not yet happened. We also welcomed this (initial) proposed amendment. The Ombudsman has had reservations since the introduction of life imprisonment.

When the amendment to the Criminal Procedure Act (ZKP) was being drafted, the office of the Ombudsman was requested to provide its observations to the Ministry of Justice as the drafter of the proposed amendments. The observations focused (only) on those parts of the proposed legislative regulation for which we assessed that they might have a greater effect on the protection of human rights and fundamental freedoms and legal certainty in the Republic of Slovenia, in terms of the content of the previously processed petitions from this area. The Ombudsman is unable to participate in the preparation of concrete legislative solutions because of its position, so as not to face subsequent reproach that the office participated in the drafting of an Act.

The Ombudsman has repeatedly stated that the time has long come for Slovenia to get a stable legislative framework in this area, which should not be amended as often as has been the case with the current ZKP. The legislator independently decides which legislative solutions to adopt. In doing so, it must derive from the principles of constitutionality, legality, and the observance of human rights and fundamental freedoms. In this respect, we note that in the 2007 Annual Report (p 85) **we emphasised that the planned amendments to the legislation in the area of criminal proceedings (the KZ and the ZKP) should consider the principles of constitutionality, legality, and the observance of human rights and fundamental freedoms.** Criminal law is one of the pillars of statehood, and all interventions in the main concepts of this law should be carefully considered; extensive public discussion should be ensured; and the consensus of the profession achieved before making any major changes. This of course also applies to the ZKP amendment.

Lengthy judicial proceedings

As mentioned at the beginning of this chapter, the Ombudsman still found individual cases of lengthy judicial proceedings, despite the progress which has been made with regard to court backlogs. There is also reason to fear that the new powers and obligations, such as the ones granted to courts by the Family Code (accompanied by systemic problems such as the shortage of court experts in individual fields), will enhance this problem. It is only right that courts and external supervisors pay special attention to resolving older cases and cases which have been determined as being of high importance.

The right to a trial without undue delay or the right to a trial within a reasonable time is part of the right to judicial protection under Article 23 of the Constitution of the Republic of Slovenia. Its purpose is to ensure the effectiveness of judicial protection. **If judicial protection comes too late, the affected person is in the same position as they would be if no judicial protection was available. In one of the processed cases, we judged that it was a case of a trial with undue delay, as the pre-trial hearing** for a charge lodged on 9 August 2016 in a criminal case led by the Celje District Court, Ref. No. I K 22711/2015, was fixed for 17 November 2016 and then cancelled and fixed anew (after our intervention) for 4 September 2017. **Lengthy judicial proceedings do not contribute to legal certainty. Furthermore, due to lengthy decision-making by the courts, parties to judicial proceedings and the public lose faith in the rule of law and effective judicial protection, whose primary purpose is for the party involved to receive a substantive court decision on their rights or legal benefits within a reasonable time.** Even though lengthy judicial proceedings are often not the exclusive result of delays caused by the courts, but also of the complexity or extensiveness of the case of the party's actions, the Ombudsman believes that the parties in the proceedings can reasonably expect that the courts, using the powers granted to them by process rules, should be able to conduct the proceedings without undue delay and with minimal costs, so as not to violate such an important human right as that to judicial protection.

We find that lengthy judicial proceedings are often also the result of repeat trials. In one of the cases processed in 2017, we found that the proceeding had been repeated at the labour court of first instance five times. The petitioner, who was involved in a labour law dispute over the extraordinary cancellation of their employment contract as the plaintiff, had filed a lawsuit with Maribor Labour Court, Murska Sobota Regional Unit, against his former employer more than five years ago; however, in 2017 he had still not received a substantive court decision.

We are pleased to establish that our interventions in court, especially when there are unjustified delays in the hearing, often help the proceedings to move forward. In the case presented below, the court president reacted to the Ombudsman's inquiry by ordering a priority hearing of a non-contentious proceeding.

Example:

A faster hearing with the Ombudsman's help
The petitioner contacted the Ombudsman due to lengthy decision-making by Maribor District Court in the non-contentious proceeding Ref. No. N 44/2016, in which the court again decided on a proposal for the reopening of the denationalisation proceedings which the petitioner had filed together with other proposers, i.e. after the Constitutional Court had granted their constitutional complaint with decision No. Up-232/14 of 19 November 2015 (Official Gazette, No. 92/15), and annulled all court decisions referring to the rejection of their proposal for the reopening of the denationalisation proceedings, and returned the case to the court of first instance for reconsideration. Almost one year after this decision had been published in the Official Gazette, the court had still not made a decision and the petitioner asked the Ombudsman to intervene.

With regard to the processed petition, the Ombudsman asked Maribor District Court about the timeline of processing the proposal for the reopening of the proceedings, and asked the court to provide its reasons as to why it had not yet decided on the proposal, as well as when a decision could be expected. In the response to our inquiry, the President of Maribor District Court explained the course of the non-contentious proceedings, and that the opening hearing had been fixed for 18 August 2016 and the case has been processed continually ever since. She further stated that the President of Maribor Local Court, after receiving our inquiry, had ordered this non-contentious proceeding to receive priority processing.

On the basis of the collected data on the course of the non-contentious proceedings at Maribor Local Court, the Ombudsman accepted the explanations provided by the President of the court that the case has been continually processed since the opening hearing as of 18 August 2016. **We nevertheless came to the conclusion that the time which the court took to fix the opening hearing, i.e. more than eight months from the publication of the Constitutional Court decision in the Official Gazette, especially as this concerned the court's reconsideration concerning the reopening of a case, was unreasonably long.** In the absence of any kind of reason for the excessively long decision-making on the fixing of the opening hearing, and in consideration of the third indent of the second paragraph and the third and fourth paragraphs of Article 289 of the Court Rules, on the basis of which the resolution of non-contentious proceedings which are subject to reopening (and not only the fixing of a hearing in such a case) taking more than three months would be considered a backlog, the Ombudsman believed that by taking more than eight months to (merely) fix the opening hearing, Maribor Local Court had violated the petitioner's right to a trial without undue delay, as derived from the first paragraph of Article 23 of the Constitution of the Republic of Slovenia, or the right to a trial within a reasonable time as derived from the first paragraph of Article 6 of the ECHR.

Maribor Local Court responded to the Ombudsman's enquiry with the President of this court ordering priority hearing of the case. According to the court President, this means that it can be expected that the case will be concluded and a substantive decision at first instance issued in the shortest possible time. 6.4-177/2016

Quality of trials and the operations of the judiciary

Although there were a lower number of petitions due to lengthy judicial proceedings, a number of petitions again referred to the proceedings themselves or the adopted decisions. Dissatisfied with court decisions, individual petitioners turned to the Ombudsman for assistance. In such cases, we often need to explain the Ombudsman's jurisdiction and the possibilities available to the petitioners as parties to the proceedings (e.g. use of available legal remedies). Limited authority with regard to the judicial branch of power means that the Ombudsman cannot assess the lawfulness and correctness of court decisions or in any way assess judicial proceedings, as it is not a higher authority with regard to the court or a body for assessing the correctness and lawfulness of the decisions made, i.e. the correctness of the established facts of the case and the application of material and process law.

The Ombudsman can intervene in judicial proceedings if it establishes undue delay (if the rule on the order of dealing with cases is not considered, or if we establish a violation of the provisions of process law whose purpose is to ensure fast and effective hearing and decision-making in judicial proceedings). Article 24 of the

Human Rights Ombudsman Act stipulates that the Ombudsman must not process cases for which judicial or other legal proceedings are running, unless these involve undue delays in proceedings or an obvious abuse of power. Beyond this provision, **the Ombudsman can only intervene as a friend of the court (amicus curiae) under Article 25 of the same Act. In 2017, we made use of this possibility several times (as pointed out in the chapter on limitation of personal liberty, in reopening decision-making with regard to the duration and changes to the compulsory psychiatric treatment measure).** In this role, we pointed out the need for the Supreme Court of the Republic of Slovenia, as the responsible court for uniform case law, to especially carefully assess the claimed violations in decision-making on a request for the protection of legality in one of our processed cases on the basis of Article 22 of the Constitution of the Republic of Slovenia.

With appropriate rules and regulations and work conditions, the judiciary can make the largest contribution to the quality of the judicial system. **We therefore again encourage the Supreme Court of the Republic of Slovenia to continue to implement mechanisms aimed at improving court operations and quality of trials with a view to uniform case law.** The endeavours towards fair and effective proceedings cannot overlook the ongoing training of judges.

Improved court decisions and uniform case law will strengthen the public's trust in the work of the judiciary. The public often believes that individuals are not granted equal constitutional rights in legal proceedings. We believe that the judiciary should appropriately react to serious allegations concerning the legality of the work of the courts, as this is the only way to obtain the better trust of citizens, which is the fundamental condition of the rule of law. Failure to do so can cement the belief of individuals that the claims appearing in the media are true, which consequently weakens public trust in the judiciary and the rule of law. We believe that a response by the judiciary to the publicised allegations concerning the work of the courts would contribute to better transparency of the work of the judiciary, a fact also advocated by the President of the Supreme Court of the Republic of Slovenia in the announcement of its strategic work programme. We therefore encourage the courts to make sure there is an appropriate level of communication with the public, including, if necessary, providing the reasoning behind its decisions.

Trust in the work of the judiciary was strongly shaken by the issue of misplaced or unclaimed wills. We continued to process this problem in 2017 and will report on our findings in our next report. We can already say that, after studying the information provided by the Supreme Court of the Republic of Slovenia, we found that information stated in the Guidelines for Cases when a Will was not Announced to be Deposited but Probate Proceedings Have Been Conducted (the Guidelines), which have been prepared by a working group appointed by the decision of the President of the Supreme Court of the Republic of Slovenia on 17 April 2015, were not fully in line with the information provided to the affected individuals. A letter sent by the court to the petitioner did not indicate that she was informed of the possibility of reviewing the court file and inspecting the will (as stipulated by Item 9 of the Guidelines). **The petitioner also did not receive a (written) explanation of the situation nor an apology by the court for the situation and potential problems. We emphasised that the Ombudsman believes that merely the general apology by the Supreme Court of the Republic of Slovenia which was offered through the media does not suffice in such cases, and a separate apology for each case can represent a good basis for further remedying the wrongs.**

The information provided by another petitioner, who was being sued by a testamentary heir, even showed that he did not receive any documents from the court which would (at least) have informed him of the position he could have found himself in due to the subsequently found and claimed will, and the decision of the testamentary heir to legally enforce their rights from the this will. Ljubljana Local Court (only) sent him a copy of the will and the minutes on its proclamation. The Ombudsman welcomes the endeavours of the Supreme Court of the Republic of Slovenia with regard to the introduction of the principles of a just culture, as the method of communicating errors without the sender being afraid of the consequences undoubtedly contributes to improving business processes where such errors occur and to seeking responsibility for the future. We believe that a component part of a just culture is also an apology sent to everyone who has suffered damages because of the mistake or who has been affected by it in any way. We therefore also believe it was only right for each local court to show its ethical and moral stance by an individual apology, which the affected individual justifiably expects.

While processing these issues, the Ombudsman also supported the intentions of the Ministry of Justice, stated in its letter of 28 November 2017, that it would, where it is unambiguously clear that judges had acted in a professionally wrong or even unlawful manner, provide proposals to initiate an official supervision of the work of the judge and, in accordance with Articles 3, 7, and 45 of the ZVarCP, also propose that the Supreme Court of the Republic of Slovenia ensures that, in accordance with Article 79b of the Judicial Service Act, official supervision is conducted in probate cases falling under the scope of the issue of unclaimed wills, or submits

this recommendation by the Ombudsman to the competent presidents of district courts within whose local courts the established violations had occurred. Furthermore, the Ombudsman expects that the existence of elements of personal responsibility of legal officials will also be checked at the highest level of each individual court.

2.4.3 DEBT ENFORCEMENT PROCEEDINGS

In 2017, petitions associated with enforcement proceedings again included petitions by creditors (e.g. because of ineffective or lengthy proceedings) and debtors (e.g. because of disagreement with the claim; inability to settle a claim; debtor's distress if their home is the subject of the enforcement; conduct of enforcement agents, etc.).

Effective enforcement proceedings are a component part of (an effective) legal system. However, we reiterate that the effectiveness of enforcement proceedings does not apply only to the protection of the interests of the creditor and thus indirectly also of the public interest with regard to assuring payment discipline. It must also ensure the proportionate protection of the debtor in consideration of the amount of the debt to be repaid under the enforcement proceedings.

The purpose of the enforcement proceedings is the fulfilment of the debtor's obligation and the repayment of the creditor. In this respect, the interests of the creditor after an effective enforcement must also be considered. It often happens that the creditor is also a person under social distress, with low income or without any means of subsistence, who just wants the repayment of their receivable.

Even though the main purpose of the enforcement proceedings is to ensure the repayment of the creditor, the debtor's rights must also be considered. This means that, due to a request for the protection of the debtor's rights under the principle of a social state, the debtor's dignity and the protection of their economic or social existence, the creditor's rights to an effective enforcement can be limited in the enforcement proceedings. For this reason, the Claim Enforcement and Security Act (the ZIZ) contains numerous provisions which protect the debtor's social position (certain types of income are excluded from enforcement, enforcement on cash benefits is limited, certain items of property are excluded from enforcement, etc.).

The Ombudsman has noted an increase in social issues and associated growing distress among people (including distress due to overindebtedness and the lack of resources for the payment of debts). We received a number of phone calls associated with enforcements. The callers mostly asked for (legal) advice on how to avoid a pending enforcement, as they were unable to afford a lawyer or did not seek legal aid (for various reasons) until the time of the enforcement. **We believe that the state should pay greater attention to social issues and find appropriate solutions, as poverty, and consequently social exclusion, can mean a severe encroachment upon human dignity and therefore a violation of human rights.** The Ombudsman has therefore repeatedly asked state authorities to respond more appropriately to the social distress of the most vulnerable individuals and families.

Are amendments to enforcement against immovable property in sight?

With Recommendation No. 26 (2016), the Ombudsman encouraged the competent authorities to seek specific solutions to the issue of enforcement against immovable property as the first and only method of enforcement, especially if this relates to the debtor's home. We have already focused in and since 2012 (Annual Report of the Ombudsman for the Year 2012, pp 106-107) on the appropriateness of the current legislation governing enforcement which, in the light of the established principle of free choice of the means of enforcement regardless of the creditor's receivable, enables enforcement against immovable property to be the first and only means of enforcement. At that time, we wrote that, in order to ensure the principle of equality before the law, enforcement proceedings should ensure a balanced protection of the creditor for whom the enforcement means the repayment of the receivable, but also protection of the debtor so that their existence is not threatened by the repayment. The regulation which enables the sale of the debtor's immovable property and only pursues the objective that enforcement proceedings result in the payment of the receivable is legitimate and lawful; however, we believe that such a regulation is not fully in line with one of the principles of the rule of law, i.e. proportionality. We recommended that the Ministry of Justice and the Government of the Republic of Slovenia (again) start to prepare solutions for the legislation governing enforcements, especially for cases where the enforcement is being implemented on the basis of an authentic document for relatively small amounts due, so that for the debtor the enforcement does not mean an enforcement only against immovable property which

is also the debtor's home and their only property. We repeated this recommendation in 2015 and 2017 when providing our observations on the text of the proposed Act Amending the Claim Enforcement and Security Act – working material (EVA 2016-2030-0008), as no legislative amendments had (yet) been introduced in this area.

The enforcement proceedings (still) follow the principle of a fully free choice of the means of enforcement, regardless of the amount of the receivable. This means that enforcement against immovable property can be the first and only means of enforcement in proceedings for the repayment of a monetary claim. In the case of Vaskrsić (which was also highly publicised), which was even subject to a decision by the European Court of Human Rights, this turned out to be an inappropriate solution. The European Court of Human Rights found that in this case, in view, in particular, of the low value of the debt and the lack of consideration of other suitable and less onerous measures by the domestic authorities, the state had failed to strike a fair balance between the aim pursued and the measure employed in the enforcement proceedings against the applicant. This means that Article 1 of Protocol No 1 to the European Convention on the Protection of Human Rights and Fundamental Freedoms, which ensures the right to peaceful enjoyment of possessions, was violated.

It is encouraging that the proposed ZIZ amendment, which the Government of the Republic of Slovenia confirmed in October 2017, brings improvements in this area. The proposed amendment foresees changes which aim to prevent social enforcements against immovable property where the main characteristic is the low value of the debt and a realistic or manageable repayment by the debtor. It also instructs the courts to notify the social work centre of enforcement proceedings against immovable property which is also the debtor's flat or house in which they live and where the debt being enforced is obviously disproportionate to the established value of the immovable property. After receiving such notification, the social work centre can begin to implement its tasks under public authorisations or social care services which are intended for the elimination of social distress and problems (e.g. initial social assistance, personal assistance, assistance to families).

2.4.4 MINOR OFFENCE PROCEEDINGS

General observations

In this sub-field, we processed slightly fewer cases in 2017 than in 2016; i.e. 50 cases compared to 55 in 2016. The content of the processed issues did not significantly change. The majority of the petitions still focused on dissatisfaction with fines imposed or decisions made in minor offence proceedings, with petitioners claiming procedural irregularities. As in all previous years, the majority of the petitions were related to road traffic and the Police as the authority responsible for minor offences, and in some cases to the actions of municipal wardens. In consideration of the fact that the Ombudsman does not process cases for which judicial or other legal proceedings are running, unless these involve undue delays in the proceedings or an obvious abuse of power (Article 24 of the ZVarCP), the Ombudsman's actions in this area cannot refer to decision-making on minor offences, but rather to other circumstances in minor offence proceedings.

We already highlighted, in the 2016 Annual Report, petitions which referred to the acquisition of personal data for the needs of enforcement of supposedly unpaid parking fees in Croatia. We received similar petitions also in 2017; however, we were unable to process any of the received petitions due to the lack of cooperation by the petitioners. The procedure in this case was completed by the Information Commissioner establishing illegalities in obtaining personal data of owners and users of motor vehicles, as he assessed that the conditions for obtaining personal data on the basis of Article 10 of the Attorneys Act (ZOdv) had not been met.

Implementation of the Ombudsman's recommendations

In Recommendation No. 27 (2016), the Ombudsman emphasised that courts and all other minor offence authorities should also consistently observe the fundamental constitutional guarantees for fair judicial proceedings in minor offence proceedings; in particular, the careful processing of requests for judicial protection is required. This recommendation must be a permanent task. The Ministry of Justice (the MP) assured us that it would continue to strive to include this content in the training of judges, state prosecutors, and judicial and prosecution staff. Furthermore, MP representatives will continue to cooperate in the preparation of training programmes for minor offence authorities. The Ministry believes that training provided to minor offence authorities and courts contributes to strengthening the foundations of constitutional guarantees of a fair

trial, as authorised officials of minor offence authorities, judges, and judicial staff learn of amendments and changes and the latest case law, including that of the ECtHR, from the area of minor offence law, which has a positive effect on the correct application of the ZP-1.

Under the Road Tolling Act (ZCestn), minor offence authorities also include toll inspectors, who are the authorised representatives of the toll road operator and carry out the tasks of monitoring toll payment. A toll user who deems that a toll inspector has exceeded their powers may file a complaint with the toll road operator within eight days of the alleged violation. The toll road operator sends the complaint to a committee appointed by the Minister and consisting of a representative of the ministry responsible for internal affairs, a representative of the toll road operator and two representatives of the Ministry. The committee considers the complaint and notifies the complainant of its findings and measures in writing within 30 days. If the committee establishes that the complaint is groundless, it is rejected. If the committee concludes that the complaint is justified, it may, in consideration of the severity of the violation, propose that the competent toll road operator revoke the authorisation of the toll inspector concerned or commence disciplinary action against them (fourth and fifth paragraph of Article 41 of the ZCestn). Below are two cases from this area.

Example:

The decision on a complaint filed against a toll inspector was only made once the Ombudsman had intervened

The petitioner, a Bulgarian citizen residing in Denmark, who was issued a payment order by a toll inspector of Dars d.o.o. (minor offence authority), informed the Ombudsman that she had not received a decision concerning the complaint, which she had filed due to the actions of the toll inspector during minor offence proceedings.

After studying the petitioner's statements and the documents provided, the Ombudsman established that after receiving the complaint, the minor offence authority instructed the petitioner to amend her complaint within eight days, stating whether she wanted the court to decide on the matter. As the petitioner had explicitly expressed that desire, the minor offence authority handled her complaint and its amendment as a request for judicial protection against the payment order and referred the case for ruling to the competent local court. The court ruled that the petitioner's complaint could not be processed as a request for judicial protection, as the petitioner did not contest the minor offence but only complained against the actions of the toll inspector. The court therefore returned the case for ruling to the minor offence authority. The Ombudsman believes that the court acted in the interest of the petitioner, as the judicial proceedings ended without any legal costs. The minor offence authority then sent a letter to the petitioner informing her of the decision of the court and the fact that after reviewing her case, no signs had been found which would indicate that the toll inspector had exceeded her powers under the second paragraph of Article 41 of the Road Tolling Act (ZCestn), which constitutes the conditions for filing a complaint, and the minor offence authority therefore did not send her letters to be processed by the competent ministry.

The Ombudsman asked Dars d.d. as to who was the official who studied the petitioner's complaint, and on which basis this official had made the decision that the complaint should not be sent to be processed by the competent ministry. The minor offence authority informed us that the decision not to send the complaint and its amendment for adjudication to the committee appointed by the minister responsible for infrastructure was made by the head of the minor offence authority, as he did not recognise that the complaint showed signs of the toll inspector exceeding her powers during the proceedings in accordance with the fourth paragraph of Article 41 of the ZCestn.

The Ombudsman was not satisfied with the explanation received. We believe that such actions by the head of the minor offence authority could violate the petitioner's right to legal protection, as he did not handle the complaint against the actions of an authorised person of the minor offence authority in accordance with the fourth paragraph of Article 41 of the ZCestn, which explicitly stipulates that the complaint of a toll road user who believes that a toll inspector has exceeded their powers must be decided upon by a committee appointed by the minister (responsible for infrastructure). The Ombudsman believes that the complaint by the toll road user should have immediately been referred for ruling to the Ministry of Infrastructure (without prior testing).

We informed the supervisory body of the minor offence authority, in this case the Ministry of Infrastructure, of the Ombudsman's assessment and opinion. The Ministry agreed with the Ombudsman's findings and informed us that the president of the mentioned committee had requested that the minor offence authority sends the committee all the required documents concerning this case. We later also received a copy of the decision of the committee of the Ministry of Infrastructure, the Land Transport Directorate, which meant that the petitioner had finally been issued a decision.

The Ombudsman concluded the processing of this petition with the finding that the petition was well-founded and the Ombudsman's intervention justified and successful, as the petitioner, with the competent authority deciding on her complaint, had been assured of her right to legal protection. 6.6-1/2017

2.4.5 THE STATE PROSECUTOR'S OFFICE

In the sub-field of pre-trial proceedings, in which mainly petitions related to the work of state prosecutors are processed, we processed the same number of cases as in 2016, i.e. 26 cases. Where necessary, the petitioners' statements were verified by the heads of State Prosecutor's Offices (informing the Office of the State Prosecutor General of the Republic of Slovenia thereof), who responded regularly to our enquiries. We also met with the State Prosecutor General, who at the end of 2017 adopted the prosecution policy directing the implementation of the competencies and powers of the state prosecutor and determining the framework standards for high-quality criminal prosecution carried out ex officio.

Implementation of the Ombudsman's recommendations

With Recommendation No. 28 (2016), the Ombudsman encouraged all state prosecutors to work in a manner that is conscientious, prompt, and professional. This recommendation must be a permanent task of state prosecutors. With regard to this recommendation, the Ministry of Justice wrote that it needs to be observed and expressed its agreement with the recommendation. It observed that the State Prosecutor Act (ZDT-1) stipulates numerous levers in this respect, with regard to both the work of the state prosecution administration and expert supervision. The state prosecution administration encompasses decision-making and other tasks which, pursuant to the ZDT-1, the State Prosecutor's Order, and other implementing regulations, ensure the conditions for the regular, conscientious, and effective work of the state prosecution. It is explicitly determined that ensuring the legality, professional correctness, and timeliness of the work of the State Prosecutor and the supervision of that work is implemented according to the provisions of the ZDT-1 concerning expert supervision (Articles 167 through 175).

With Recommendation No. 29 (2016), the Ombudsman recommended that the Ministry of Justice study the need to regulate a special complaints procedure concerning the work of police officers of the Special Department when drafting the next amendments to the state prosecution legislation. In this respect, it is encouraging to read the communication by the Ministry of Justice that the valid regulation of supervision of the work of police officers of the Special Department needs to be systemically regulated, bearing in mind a comparable regulation of supervision of the work of police officers or people with powers which directly or indirectly interfere with human rights.

The content of petitions again primarily focused on the dissatisfaction of petitioners with individual decisions of prosecutors (e.g. rejection of complaints) and the lengthy processing of their criminal complaints or (un) responsiveness to individual complaints. We emphasise that only two processed petitions from this area were established as being well-founded, while the others ended with explanations (after the conducted enquiries, if required).

Information on the decision concerning a report

The State Prosecutor, learning there are no legal grounds for prosecution for a criminal offence for which the perpetrator is prosecuted ex officio, must inform the aggrieved party of this fact within eight days and instruct them that they can initiate proceedings themselves within eight days (the first paragraph of Article 60 of the ZKP). In the past we have pointed out that the state authority not even answering the received letter (i.e. not even with an initial answer) can (also) be in contradiction of the principles of good administration. State authorities must explain their decision and reasons to the petitioner with at least an initial (one) answer. Otherwise, the petitioner is facing uncertainty as to the opinion of the authority (which can be wrong) that the complaint does not meet the conditions for (further) processing.

Example:

Complainant not informed about the result of a complaint
In 2017, a petitioner complained that he had not received an answer to a reported criminal offence (report filed in April 2015).

The Novo Mesto State Prosecutor's Office initially informed the petitioner that it had received a report from the competent police station on 6 July 2015 concerning the filed report. The Office explained that as the report and the attachments showed that there was no reasonable suspicion that the suspect had committed the indicated criminal offence, no criminal proceedings were instigated.

After receiving such an answer, we asked for an additional answer on whether, and if so, when, the complainants filing the report in April 2015 had been informed that there was no reasonable suspicion that the suspect had committed the indicated criminal offence and no criminal proceedings had been instigated, and of further rights pertaining to the injured party, i.e. the person filing the report. In this respect, we also brought the attention of the State Prosecutor's Office to Article 60 of the ZKP. We asked the State Prosecutor's Office to explain its reasons why the complainants filing this report had not (yet) received such an explanation, and proposed that the Office should inform the petitioners of its decision.

The State Prosecutor's Office considered our recommendation and notified us of its decision, dated 5 December 2017, with which it dismissed the filed report. 6.2-14/2017

2.4.6 ATTORNEYS AND NOTARIES

The work of attorneys, as a part of the justice system and a constitutional category, plays an important part in ensuring and strengthening legal certainty and of course the protection of human rights. It is therefore disconcerting to learn of attorneys' warnings that there are interventions made by the state which weaken their position, independence, and autonomy.

We processed 22 cases in this area, which is several more than in 2016 (15 petitions). When processing these cases, we mainly contacted the Bar Association of Slovenia (the Bar), with whom cooperation was again good.

As usual, the processed cases included complaints claiming negligent provision of services or dissatisfaction with the work of attorneys (including petitioners' allegations that they were insufficiently informed about the legal and actual situation of their cases; assessments of the dispute; possible continuations of proceedings with legal remedies, particularly in cases of free legal aid), incorrect calculation of costs, inappropriate conduct of individual attorneys, disagreement with a decision of the disciplinary authorities of the Bar Association of Slovenia, and other irregularities.

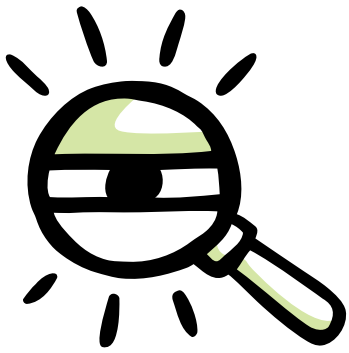
The processed cases did not include any petitions which would require our action concerning the work of notaries (with the exception of a question on the entry of wills in the Central Register of Wills), and only one petition about attorneys was felt to be well-founded. It needs to be remembered that the possibilities for the Ombudsman processing cases between individuals on the one hand and attorneys or law firms on the other, are limited.

The Ombudsman's supervision of the work of attorneys is (only) indirect. It is predominantly implemented as supervision of the work of the Bar in the part of the latter's public authorisation. This does not mean that the Ombudsman has the possibility of filing legal remedies against the decisions of the Bar's disciplinary bodies, or even the possibility of changing these decisions. It can only intervene in the event of lengthy decision-making by the Bar concerning a report against the actions of individual attorneys.

The processed cases in this area included statements made by a petitioner that since the Bar had referred his report against a lawyer over six months ago to the disciplinary prosecutor, he had not received any kind of information on the processing of his report. We contacted the Bar requesting information as to when the petitioner could expect to receive the decision of the competent body within the Bar in consideration of the potential specific characteristics of the case. The Bar informed us that it had contacted the disciplinary prosecutor processing the case, and received their assurance that a decision would be made shortly. We

informed the petitioner of the Bar's answer and recommended that he contact us again should this not be the case.

The Ombudsman believes that the lengthy processing of a report made against a lawyer does not strengthen faith in the work of the Bar and its disciplinary bodies, nor does it contribute to the transparency of their actions. **With Recommendation No. 30 (2016), the Ombudsman therefore recommended that the Bar Association of Slovenia continue to effectively react to irregularities which have been established among its members with the effective work of its disciplinary bodies, and ensure fast and objective decision-making on reports filed against the work of lawyers.** This recommendation must be a permanent task and is therefore reiterated. In this respect, the Ministry of Justice explained that the current legislation governing disciplinary proceedings against lawyers was not the reason for potential length of these proceedings. In accordance with the second paragraph of Article 60 of the ZOdv, the duty of the Bar and its disciplinary bodies is to ensure the effective, impartial and transparent exercise of its members' responsibilities in the event of disciplinary violations. The fast implementation of disciplinary proceedings is also stipulated by individual provisions of Chapter VIIIA of the ZOdv, which stipulate the deadlines for executing individual actions in the context of disciplinary proceedings (Articles 64, 64a, 64b, and 64c of the ZOdv). Furthermore, the Government of the Republic of Slovenia (just like the Ombudsman) does not have the possibility of filing legal remedies against the decisions of the disciplinary bodies of the Bar or even the possibility to change their decisions. Disciplinary proceedings by the Bar encompass the work of representatives of the Ministry of Justice (five representatives in the disciplinary committee of first instance, and five representatives in the disciplinary committee of second instance), who regularly attend disciplinary hearings and participate in various panels with members of the disciplinary committee appointed by the Bar.



2.5 POLICE PROCEDURES

	Cases processed			Resolved and well-founded		
Area of work	2016	2017	Index 17/16	No. of resolved cases	No. of well-founded cases	Proportion of well-founded cases among those resolved (in %)
Police procedures	81	97	119.8	84	10	**11.9**

2.5.1 GENERAL OBSERVATIONS

In 2017, the Ombudsman processed 97 petitions which predominantly related to police procedures. This is 16 cases more than in 2016 (81 petitions). Police procedures are also processed in other fields (e.g. the sub-field of minor offence procedures). Our associates once again contributed to a number of issues not needing to be processed in a more formal procedure by resolving them during telephone discussions.

We again note that the assessment of police officers' observance of human rights and freedoms cannot be based only on the number of complaints sent to the Ombudsman and/or their justification. We also need to consider that the share of (un)founded petitions particularly reflects the manner of processing petitions in this field and frequently also the lack of petitioners' cooperation.

In addition to processing petitions in this field, we also visited 27 police stations in 2017 while implementing the duties and powers of the National Preventive Mechanism (NPM), which is the subject of a special report. In 2017, we again enquired about concrete procedures relating to petitions concerning the work of police officers, particularly with the Ministry of the Interior, and in certain cases directly (during the visits) with the police stations. We can again commend the prompt responses of the Ministry of the Interior and the Police.

In the context of preparations for drafting the guidelines and mandatory instructions for the preparation of the annual work plan of the police, and the planning of supervisions of the police in the observed year (as is usual), we met with the Police and Security Directorate of the Ministry of the Interior, and also discussed individual issues with the Director General of the Police or the General Police Directorate. As an external expert, the Deputy Ombudsman, Ivan Šelih, was again appointed to the Expert Council on Police Law and Powers, a permanent, autonomous and consultative body of the Police and the Police and Security Directorate at the Ministry of the Interior. The Council connects the external and internal expert public in the provision of lawful, professional, and proportionate use of police powers, and contributes to enhancing the trust of the internal and external public in the professional integrity and operational autonomy of the work of the police.

In this respect, we cannot overlook the repeat visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to Slovenia at the beginning of 2017 (the previous visit took place in 2012). The CPT also visited five police stations. On this basis it provided comments and recommendations in its report which Slovenia is bound to consider or to eliminate all established deficiencies (especially those coinciding with our findings), which we will certainly monitor.

2.5.2 IMPLEMENTATION OF THE OMBUDSMAN'S RECOMMENDATIONS

We are pleased to note that in most cases, the Ministry of the Interior and the Police follow our recommendations. This was also evident from the 2016 review of the implementation of the Ombudsman's recommendations concerning police procedures.

With Recommendation No. 31 (2016), we have again advocated that the Ministry of the Interior and the Police continue their efforts to consistently observe human rights in police procedures by means of appropriate communication and a respectful attitude of police officers towards individuals during their procedures. This recommendation must be a permanent task. We are therefore pleased with the assurance of the Ministry of the Interior that the Ombudsman's findings and recommendations are important for preparing the guidelines for high-quality police work.

The police strive to perform their work properly and with great expertise. In this respect, the quality and content of education and training of all employees must be enhanced, and it is planned that more resources will be allocated to this in 2018 and 2019. The Ministry has strengthened its human resources for the handling of complaints and they were able to engage in proactive action and focus even more on monitoring conciliation procedures. So as to contribute to improving the quality of work of police officers, the Ministry implements systemic control, including detailed analyses of individual incidents, which serve as basis for preparing guidelines for the better work and greater safety of police officers.

With regard to Recommendation No. 32 (2016), in which the Ombudsman points out that the police must consistently observe all the rights of suspects deprived of liberty, including the right to counsel, and Recommendation No. 33 (2016) that the police, whenever they are investigating whether deprivation of liberty is necessary and recording such deprivation, act with particular care, and always take into account that the entire time of the police procedure until remand custody is ordered must be included in the time of detention, it is especially encouraging to hear the assurance of the Ministry of the Interior that police officers, in cases of deprivation of liberty, act with particular care and consistently observe all the rights of suspects deprived of liberty, including the right to counsel. However, we have still established problems in this field and these are pointed out below.

With Recommendation No. 34 (2016), the Ombudsman recommended that the police ensure the careful recording of all confiscated items in a manner that does not allow them to be switched, and their suitable storage. It is therefore encouraging that the Ministry of the Interior has announced that it will use a special application which will ensure additional traceability and careful recording of confiscated items.

We also recommend that police officers carry out the selection of witnesses during house and personal searches with particular care, and that the Ministry of the Interior, in cooperation with the Ministry of Justice, prepares a systemic solution for providing witnesses when conducting house or personal searches, e.g. by establishing a court list of people who could participate in pre-trial procedures as witnesses when these searches are carried out **Recommendation No. 35 (2016).** However, with regard to systemic solutions for providing witnesses when conducting house or personal searches, no progress has been established.

Recommendation No. 36 (2016), that when communicating with the public, the police should carefully consider in every case which and how much information about an individual should be shared with the public (if at all) is also a permanent task, and the Ministry of the Interior assured us that the decision on which information to publish is always carefully considered.

2.5.3 AMENDED REGULATORY FRAMEWORK OF POLICE OPERATIONS

The Organisation and Work of the Police Act stipulates that the Police is a body within the Ministry of the Interior, which performs tasks defined by law and implementing regulations adopted on the basis thereof. As one of the entities of the domestic security system, the police contribute to internal stability and security in the Republic of Slovenia by implementing their tasks. In order to successfully ensure domestic security, the

police cooperate with other entities which contribute to the provision of the national security of the Republic of Slovenia. The tasks of the police are carried out by the uniformed and criminal police and by specialised police units organised within the General Police Directorate, police directorates and police stations. The Ministry of the Interior assures us that the material position of the police is improving; however, the police are still facing staff shortages in specific areas. Consequently there are delays in pre-trial procedures, as pointed out by the prosecutor's office.

The tasks and powers of police officers are regulated by the ZNPPol. At its session of 17 February 2017, the National Assembly of the Republic of Slovenia adopted the Act Amending the Police Tasks and Powers Act (ZNPPol-A), which was also published in the Official Gazette of the Republic of Slovenia, No. 10 of 27 February 2017.

The Ombudsman provided its comments to the proposed amendments to the ZNPPol at the time of the presentation of the ZNPPol amendment on 19 August 2015, and later in the further process of preparing the amendment. Several of our observations on the planned amendments to the ZNPPol were considered.

The drafter of the proposed regulation, or later the legislator, decides whether and to what extent to consider our observations. The Ombudsman is unable to participate in the preparation of concrete legislative solutions because of its position, so as not to face subsequent reproach that the office participated in the drafting of an Act.

The Ombudsman also provided its comments to the draft before the end of inter-ministerial coordination, and drew attention to the provided comments by the Information Commissioner. The Ombudsman also proposed that a stand be taken with regard to these comments and that they are considered in the drafting of the Act. The Legislative and Legal Service of the National Assembly of the Republic of Slovenia was also critical of numerous aspects during the legislative procedure (in this respect see Opinion No. 210-01/16-17 of 12 January 2017 (EPA: 1567-VII)). **After the ZNPPol-A had been adopted by the National Assembly of the Republic of Slovenia, the Ombudsman received an appeal by a group of citizens to challenge this Act before the Constitutional Court, and a proposal by the Information Commissioner to consider filing a request for a review of constitutionality. On this basis, the regulation, which has been enforced by the ZNPPol-A, must be studied.** In this respect, the Ombudsman also considered the viewpoints expressed by the European Court of Human Rights (ECHR) that greater attention must be paid to respecting privacy when handling new communication technologies which enable the storage and reproduction of personal data, and that the development of surveillance methods using the latest technologies must be simultaneous with the development of legal safeguards; and by the Constitutional Court of the Republic of Slovenia that the legislator, when dealing with personal data processing for reasons of police operations, must carefully study the severity of the measure which encroaches upon the sensitive area of privacy without the consent of the individual. **The Ombudsman therefore decided to file a request for a review of constitutionality in accordance with Article 23a of the Constitutional Court Act (ZUstS), as we assessed that several provisions of the ZNPPol-A amendment were inconsistent with the Constitution of the Republic of Slovenia and the European Convention for the Protection of Human Rights and Fundamental Freedoms.** We are still awaiting the decision of the Constitutional Court of the Republic of Slovenia.

In the process of preparing the ZNPPol-A amendment, special attention was paid to the introduction of the taser as a coercive measure. We have reservations about its introduction, as we believe (as does the CPT) that its use should be strictly limited to cases of serious and imminent threat to life or grave injury, and even then only if this cannot be prevented in any other way, i.e. when this is the only option instead of using other, riskier means which cause injury or death (e.g. firearms). We are glad that a number of our observations have been considered in this part of preparing the draft Act.

Unfortunately, the drafter or legislator did not follow solutions which anticipated the limited use of tasers. We believe that if tasers are introduced as a coercive measure, the law must stipulate that they can be used only by police officers who perform their tasks and duties in intervention teams or in other similar operations. This has been observed by the amended Rules on police powers. This implementing regulation details the method of exercising police powers. Following the ZNPPol-A amendment, the Rules were amended (Official Gazette of the Republic of Slovenia, No. 59/2017) after obtaining our preliminary opinion (as stipulated by Article 33 of the ZNPPol). We are especially satisfied with the new Article 43a of the Rules, which stipulates limited use of the electric taser. The Rules allow the use of electric tasers only by police officers who perform their tasks and duties in intervention teams or in other similar operations, members of the Special Unit, and mobile crime units. In this part, the Rules also follow the recommendations provided by the CPT.

2.5.4 FINDINGS FROM THE PROCESSED PETITIONS

The petitions from this area relate to all aspects of the activity of police officers. **The processed petitions still most frequently referred to alleged violations of the protection of human personality and dignity, violations of the principle of equality, the right to personal dignity and safety, legal guarantees in minor offence proceedings, and the right to equal protection of rights, among others. The established violations include the non-observance of the principle of good administration, the right to personal dignity and safety, equality before the law, and protection of personal liberty, among others.**

Recurrent petitions in this area refer to dissatisfaction with the (in)action of police officers in cases of neighbourly disputes, domestic violence, and other risks. We must reiterate that complaints or requests for further action in such cases must be responded to, and the actual situation of all the complaints that are considered must be diligently and properly examined, since this is the basis for possible further action by police officers, which must be effective.

As in previous years, the petitioners most frequently cited irregularities in police procedures in which the Police acted as a minor offence authority (these findings are presented in more detail in the chapter on Justice – Minor Offence Procedures) when considering violations of public peace and order and road traffic offences, as well as road accidents and other minor offences. In this respect, the petitioners mainly emphasised the (in) action of police officers, bias when establishing the facts and circumstances of alleged offences, incomplete establishment of the actual situation, and dissatisfaction with the issue of a payment order or a fine, and other violations of rights.

Other petitions referred to alleged misconduct by police officers and other irregularities, e.g. with regard to the use of coercive measures, deprivation of liberty or detention. Due to a lack of petitions or the cooperation of the affected individuals we were unable to process the covert work of the (criminal) police.

Example:

Foreign nationals were kept in the detention room for more than four hours after detention.
During a review visit to Ptuj Police Station (Ptuj PS) in the role of the National Preventive Mechanism (NPM), a review of randomly chosen cases of detention included the case of a detention of two foreign nationals. The foreign nationals were detained at Ptuj PS, pursuant to the fourth indent of the first paragraph of Article 64 of the Police Tasks and Powers Act (ZNPPol), from 18 March 2017 at 10.25 to 20 March 2017 at 8.57. It was also established that the foreign nationals remained in the same detention room where they had been detained even after the detention ended on 20 March 2017 at 8.57, right up to their placement in the Aliens Centre, to which they were taken from Ptuj PS at 13.37. **We therefore recommended to the Ministry of the Interior (MI) to review this case of detention and notify us of its findings and eventual measures. We specifically asked for an explanation of the legal grounds under which the foreign nationals had been placed in the detention room after the expiry of detention, i.e. on 20 March 2017 from 8.57 to 13.37.**

The MI explained that the Croatian security authorities informed the police unit that they would not accept the foreign nationals only two hours prior to the expiry of the legally permissible detention time. The detention therefore ended at 8.57. From 8.57 until 13.37, the procedure was followed for the placement of the foreign nationals in the Aliens Centre for reasons of removal from the country, of which the foreign nationals were informed. After the expiry of detention, both foreign nationals remained in the detention room, as Ptuj PS does not have a more appropriate room where they would be able to ensure their safety and privacy. It was further established that food was provided at 9.15, but that police officers did not record this fact. The MI commented that the management of Ptuj PS had been alerted to the fact that they must record all activities concerning a detained or remanded person, and that the time from the end of detention until placement in the Aliens Centre must be as short as possible.

As the explanation received from the MI did not address all of the NPM findings during its review visit, we additionally asked the MI to explain why the procedure lasted more than four hours after the expiry of detention, and why the foreign nationals were not moved to a more appropriate room, e.g. the booth in the hall opposite the police officer on call, or to rooms intended for the placement of foreign nationals, which are available in individual police stations (e.g. there is such a room in nearby Gorišnica PS). We also asked for an explanation of how other PS across Slovenia manage these procedures in similar cases of detaining foreign nationals (detentions over the weekend and announcements made to the Croatian security authorities and their non-acceptance of foreign nationals). We inquired as to the time frames and whether PS are given any instructions

or guidelines on what to do if foreign security authorities do not accept a foreign national by the time of the expiry of the legal deadline for detention.

We emphasised that each police detention is limited to last only as long as strictly necessary, while detention under the fourth indent of Article 64 of the ZNPPol may last no more than 48 hours (the second paragraph of this Article). Overstepping this time means a violation of the law. If a person who needs to be handed over to foreign security authorities cannot be handed over within this time limit, the police must act especially fast. The police must be ready for that, as it is clear that foreign security authorities can refuse the acceptance of a foreign national. In the case at hand, the Croatian security authorities informed the police unit more than two hours prior to the expiry of the deadline for detention that they would not accept the foreign nationals, and it is incomprehensible that the procedure for placing the foreign nationals in the Aliens Centre lasted so long (more than four hours). **We also found it questionable that the foreign nationals remained in unchanged conditions, i.e. in the detention room where they had been kept since the beginning of the procedure, from the end of detention on 20 March 2017 from 8.57 until 13.37 (more than four hours), at which point they were taken to the Aliens Centre. Saying that the Ptuj PS does not have a more appropriate room hardly justifies that.**

In its additional response, the MI said that the reason for the procedure (where the foreign nationals had restricted movement pursuant to Article 76 of the Aliens Act) taking so long after the expiry of detention was that in this case the senior officer had to write a dispatch note and four decisions, i.e. two for the removal of each foreign national from the country and two for the placement of each foreign national in the Aliens Centre. When being served the decisions, their content was explained to the foreign nationals in English, which again took time. Regardless of this, the MI also believes that Ptuj PS should have made sure that the time from the expiry of detention until the placement of the foreign nationals in the Aliens Centre should have been as short as possible, and the PS has been alerted of the fact. With regard to the reasons why the foreign nationals were not moved to a different room after the expiry of detention, the MI said that it would have been impossible to watch the foreign nationals had they been placed in the booths, as police officers were involved in other activities. The foreign nationals received food at 9.15, which they consumed in the detention room. The MI further believes that had they been given the food in the booths, in plain sight of arriving clients, they would not have had any privacy. The MI agreed with our finding that the foreign nationals could have been placed in Gorišnica PS, which has an appropriate room; however, this would have additionally prolonged the duration of the proceedings. Procedures in cases where foreign security authorities refuse to accept foreign nationals last different lengths of time, as they depend on a number of factors (number of processed foreign nationals, distance from the police station to the Aliens Centre and so on). **With regard to this particular case, the Police prepared a dispatch note for police units, explaining the actions of police officers in such cases.** We therefore do not expect to come across a case like this one in the future, and that foreign nationals, once detention expires, will be placed in the Aliens Centre in the shortest possible time and that they will not be placed (or only in exceptional cases) in detention rooms after the end of their detention. 12.2-38/2017

We contacted the Specialised State Prosecutor's Office of the Republic of Slovenia (SSPO), Section for the Investigation and Prosecution of Official Persons Having Special Authority with regard to one case, where the instigator described maltreatment by police officers even though the Ministry of the Interior denied that police officers were even using coercive measures in the said case. We have asked the competent state prosecutor to investigate the actions of the police officers from the viewpoint of an eventual criminal offence. We are still awaiting the State Prosecutor's response.

Judges also play an important role in the prevention of ill-treatment in police procedures. **During its visit to Slovenia in 2001, the CPT recommended that whenever criminal suspects brought before a judge at the end of police custody allege ill-treatment by the police, the judge should record the allegations in writing, immediately order a forensic medical examination, and take the necessary steps to ensure that the allegations are properly investigated.** In its response to the CPT report, the Ministry of Justice said that it had communicated this recommendation to the Supreme Court of the Republic of Slovenia and that it expects the recommendation to be considered. While processing one of the cases from this field, we checked how this recommendation is observed in practice.

Example:

The role of the judge in alleged ill-treatment during detention
The Ombudsman was contacted by a petitioner who stated that the investigating judge of the Celje District Court placed him in detention without ensuring medical assistance, despite the fact that he was injured and asked for medical assistance. **The records of the hearing, which were sent to the Ombudsman, also included a note on the petitioner's statement concerning the actions of police officers at the time of apprehension, stating that police officers attacked, strangled, and tortured him, causing redness in his eyes.**

In this respect we asked the court how the CPT recommendation had been considered in this case. The court explained that the judge noted the suspect's statements concerning the actions of the police officers and the alleged consequences. She also noted her own observation concerning the suspect's red eyes, asking him to approach the bench. The court also stated that the petitioner did not complain of any medical problems or potential injuries and did not ask for medical assistance. According to the court, such a request was also not made by the petitioner's attorney. The judge did not establish the need to provide medical assistance or a medical examination. According to the court's assessment, the alleged statements on the ill-treatment by the police officers can be studied using the records of the hearing and the contained note on the reproach concerning the ill-treatment by the police officers, the provided personal observations, and the remaining proof in the records.

In our answer to the petitioner, which we also sent to the court for information, we emphasised that a medical examination, especially if coercive measures have been used, is in the interest of the person involved in the procedure and the police officers alike. In this way, potential injuries and their origin can be established, which plays an important role in the subsequent verification of the potential recriminations of ill-treatment during detention and deprivation of liberty in police procedures. The CPT paid special attention to this fact by recommending that such an approach should be followed whether or not the person concerned bears visible external injuries.

In the case at hand, the court did not order a medical examination, which the Ombudsman believes could have been useful. In consideration of the court's actions, with the court recording the allegations and observations, and the fact that the official note by the institution in which the petitioner had been placed showed that even prior to questioning after placement in the institution the petitioner had refused a medical examination, confirming that with his signature, no irregularities were established in this case which would require our further action. 2.1-1/2017

The petitions also referred to the management of pre-trial criminal proceedings, and in this respect to the investigation (or lack thereof) of criminal actions, the collecting of notifications or conducting of interviews, (non)responses to reports or requests for action, and searches for missing persons, among others. There were again petitions made concerning impolite, incorrect or inappropriate verbal behaviour by police officers.

2.5.5 DEPRIVATION OF LIBERTY

When discussing claims regarding the work of police officers, **the Ombudsman pays special attention to complaints referring to the deprivation of liberty, which is one of the major encroachments upon human rights. Any restriction to the liberty of the suspect that involves forced detention is considered deprivation of liberty (third paragraph of Article 4 of the ZKP).** When processing petitions, we also come across issues of correct deprivation of liberty and its recording. As in the Constitution of the Republic of Slovenia (Article 19), the ZKP also stipulates that every person deprived of their liberty must be advised immediately, in their mother tongue or in a language they understand, of the reasons for the deprivation of their liberty. They must immediately be instructed that they are not bound to make any statements, are entitled to the legal assistance of a lawyer of their own choice, and that the competent body is bound to inform their immediate family of their detention, if they so request. A suspect deprived of their liberty must also be informed of their rights under Article 8 and the fourth paragraph of Article 4 of the ZKP.

The police officer must ensure the enforcement of these rights as soon as possible. If the detainee requests that their immediate family be told of the detention, they are informed by a police officer, unless the immediate

family is located outside the territory of the Republic of Slovenia. The police officer can inform the family members by phone or in person (Article 33 of the Rules on Police Powers).

In this respect, we also processed a petition put forward by three foreign nationals detained by the police, who claimed that during their deprivation of liberty they were not given the possibility to notify their family members of their arrest and detention. Police documents showed that the foreign nationals were informed of the rights of a detained person, including the right to notify family members; however, while they did not request family members or other people be notified, they did not confirm this with their signature. The MI explained that this was not specifically anticipated in the existing forms. Obviously, the CPT also perceived problems in this area during its 2017 visit to Slovenia. At the end of the visit, the delegation suggested that the Slovenian authorities include the information as to whether the detainee availed themselves of their rights or waived them in a document to be signed by the detainee. The communication by the Government of the Republic of Slovenia that the form in which police officers record information on the (non) enforcement of rights of detainees will be updated with the possibility of adding the detainee's signature is encouraging.

2.5.6 POLICE PROCEDURES WITH CHILDREN AND MINORS

During the performance of police tasks, police officers must observe and protect the right to life, human personality and dignity, and other human rights and fundamental freedoms. **Special consideration must be given to people who need extra attention, assistance, and care, such as children and minors.** During procedures involving children and minors, their age, physical and mental development, sensitivity and potential other characteristics which can be observed must be considered. We therefore pay special attention to petitions which contain claims that police officers failed to observe this, as every complaint of this kind can be cause for concern. **Given the particular vulnerability of this age group, the CPT, during its 2017 visit to Slovenia, recommended that the necessary measures be taken to guarantee that juveniles deprived of their liberty by the police are never subjected to police questioning or requested to make any statement or to sign any document concerning the offence(s) they are suspected of having committed without the presence of a lawyer and, in principle, a trusted adult person.** Further, juveniles who are not able to pay for a lawyer should be entitled to free legal aid from a lawyer appointed by the Bar Association.

2.6 OTHER ADMINISTRATIVE MATTERS

	Cases processed			Resolved and well-founded		
Area of work	2016	2017	Index 17/16	No. of resolved cases	No. of well-founded cases	Proportion of well-founded cases among those resolved (in %)
6 Administrative matters	**423**	**405**	**95.7**	**317**	**79**	**24.9**
6.1 Citizenship	7	8	114.3	8	2	**25.0**
6.2 Aliens	99	119	120.2	91	35	**38.5**
6.3 Denationalisation	14	7	50.0	6	3	**50.0**
6.4 Legal property matters	47	31	66.0	24	7	**29.2**
6.5 Taxes	77	60	77.9	47	6	**12.8**
6.6 Customs	1	0	–	0	0	**–**
6.7 Administrative procedures	96	88	91.7	61	12	**19.7**
6.8 Social activities	61	76	124.6	68	11	**16.2**
6.9 Other	21	16	76.2	12	3	**25.0**

2.6.1 ALIENS

The newly legislated possibilities for action by the state due to the *"changed conditions in the area of migrations"* have divided the public, but also erased the differences at least in the political arena between otherwise traditional opponents.

We have already described some events concerning the amendment of the Aliens Act (ZTuj-2D) in last year's Annual Report (pp 229-230). It has brought new possibilities for state action upon *"changed conditions in the area of migrations"* We can continue to do so this year, because there have been many new events to describe.

A lot of pressure was put on the Ombudsman from a number of directions while we were in the process of considering the materials for filing a request for a review of the constitutionality of the ZTuj-2 after the adoption of the amendment ZTuj-2D. The pressure continued after the decision to challenge the Act before the Constitutional Court of the Republic of Slovenia. On the one hand, we received letters from individuals who asked us to send *"the adopted Aliens Act amendment under constitutional review"*, expressed they were sure that the Ombudsman would *"file a request for constitutional review of this shameful act as soon as possible"*, hoped the Ombudsman will expose the dangers of the Act, and so on. At the request of a coordinator of several humanitarian and non-governmental organisations, we also met with their representatives to discuss the complaints. On the other hand, others urged us not to waste too much time *"with innocent migrants crossing our borders, but to concentrate on paid murderers that are destroying our nation, or there is a strong capital in the background that is not easy to defy"* etc. Among the latter was a representative of the Roma community, who had learned that the Ombudsman had filed a request for the review of constitutionality of Article 10b of ZTuj-2 and was asking what the Ombudsman was doing for the Roma community (*"right to education, employment,*

accommodation, co-decision in public matters"). Among other things, he wrote: *"The Ombudsman has the means to launch a media campaign at a national level to inform all citizens of the Republic of Slovenia about the situation in the Roma community. If this has been done for the migrants who only took a walk through Slovenia, it should also be done for legal citizens of Slovenia. The members of the Roma community were born in the Republic of Slovenia and are indigenous to the area. I wonder what actions there would be if migrants did not have drinking water or sanitation, and how much money the Government spends on this account."* We reminded this sender of all the actions the Ombudsman has taken regarding the Roma community, such as annual reports on the conditions of the Roma community, the Special Report on the Living Conditions of the Roma in the area of south-eastern Slovenia from 2012, and the Ombudsman's challenge to the ZRomS-1 before the Constitutional Court (Case Number U-I-15/10). This experience with the aforesaid representative of the Roma community demonstrates **the fluidity of the construction of one's identity in the context of the us-and-them dichotomy.**

The amendment to the ZTuj-2 was adopted at the end of January and came into force at the beginning of February. At the beginning of March, we received a statement signed by *"associates of the Today is a New Day, Institute for Other Studies"* stating they had completed an on-line petition at the website http://danesjenovdan.si/varuhinja/, urging the Ombudsman to put the Act under constitutional review. They said they were sending us a public letter and that they had also informed the media about it. They attached the said letter, asking the Ombudsman to *"stop the madness called the amendment to the Aliens Act"* by filing a request for a review of its constitutionality and legality. It is also stated in the letter that the Ombudsman's passivity, hesitation and indecisiveness could be understood as *"a collaboration with totalitarian and anti-humanistic trends of bad authority"*. At the end of the letter, it was stated that the Ombudsman had only two options regarding this *"human-rights violating law"*; she can *"express clear opposition against it, or resign"*, followed by a question on what her decision would be. We responded that the Ombudsman was in the process of considering the materials for an eventual request for a review of the constitutionality of the ZTuJ-2, which we might file, but in our opinion, calling the Act *"madness"*, or *"totalitarian or anti-humanistic trends of bad authority"* or *"an Act trashing human rights"* were not the best arguments ever, since the likelihood of success with such a melodramatic demand would of course be significantly lower than in the case of more reasoned criticism from the point of view of unconstitutionality. For the latter, complex materials must be examined, all the relevant information collected, and convincing reasoning prepared, all of which takes time. **We considered the insinuations that the Ombudsman is *"collaborating with the authorities"* as completely unfounded,** and we also rejected the arrogant request to choose between the *"only"* two options. **We are aware that the author of the letter exercised their constitutionally and conventionally granted freedom of expression, but the rationality of the author was still under question,** seeing how the Ombudsman had already challenged the Defence Act (ZObr) after it was amended. This Act also covered legislative changes relating to the developments in the issue of migrations. The Ombudsman has also challenged the International Protection Act (ZMZ) before the Constitutional Court. The Ombudsman's efforts concerning foreigners and applicants for international protection can be observed in the easily accessible Annual Reports of the Ombudsman, and in the reports on the exercise of the tasks and powers of the National Preventive Mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We experience the calls to stand down as unnecessary attempts to put pressure on the Ombudsman's actions. It is very disappointing to be pressured by an engaged civil society, since it can be reasonably expected, first of all, to have an **adequate knowledge of the position of the constitutional category and to be familiar with the fact that the Ombudsman is operationally independent and autonomous, as explicitly stated by Article 4 of the ZVarCP. The Ombudsman's positions must be her own, and not under the influence of other individuals, groups or authorities. Otherwise, the existence of such an office would be pointless.**

On 26 January 2017, 47 members of the Parliament voted in favour of the ZTuj-2D, and only 18 against it (the quorum was 71 members), so party affiliation was not a decisive factor. Thus, it was no surprise that there was a lot of criticism in the political commentary following our filing of a request for a review of constitutionality. In the 53th meeting of the Committee on the Interior, Public Administration and Local Self-Government, where the Ombudsman's request for review of the constitutionality of Article 10b of ZTuj-2 was on the agenda, a member of the largest opposition party agreed that the Act was unconstitutional, but only if *"read without any thought."* He also stated that the Ombudsman's actions are *"practically directed against the citizens of the Republic of Slovenia."* On a similar occasion, at the 31st regular meeting of the National Assembly of the Republic of Slovenia held on 21 June 2017, where the amendment to ZVarCP-B was on the agenda, a deputy from the Nova Slovenija Group said that *"the Ombudsman has filed many requests for review of constitutionality in recent years and demonstrated whose interests and whose rights and fundamental freedoms are considered a priority"*. Since she pointed out the requests for reviews of constitutionality of the ZObr in ZTuj-2, it seems to us that she implied we had prioritised the interests of aliens or non-nationals. On the same occasion,

a deputy from the biggest government party group stated some particularly interesting thoughts, i.e. that the *"Ombudsman has not done her homework"* because *"she did not do what she should have done."* The Ombudsman allegedly did not cite the severe consequences and those who prepared it for her allegedly did a poor job (compare this criticism with the fact that the Constitutional Court adopted Decision No. U-I-59/17-9 on 25 May 2017, which clearly states that the Ombudsman, as the proposer, *"states that the exercising of the contested provision could have adverse consequences on the protection of the right under Article 18 of the Constitution"* and that our proposal to stay the enforcement of Article 10b until the final decision was not denied because we would forget to do our homework.) We would like to emphasise that there were also more welcoming comments from the political scene and not every reaction was this polemic. For example, we were happy to hear the leader of the biggest Government group (that nevertheless voted in favour of the amending act) salute the Ombudsman's *"democratically mature and responsible move"* on the day when we filed the request for the review of constitutionality. After the amendment had already been adopted, the Minister of the Interior stated that it would be of great importance for the state if the Constitutional Court established that the Act was not disputable.

In order to avoid any misunderstandings, we would like to emphasise that **the Ombudsman considers all of the presented political statements above as an expression of the constitutionally protected freedom of speech and the pluralism of opinion, both essential for a democratic society.** Thus, we do not want to label them as problematic from a formal point of view. However, we would still like to comment on two allegations stated above in the light of the facts. We have been confronted with one of them on several occasions, and the other is pointed out because of the irony it brings.

The allegation that the Ombudsman prioritises the interests of aliens over the interests of the citizens of the Republic of Slovenia is easily refuted, as it is quickly revealed that it cannot be based on the facts. The requests for a review of constitutionality filed so far are eloquent enough; the Ombudsman has filed eight (8) requests for a review of constitutionality since 2013. One of these was related to the rights of foreigners (a request for the review of the constitutionality of Article 10b of the Aliens Act, filed on 19 April 2017). The remaining seven cases were: The Police Tasks And Powers Act (see the subsection on the protection of personal data of this Annual Report), The Defence Act (see p 381 of the Annual Report for 2015), the Act Regulating Measures Aimed at the Fiscal Balance of Municipalities in connection with the Exercise of Rights from Public Funds Act, the Pension and Disability Insurance Act, the Exercise of Rights from Public Funds Act (and the Rules for Determining the Savings Amount and Property Value and on the Value of Provision for Basic Needs with Reference to Procedures of Exercise of Rights to Public Funds), the Real Property Tax Act, and the Act Amending the Banking Act. The allegations regarding the Ombudsman's prioritisation of the interests of aliens over the interests of citizens can therefore only be considered as either ignorant, delusional or as an attempt to misrepresent the facts e.g. with the aim of scoring political points. The fact that the Ombudsman had in mind the highest level of protection from the arbitrary decisions of the authorities when she filed a request for the review of constitutionality of the Defence Act amendment ZObr-E was confirmed by the Decision of the Constitutional Court of the Republic of Slovenia U-I-28/16-27 from 12 May 2016. Furthermore, the Ombudsman has filed only one more request for review of constitutionality of an Act concerning the rights of foreigners (specifically, a request for review of constitutionality of the International Protection Act (ZMZ) filed on 20 July 2011) in the last twenty years. During this period, only a total of two requests for review of constitutionality (out of a total of 30) applied to the regulation of certain rights of aliens (ZMZ in 2011 and ZTuj-2 in 2017). We conclude that although the anti-foreigner rhetoric can be intoxicating and obscure the facts, it can also cost a lot of taxpayer's money. The convictions of the Republic of Slovenia before the European Court of Human Rights in Strasbourg in 2014 regarding *"the erased"* and the people saving money at the subsidiaries of Ljubljanska banka (next to several other convictions of states, including ones from Western Europe, regarding their treatment of aliens) should have a sobering effect.

The allegations concerning the Ombudsman's *"homework"* are truly ironic, considering that as many as 19 Acts were found to be unconstitutional based on the Annual Report of the Constitutional Court of the Republic of Slovenia for 2016. These acts were adopted by the very members of the National Assembly who made the allegations against the Ombudsman. The same Annual Report cites 9 Decisions concerning legal Acts that remain ignored, which is also very worrying. Considering the fact that any member of the National Assembly can also propose laws (the Constitution of the Republic of Slovenia, Article 88), this situation is even less acceptable. The Ombudsman has repeatedly drawn attention to the legislator's *"homework"* in the past (see the Annual Report for 1996, p X , the Annual Report for 2001 ...) but the homework is still late or missing.

In the process of drafting and adopting the ZTuj-2D, **it again became evident that there was not enough time for the examination of the Act from the moment its draft was made available on the websites of the Government and the National Assembly, considering the complexity of the matter.** So far, there have been

several situations equal or similar to this one. For example, the Government determined the text of the draft for the ZObr-E, granting extraordinary powers to the army, on 20 October 2015. The National Assembly of the Republic of Slovenia had already adopted this draft by 21st October 2015. In the past the Ombudsman has already brought to the attention of the Ministry of the Interior that the time devoted to preparing comments on the amendment of the ZPol, determined within the inter-ministerial coordination, is much too short for the Ombudsman to thoroughly study the materials and prepare informed views within the specified period (we received the proposal on 20 March 2009, and the deadline for comments was 31 March 2009).

The newly proposed articles 10a and 10b of the ZTuj-2 can clearly pose problems from the standpoint of several constitutional or conventional demands (e.g. access to the asylum procedure, principle of non-refoulement, effective remedies). It was also clear that even a comprehensive explanation of the draft could not prevent that. The measures at their core collide with the legal concepts and institutions that can be the subject of very different interpretations in the context of the present social reality, some of which can be far from neutral. **The Ombudsman has stated on numerous occasions that the adoption of legislative proposals in haste can result in rash, incomplete and poor solutions. It would therefore be even more absurd if the Ombudsman proceeded in such a way.** It is not difficult to list the constitutional and conventional Articles that could be interpreted as incompatible with the measures from the ZTuj-2D if argued in formal proceedings before the relevant authority (Constitutional Court or the ECtHR). It is much more difficult (both in terms of content and in terms of available time) to add an interpretation that is sufficiently tangible and convincing. Especially today, since the beginning of the migration crisis, we live in different times from when the Conventions or the Constitution were written and interpreted.

The judgement of the Grand Chamber of the ECtHR in the case of Khlaifia v. Italy (16483/12) from 15 December 2016 is a fine example of how differently the (in)admissibility in the same encroachment on human rights can be interpreted at the highest levels. The events of the alleged violation of rights under the ECtHR that took place in Lampedusa after *"the great migrant crisis of 2011 resulting from the Arab Spring"* were considered differently by the Grand Chamber than they were by the Committee of the Court in the judgement of 1 September 2015. The Grand Chamber discarded the judgement of the Committee and judged that there were no violations of rights of the migrants. We believe that the central message of the judgement is, as explicitly stated by the Grand Chamber, that *"it would certainly be artificial to examine the facts of the case without considering the general context in which those facts arose"*. The ECtHR has a known position that the Convention is a living instrument that should be interpreted in the light of the present situation (the same can be said of our own Constitution). The Secretary General of the Council of Europe has also taken the stand that *"The ongoing migrant crisis is creating unprecedented challenges for European states"* (Letter to the Member States, Strasbourg, 8 September 2015).

The Ombudsman does not want to conveniently focus only on the rights of the migrants or refugees. **It would be irresponsible to neglect the other part, connected to the maintenance of law and order and internal security.** The Ombudsman pointed out that the individuals arriving with the migration flows could have many personal issues (Annual Report of the Ombudsman for 2015, p 118), and that they have been travelling for a long time, may have personal problems and may lack tolerance (press release of 22 October 2015 entitled The Ombudsman underlined the importance of tolerant speech for higher officials). She stated that the migrants can also be very unruly, and that the uncertainty can lead to tensions with tragic outcomes (press release of 23 October 2015 entitled The situation in the reception centre Brežice is under control), and that among them, there may of course also be some instigators and people that lose their temper. Representatives of civil society have also drawn attention to cases where grown men tried to alienate children in order to have an advantage on their way to the desired country (press release of 25 September 2015 entitled Civil society on their first impressions and future steps in the attitude of Slovenia towards migrants). The head of the coordination group for medical care was concerned by the possibility of a rapid spread of contagious diseases, especially rotaviruses and respiratory diseases, when visiting the centre in Brežice (press release of 28. 10. 2015 entitled Visit to accommodation locations in Brežice and Rigonce and Cirkulane). During that visit, we learned that there had been confrontations between various groups of foreigners in the centre and that a group had set fire to their assigned tent with the intention of continuing their journey towards the north-west as quickly as possible. We also talked to an individual who owns a house in Cirkulane. A group of foreigners broke into his house and lit a fire with his furniture. We are presenting only some of these events because **it is not unreasonable to expect threats to public order and the internal security of the State in these situations** – especially when migrants are being prevented from continuing their journey to Austria and new migrants are continuing to enter our country in huge numbers.

The position of the Ombudsman was that the **refugee crisis that took place in our country from September 2015 to March 2016 has clearly demonstrated the need to be better adapted and prepared for such**

situations, seeing how they could reoccur considering the geopolitical position of our country and the situation south-east of us. At the time, the Ombudsman assessed that the situation in reception centres is manageable, but could change very quickly should something unexpected happen, e.g. if unannounced larger groups of migrants should arrive, if difficulties should occur in the transport to Austria or in the case of bad weather and general fatigue (press release of 23 October 2015 entitled The situation in the reception centre Brežice is under control). At a meeting with representatives of civil society, soon after the second *"migration wave"* started, the Ombudsman noted that the provisions of the Aliens Act are not adapted to the current refugee situation and should be revised (press release of 25 September 2015 entitled Civil society on their first impressions and future steps in the attitude of Slovenia towards migrants).

The Ombudsman finds **the fact that the Government of the Republic of Slovenia is willing to amend the current legislation as a result of the *"refugee"* crisis, is commendable** (cf. with EVA 2016-1711-0007: *"The position of the Government of the Republic of Slovenia is that the transition of migrants through the state, as was the case during the second migrant wave, is no longer acceptable for Slovenia, especially taking into account the described measures taken by other Member States which will prevent the smooth transition of migrants across the territories of different Member States to the desired destination."*) The amendments would help to improve the reactions of the State in case another crisis should occur. We do not criticise the Government's conduct in this context. However, the concrete solution, enshrined in Article 10b of the ZTuj-2, is, in our opinion, incompatible with (too) many aspects of the previous stage of development of the constitutional and conventional human rights standards. For this reason, we decided to challenge the Act before the Constitutional Court, showing the discrepancy with Articles 2, 14, 18, 22, 25 and 34 of the Slovenian Constitution (and some equivalent Conventional provisions). The case was assigned No. U-I-59/17 before the Constitutional Court.

The ZTuj-2 is not the first Act under intense debate since the state began to face the reality of the migration waves. The Ombudsman decided to file a request for the review of constitutionality of Article 8 of the ZNDM-2 (see press release of 22 December 2015 entitled The conference after the examination of circumstances of a request for a review of the constitutionality of the ZNDM-2). After an in-depth analysis that lasted more than two months, the Ombudsman decided not to file the request (see press release of 3 February 2016 entitled Press conference of the Ombudsman on refugees and requests for reviewing the constitutionality of certain Acts). Similarly, the Ombudsman drew up a request for a review of constitutionality of the ZObr in a mere three and a half months from the adoption of the disputed amendment (the Constitutional Court of the Republic of Slovenia took more than three months to decide on this request).

We would like to conclude this section by commenting that during the legislative process, some mainly journalistic questions (whether the act was in conflict with the Constitution and similar, although it had not even been adopted yet) seemed to indicate that there was a lack of awareness that the **legislative authority is obliged to respect human rights and fundamental freedoms** – and with that it should adopt or reject certain Acts or amendments as best as it sees fit.

The regulation of the status of people with tolerated long-term illegal residence in the Republic of Slovenia is insufficient, according to the Ombudsman

The Ombudsman has been dealing with the status of people with tolerated long-term illegal residence in the Republic of Slovenia since 2015, when she addressed a petition from a citizen of Bosnia and Herzegovina who had just turned of age and was threatened with repatriation after 14 years of illegal residence in the Republic of Slovenia.

As the Ministry of the Interior was reluctant to regulate this area because of one single case in their last response, and on the premise (based on the petitions addressed in the past few years, where we highlighted the area of *"erased"* residents of the Republic of Slovenia) that this petition was not an isolated case, the Ombudsman organised a meeting in 2015 between non-governmental organisations and individuals acting in the area of aliens law. At this meeting we already emphasised the **importance of launching concrete proceedings for the people in this situation and the fact that in regard of the absence of regulations on the issue, it might need to be brought before the Constitutional Court.** The Ombudsman also prepared the argumentation containing the relevant case law of the European Court of Human Rights (ECtHR) and proposed to the people present that it should be considered appropriately when launching concrete proceedings. It was also explained that the Ombudsman would raise the issue of legislative deficiencies, and then the legal representatives of the affected individuals should launch concrete proceedings and inform us of their course of action.

The Ombudsman then received another **21 petitions concerning 32 individuals with tolerated long-term illegal residence in the Republic of Slovenia** (the number of such petitions and individuals in this situation is also increasing in 2018). These petitions show that **the shortest period of illegal residence in the Republic of Slovenia was eight years, while the longest a staggering fifty-five years.** We also understood that **these people were not able to regulate their status despite their efforts to do so.** We assume that there are **even more such cases, as not everyone seeks legal assistance or turns to the Ombudsman with a petition.**

The Ombudsman introduced the problem in detail for the first time in the Annual Report for 2016 (pp 231-233), where she presented two concrete cases; they were selected with the intention of presenting **two major groups of such individuals, namely the individuals erased from the Register of Permanent Residents and the individuals whose application for asylum has been denied.**

The Ombudsman contacted the Ministry of Interior repeatedly between 2015 and 2017, until it finally issued a Response Report of the Government of Republic of Slovenia to the Annual Report of the Ombudsman for 2016 (pp 108-111), focusing on explaining the concrete proceedings and the adequacy of the regulation of the two petitions presented in the Annual Report of the Ombudsman for 2016. We believe the Ministry somehow overlooked the **core problem, i.e. that these individuals continue to illegally reside in the Republic of Slovenia, but their removal would most likely be considered a violation of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECtHR), according to ECtHR case law.**

Nevertheless, the Ministry of the Interior stated in the aforementioned Response Report that it also followed the initiative of the Ombudsman and amended Article 51 of the ZTuj-2, so that it now also regulates the status of those aliens who were allowed to stay in Slovenia for at least 24 months and who still cannot be removed from the country; this category of aliens needs additional justified reasons and specific personal circumstances to justify their stay in the Republic of Slovenia. These reasons and circumstances must be determined by the competent authority in order to issue a temporary residence permit. These people are thus allowed to obtain a temporary residence permit with a validity of two years, with the possibility of renewal for another two years, under the conditions laid down by law. The existing arrangement thus enables more aliens to stay for a period of at least 24 months and obtain a temporary residence permit, since this possibility was previously determined only for aliens who were allowed to stay in the Republic of Slovenia for at least 24 months and whose removal from the state was not possible under the principle of non-refoulement.

The Ombudsman welcomes this amendment, which represents a step forward in the legal regulation of this issue, but we nevertheless consider that this is not a sufficient solution. Firstly, a person must have temporary admission to the Republic of Slovenia for at least 24 months before obtaining this temporary residence permit. In the highlighted cases of the petitioners, this means that the people with long-term illegal residence in the Republic of Slovenia must first undergo the removal process and then, based on the fact that they cannot be removed, obtain temporary admission, which is issued and renewed every six months. After doing so for 24 months, they may apply for a temporary residence permit and have their status regulated for a period of two years. Temporary admission as such only gives them the right to stay within the territory of the Republic of Slovenia, which means that these people must wait two years before they can be actively involved in society. Secondly, the said amendment only makes it possible to issue a temporary residence permit, which is a temporary solution instead of the permanent one that the people in this situation need. When addressing the petitions in the past few years, the Ombudsman has also noted that the people who acquired the temporary residence permit after 24 months did not get it prolonged after two years, which is another reason why this solution is inadequate.

The Ombudsman assessed the Ministry's proposed solution as inadequate and informed the Government of the Republic of Slovenia about this with a letter at the end of 2017. We proposed to the Government that it should ensure the respect of the right under Article 8 of the ECHR, and prepare a draft regulation which would enable this issue to be sorted out, taking into account the aforementioned aspects. The Government explained that, as this concerns the illegally resident foreign nationals, the amendment of Article 51 took into account the legislation that was already in place for the regularisation of the status of illegally resident people allowed in the Republic of Slovenia, whereby the possibility of issuing a temporary residence permit was now additionally extended to other aliens depending on the specificity of their situation, i.e. to those aliens whose removal from the state was not possible under the principle of non-refoulement, as well as under other reasons stated in Article 73 of the Aliens Act. It is also stipulated that other well-founded reasons and specific personal circumstances must exist to justify a stay in the Republic of Slovenia. According to the Government, this solution established an appropriate legal basis that will enable the regularisation of the status of all those

foreign nationals who have been illegally staying in the Republic of Slovenia and who fulfil the conditions for obtaining a temporary residence permit according to Article 51 of the Aliens Act.

With regard to the Ombudsman's concern that the change only enables these foreign nationals to obtain a temporary residence permit, and does not offer a permanent regularisation of their status, the Government estimated that the period of two years for which the aliens may be granted a temporary residence permit if they fulfil the legal conditions (allowed to stay for a period of at least 24 months and removal from the country still not possible; existence of other well-founded reasons and specific circumstances; identity has been established with certainty; no grounds for suspicion that the alien might pose a threat to public order and safety or the international relations of the Republic of Slovenia; no suspicion that the alien's residence in the country might be associated with the commission of terrorist or other violent acts, illegal intelligence activities, drug trafficking or the commission of other criminal acts) is enough for an alien to actively integrate into society and then regularise his or her status under any other legal basis stipulated by the Aliens Act, whereby the government additionally explained that a foreign national who was granted a temporary residence permit under this Article may also be employed in the Republic of Slovenia or work under the conditions laid down by the law regulating the employment and work of foreign nationals. In addition, the Government added that the Aliens Act also allows the possibility of prolonging the permit with the validity of two years if the removal of an alien from the country is still not possible and there are other justified reasons and special circumstances that justify their stay in the Republic of Slovenia, and if there are no previously stated grounds for refusing the permit.

Taking into consideration all of the above, the Government concluded that by amending the legislation, the possibility of the regularisation of the status of individuals with long-term illegal residence was adequately resolved and also followed the standards and criteria of the European Convention on Human Rights. The Ombudsman was not persuaded by these arguments. Therefore, we will continue to pay attention to this issue. (5.2-33/2016)

Should the State assume responsibility for deciding on applications for international protection under the provisions of the Dublin Regulation?

The Ombudsman was contacted by two legal representatives of applicants for international protection – a family with a minor child born in the Republic of Slovenia. They raised the issue of the responsibility for deciding on applications for international protection according to Decree No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (hereinafter: the Dublin Regulation). The Ombudsman received a request in relation to the representatives' proposal on the assumption of responsibility for deciding on applications for international protection. The request stated that the petitioners had been living in uncertainty for over nine months, because they did not know which country would address their applications for international protection. One of the petitioners also had reported health problems. The representatives took the view that the Republic of Slovenia could apply Article 17 of the Dublin Regulation (discretionary clause) in the light of the circumstances of this case, regardless of the fact that another Member State was responsible for deciding on the applications under the said Regulation. This article of the Dublin Regulation stipulates that each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation.

In view of the facts described in the petition, the Ombudsman inquired at the Ministry of the Interior and accessed the case file in order to determine why the Republic of Slovenia had not assumed responsibility for the processing of applications for international protection in this particular case, even though this could have been done under Article 17 of the Dublin Regulation. Based on the above and on the monitoring of the proceedings, we established that the petitioners – a married couple – had lodged an application for international protection in the Republic of Slovenia in August 2015. At that time, the wife was six months pregnant and claimed to have a high-risk pregnancy. The medical documentation showed that she was RhD negative, and she was receiving medications because of that. When they submitted their application for international protection, the Ministry of the Interior obtained data that they had entered the European Union (hereinafter: the EU) with valid Croatian visas, which made the Republic of Croatia responsible for deciding on their applications under the Dublin Regulation. In September 2015, the Ministry of the Interior sent a request to the Republic of Croatia for the reception of the petitioners, which was accepted by the Republic of Croatia. During that time, one of the representatives of the Ministry of the Interior submitted a proposal for the assumption of responsibility

under Article 17 of the Dublin Regulation, which was based on the health status of the petitioner and on shortcomings in the Republic of Croatia in the provision of care to vulnerable groups. In November 2015, the petitioner gave birth to a son, and the parents lodged an application for international protection for the son at the end of November 2015. In January 2016, a personal interview was carried out and the petitioners were informed that the Republic of Croatia was responsible for handling their applications and had already assumed this responsibility. In addition, it was explained that their proposal for the assumption of responsibility was addressed at the College of the Administrative Internal Affairs, Migration and Naturalisation Directorate, where they had decided to carry out the return procedure to Croatia after the birth of the child. In this personal interview, the petitioners said that they had had problems in Croatia and that they had been humiliated there, in particular the wife, who was also experiencing psychological and physical health problems resulting from stress. At the end of January 2016, the Ministry of the Interior issued a decision that the Republic of Slovenia would not address the said applications for international protection and would hand them over to the Republic of Croatia. In their decision, the Ministry expressed its view of the dangers of inhuman or degrading treatment indicated by the petitioners during the personal interview, and concluded that there was no likelihood of them being exposed to this risk. With regard to the proposal for the assumption of responsibility and the state of health of the wife, the Ministry of the Interior stated that the data it obtained indicated that applicants for international protection in the Republic of Croatia were entitled to good medical care. The Ministry therefore concluded that the petitioners would have equally good medical care in the Republic of Croatia as in the Republic of Slovenia.

An action was brought against the decision before the Administrative Court of the Republic of Slovenia with an application for a stay of execution. The Court upheld the action, withdrew the said decision and referred the case back to the court. The Court also granted the application for interim measures. In the repeated procedure, the Ministry of the Interior issued a decision restating that the Republic of Slovenia would not address the aforementioned applications for international protection, as they would be handed over to the Republic of Croatia, the state responsible for processing their applications. In addition to the reasoning stated in the first, abolished, decision, the Ministry stated in the new decision that it had obtained concrete assurances from the Croatian authorities (in accordance with the reference of the Administrative Court) that the petitioners would have adequate accommodation and care in the Republic of Croatia, including the healthcare of adults and children, as defined in the Croatian Act on International and Temporary Protection. Another action against this decision was brought before the Administrative Court. The Court also upheld this action and referred the case back to the court. The Administrative Court stated that the Ministry did not follow the instructions, since it did not obtain specific assurances from the Croatian authorities with regard to the accommodation of the plaintiffs, and with regard to their adequate medical care in the accommodation centre. The Court stated that the decision of the Ministry only listed the reply of the competent authorities in Croatia ensuring that the plaintiffs would have adequate accommodation and care in the Republic of Croatia, including the healthcare of adults and children.

Both the plaintiffs and the Ministry appealed against the decision of the Administrative Court. The Supreme Court of the Republic of Slovenia upheld the appeal of the Ministry of the Interior and modified the Administrative Court's judgement by rejecting the action. It also rejected the appeal of the plaintiffs. The Supreme Court stated that the petitioners did not demonstrate the existence of well-founded assumptions that there are systemic deficiencies in Croatia regarding the procedure of international protection and reception conditions. The Supreme Court did not rule on the eventual assumption of responsibility under Article 17 of the Dublin Regulation. The plaintiffs lodged a constitutional complaint against this judgement. In September 2016, the Constitutional Court of the Republic of Slovenia abrogated the judgement of the Supreme Court of the Republic of Slovenia and referred the case back to the court. The Constitutional Court argued that the absolute nature of the protection under the principle of non-refoulement should take into account all the circumstances of each particular case, including the complainant's personal situation in the country that would transfer the applicant to another country. In this context, it is also necessary to assess whether the mere removal of an individual to another country would be contrary to the requirements arising from the principle of non-refoulement due to the health status of the applicant. According to the Constitutional Court, the Supreme Court violated the plaintiffs' right to equal protection of rights under Article 22 of the Constitution by not ruling on the circumstances that are important in terms of respecting the principle of non-refoulement.

In October 2016, the Supreme Court decided to stay the repeated proceedings and addressed a reference for a preliminary ruling with four questions to the Court of Justice of the European Union (hereinafter: the CJEU). In February 2017, the CJEU issued a judgement stating that individual addressing of this case was necessary and ordered the Supreme Court to assess the state of health of the petitioners and obtain adequate assurances from Croatia that the transfer would not seriously impair their condition. The CJEU also stated that the use of a discretionary clause is not a duty of the state. Based on that, the Supreme Court issued a judgement in March

2017 ruling that the petitioners can be returned to Croatia. The legal representatives stated that they would not lodge a constitutional complaint against this decision, as this would only prolong the agony of the petitioners.

When examining the petition, the Ombudsman initially submitted the following opinion to the petitioners: **in this specific case, there were sufficient reasons for the Republic of Slovenia to apply the discretionary clause under Article 17 of the Dublin Regulation and assume responsibility for addressing specific requests in order to meet the requirements of pursuing the best interest of a child (in accordance with the United Nations Convention on the Rights of the Child) and the appropriate protection of human personality and dignity in the Dublin procedure in question (and also fulfil the principle of rapid decision-making in asylum cases).** In this regard, the Ombudsman specifically emphasised that this decision-making applied to the involuntary return of people and not of random objects – therefore, a person should also be considered psychologically and it is necessary to consider what such a return in this specific situation would mean for these people as human beings. The mere desires of the addressed individuals of course cannot significantly influence such an authoritative decision-making. However, **in the concrete case, the Ombudsman did not see any convincing arguments to also disregard all the other circumstances on which the petitioners based their desire to be addressed in the Republic of Slovenia, along with the possibility of applying the provisions under the Dublin Regulation.**

The authorised representatives of the petitioners, backed by the opinion of the Ombudsman, did not manage to persuade the Slovenian authorities to assume responsibility for deciding on concrete applications for international protection. In December 2017, the Ombudsman addressed a proposal for the assumption of responsibility by applying a discretionary clause to the Ministry of Interior. The proposal was based on the principle of rapid and effective decision-making in asylum cases, the health status of one petitioner, and the principle of pursuing the child's best interest. The Ministry replied to the proposal after the Ombudsman's urgent letter and after the issue of the judgement of the EU Court.

However, the Ministry did not provide its opinion on the Ombudsman's proposal, but only submitted its interpretation of the EU Court judgement. The Ombudsman therefore again asked the Ministry to provide an opinion on the proposal, with particular emphasis on the fact that the Ministry should comment on all the arguments of the Ombudsman for the assumption of responsibility, and not merely on the health status of the petitioner. According to the Ministry, the discretionary clause should only be applied in very exceptional cases. It stated that **the said clause is a sovereign right of the State, which the Ombudsman explicitly emphasised as well,** despite the fact that the Ministry had understood the proposal of the Ombudsman in the opposite way. The Ministry stated that, on the basis of the correspondence with the Ombudsman, it assumed that we wanted them to decide on the use of the discretionary clause as the applicant's right to remain in the territory of a Member State due to their personal circumstances, despite the fact that a Member State is not responsible for examining the application. The Ministry stated that this was also the request of the family's legal representatives in the proceedings in the first instance and later in court proceedings, whereby the Ministry emphasised that the existence of grounds for the use of the discretionary clause is not a criterion under the Dublin Regulation, so the Member State does not have to assess those circumstances. Regarding the specific circumstances, the Ministry explained that the petitioner was receiving appropriate medical care during her pregnancy and after childbirth according to her needs. The Ministry started the said Dublin procedure eight days after the applications for international protection were submitted, and received a positive response from the Croatian authorities on the assumption of responsibility seventeen days later. As the wife was very pregnant at the time, the Ministry waited for further activity in the procedure until after the birth, and then allowed the petitioner to take sufficient time to recover. Appropriate medical and psychosocial care was allegedly provided to her during her entire stay in the Republic of Slovenia, not just after childbirth. The Ministry therefore considered that there was no reason to use a discretionary clause in the specific case because of the applicant's situation during pregnancy and after childbirth, since her condition was duly addressed at all times. According to the Ministry, her situation was not so exceptional that it would dictate the use of the discretionary clause, since the circumstances of the case did not deviate significantly from the circumstances of other similar cases of applicants for international protection.

The Ministry also stated that the child's best interests were pursued by the appropriate addressing of the needs of the mother, whereby it particularly emphasised the extraordinary care of the father and his role in this family. Regarding the principle of rapid and effective decision-making in asylum cases, the Ministry first drew attention to the deadlines imposed by the Dublin Regulation for the implementation of concrete actions in the proceedings, as well as to all the guarantees that the applicant has in the procedure, including the right to judicial protection. In view of these aspects, the proceedings under the Dublin Regulation cannot always be managed quickly and effectively. The Ministry assessed that the average addressing of an applicant in the proceedings under the Dublin Regulation takes at least four months, including the redress procedures. In the

present case, the procedure was almost four months longer because the Ministry did not burden the petitioner with procedural acts in late pregnancy and allowed her to recover after childbirth. In the first instance, the procedure was longer by more than one month due to waiting for the guarantees of the Croatian authorities. The redress procedures were also an important part of the process. Nevertheless, the Ministry considered that the procedure in question did not take so long that its longevity would require the use of the discretionary clause. It justified this by citing the case of Tarakhel v. Switzerland, where the proceedings lasted for three years and the transfer took place after that. The Ministry stated that the petitioners were transferred to Croatia on 22 March 2017 in accordance with the standards and taking into account all the individual circumstances of the petitioners in the presence of a social worker and a nurse. In the planning of the transfer, the Ministry also took into account the wishes of the petitioners that the transfer should be carried out as discreetly as possible and without police assistance.

The Ombudsman believed the petition to be well-founded, since the Ministry of the Interior did not comment on all the circumstances of the case that the Ombudsman had pointed out as relevant for rethinking the application of the discretionary clause. **The discretionary clause is obviously the right of the state, but it should not be understood in such a way that the state can arbitrarily decide on its (non)application, since the protection of rights under Article 22 of the Slovenian Constitution should also be taken into consideration.**

According to the Ombudsman, Article 21 of the Slovenian Constitution, i.e. the right to the protection of human personality and dignity, was violated in this particular case. In its replies, the Ministry commented only on the circumstances by which it could justify the non-application of the discretionary clause, and not on all the circumstances of the case, which, according to the Ombudsman, demonstrated sufficient reason to apply the discretionary clause (e.g. some aspects of the petitioner's health and the issued medical opinions advising against the return to Croatia due to the psychological state of the petitioner and the special attention needed by the petitioner, who was offered hospital treatment). Even with regard to the child's best interests, the Ministry did not comment on all the circumstances that were repeatedly brought forward by the Ombudsman – namely, the child's age, his statelessness, and the importance of a stable mother – even more so if appropriately placed in the story of the family that took place along the generally known events that shook the region. The procedure also did not last eight months as the Ministry stated, but twenty months; therefore we believe that the principle of rapid and effective decision-making in asylum cases was violated. (5.2-27/2016)

An example of the return of a Syrian refugee to Croatia under the Dublin Regulation has highlighted several problems in the international protection system

The Ombudsman has been addressing the petition of an applicant for international protection who has been in a return procedure in accordance with the provisions of Regulation (EU) No. 604/2013 (hereinafter: the Dublin Regulation) for more than a year and a half. We have repeatedly pointed out to the petitioner's authorised representatives **that this issue reflects the political decision of the state on refugee return.** We decided to present the systemic aspect of these cases in the Annual Report.

The presented case raises several issues of asylum and foreign policy in the Republic of Slovenia. The Ministry of the Interior based its decision concerning this petitioner on the provisions of the Dublin Regulation in conjunction with the judgement of the EU Court C-490/16 of 26 July 2017. **The decision of the Ministry was thus legally supported and a judicial review of this decision was also carried out.** However, we should immediately mention that neither the Ministry nor the courts addressed the actual circumstances at the time of the petitioner's arrival in the Republic of Slovenia. We need to point out that the Dublin Regulation and the referenced judgement of the EU Court do not consider the so-called *"humanitarian corridor"* that was established in this part of Europe at the time. **This was an informal political agreement of all the participating countries, which should take appropriate responsibility for this decision.** The aforementioned judgement of the EU Court interprets the provisions of the Dublin Regulation and does not discuss the actual circumstances of that wave of migrants. Likewise, the Dublin Regulation did not foresee the exceptional circumstances that began in 2015. The Ombudsman witnessed the established informal humanitarian corridor during the monitoring of the border in 2015 and 2016.

The Ombudsman believes that the Republic of Slovenia should accept part of the responsibility for having established a humanitarian corridor. If the asylum policy of the entire region focused solely on the return policy, this could lead to the collapse of the Croatian asylum system, which could eventually cause our own asylum system to collapse. The Ombudsman considers that a systemic approach to solving this issue is crucial.

The Ombudsman therefore considers that **it is initially necessary to regulate the application of the discretionary clause from Article 17 of the Dublin Regulation, by which the Republic of Slovenia can assume part of the responsibility for the establishment of the humanitarian corridor. The application of this clause is not regulated at the state level, so the decision is left to the current policy. Such disorder can lead to arbitrary decisions in individual cases. The State should set the criteria for the application of this clause on humanitarian grounds.**

In the addressed case, the Government of the Republic of Slovenia offered to apply Article 51 of ZTuj-2, which stipulates that a temporary residence permit may be issued to aliens whose residence is in the interests of the Republic of Slovenia. However, we should note that **possible approval of such a permit would only resolve this particular petitioner's case and would not offer a solution for other cases of lengthy return procedures.** Furthermore, it does not grant international protection (which is what the petitioner applied for) – a residence permit would be granted in the interests of the Republic of Slovenia, but it would not bring the same rights as granted subsidiary protection or refugee status. In addition, the Ombudsman has been informed of similar cases where the Government did not apply Article 51 of the ZTuj-2 nor the aforementioned discretionary clause, despite the fact that there were at least the same connecting factors for its application as in the example of this petitioner. Such a practice calls into question the equal protection of rights guaranteed under Article 22 of the Slovenian Constitution. Given the above and the difficulties in the application of Article 51 of ZTuj-2 detected by the Ombudsman when addressing other petitions about the issue of foreigners, **issuing temporary residence permits on other well-founded grounds should be regulated differently.** (5.2-43 / 2016, similarly highlighted in the case 5.2-48 / 2017)

Banks' refusal to open a current account on the grounds of nationality may hinder the integration – and also constitutes prohibited discrimination

A group of petitioners who contacted the Ombudsman claimed that the **banks refuse to open current accounts for people with granted international protection status coming from Afghanistan, Iraq or Syria.** Since this **could mean direct discrimination on the grounds of nationality, which is prohibited,** we asked the Bank of Slovenia to provide their opinion on this practice of banks. We referred to the (at that time still valid) Implementation of the Principle of Equal Treatment Act (ZUNEO), which stipulated in Article 2 that equal treatment must be ensured irrespective of gender, nationality, racial or ethnic origin, religious or other belief, disability, age, sexual orientation or other personal circumstance in relation to the access to goods and services made available to the public. Exceptions to this rule were laid down in Article 2a, where it was stated that the provisions of the ZUNEO do not exclude differentiated treatment on the grounds of a specific personal circumstance if such differentiated treatment is justified by a legitimate objective, and the means of achieving that objective are appropriate and necessary.

The Bank of Slovenia responded with the explanation that the prohibition of entering into a business relationship or carrying out transactions only applies if the person is on the list of entities against whom restrictive measures have been adopted at the level of the European Union (EU) or the United Nations (UN). In their understanding, the presented case was a consequence of anti-money laundering/combating the financing of terrorism (AML/CFT) risk management, whereby the banks are obliged to adopt a risk assessment approach. Accordingly, in the case of clients who represent an increased risk with a view to AML/CFT, the banks are required to ensure additional measures in terms of an in-depth review of the client.

The Bank of Slovenia assumed it was possible that the banks adopted an internal policy not to work with certain clients, since they represent a risk in terms of AML/CFT, which is not acceptable to the bank. When transposing Directive 2014/92 / EU of the European Parliament and of the Council of 23 July 2014, on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (hereinafter: the PAD Directive) into national law, the Bank of Slovenia sent a circular mail to all banks and savings banks and informed them of their **obligation to open a basic payment account for anyone legally residing in the EU territory in order to prevent the financial exclusion of some groups that has emerged after the introduction of the risk-assessment based approach.** The circular mail emphasised that these people need access to basic payment services, which is of **vital importance for their economic and social integration.** It also proposed that they **treat each customer individually.**

On the basis of Article 7 of the ZVarCP, the Ombudsman addressed a proposal to the Bank of Slovenia that it should notify the banks about the difference between people with granted international protection status and the applicants for international protection. People with granted refugee status or subsidiary protection obtain the right to permanent or temporary residence in the Republic of Slovenia. We also emphasised our

view that the **opening of a current account is of the utmost importance for the integration of these people into the new environment. The inability to open a current account makes it significantly harder for them to find a job, which is also of key importance for successful integration into the new environment, and leads to financial exclusion.** We also proposed that this notification to the banks should clarify that a business policy preventing access to services solely on the basis of nationality would constitute direct discrimination and thereby violate the principle of equal treatment.

The Bank of Slovenia then forwarded a copy of the circular mail with explanations on the establishment of business relationships with people who have obtained the status of international protection to the banks and savings banks in the Republic of Slovenia. The circular mail also indicated that the amendment to the Payment Services and Systems Act (ZPlaSS-E) based on the provisions of the PAD Directive introduced the **obligation of the banks to open a basic payment account for anyone legally residing in the EU territory in order to prevent the financial exclusion of some groups that has emerged after the introduction of the risk-assessment based approach.** Because of this approach, **individual groups of people were unable to access basic payment services, as banks often refused to conclude a business relationship due to increased risk of money laundering and terrorist financing.** When tackling this problem, the main idea was that these people need access to basic payment services, which is of vital importance for their economic and social integration. The circular mail furthermore referenced the opinion of the European Banking Authority, in which special attention is paid to establishing and verifying the identity of the client and to the careful monitoring of business secrets in terms of proper client risk management. In the circular mail, the Bank of Slovenia stated that for the purpose of establishing and verifying the identity of the client, **the bank may use the international protection seeker's card issued by a competent authority in the Member State.** It also stated that **the bank may refuse to conclude a business relationship, but only if it cannot implement the prescribed measures with a view to AML/CFT, or when it has information that restrictive measures have been imposed against the person.** In accordance with the provisions of the Prevention of Money Laundering and Terrorist Financing Act (ZPPDFT), the banks must ensure careful monitoring of the client's business secrets, including the monitoring of transactions on the account, as well as regular updating of customer data. The Bank of Slovenia recommended to the banks additional diligence in monitoring the volume of operations at the monthly level, in assessing whether the volume of operations complies with the status of the client, in monitoring transfers between natural persons, and in monitoring of transactions with non-member countries. (5.2-14/2016)

Separately on unaccompanied minors

We particularly focused on the issue of unaccompanied minors in 2017.

In the context of generally addressing this issue, the Ombudsman repeatedly contacted the Ministry of the Interior as the coordinator of a pilot project on unaccompanied minors. Among other things, we wanted to know how many unaccompanied minors arbitrarily left the appointed premises of accommodation in this year. In this regard, the Ministry's response was: *"This year, 26 unaccompanied minors filed applications. Out of 26 applications, 16 minors arbitrarily left the asylum centres."* Because we did not get a complete answer, we sent an additional query, i.e. how many unaccompanied minors arbitrarily left the student houses in the same period. The Ministry replied: *"During the project implementation, i.e. from 29 August 2017 to 5 June 2017, 25 unaccompanied minors were accommodated in the Nova Gorica student house and 12 of them left arbitrarily, representing 48% of all the unaccompanied minors that were accommodated there"*. In the Postojna student house, a total of 65 unaccompanied minors were accommodated until 5 June 2017. Of them, 51 left the student house arbitrarily, representing 78.5% of all the unaccompanied minors that were accommodated there. We noted that the unaccompanied minors arbitrarily left their accommodation after only a couple of days. According to unofficial data, they planned their onward travel through the world wide web. All arbitrary departures are reported to the Police."

Providing information to minors as particularly vulnerable people

Article 12 of International Protection Act (ZMZ-1) stipulates that *"vulnerable people with special needs"* (defined in Article 2 of the same Act as *"in particular, a minor, an unaccompanied minor, a disabled person, an elderly person, a pregnant woman, a single parent with a minor child, a victim of trafficking in human beings, a person with a mental health disorder, a person with mental health problems, or a victim of rape, torture or other severe forms of psychological, physical and sexual abuse;"*) shall be afforded special care and treatment in the procedures under this Act. With regard to treatment, it is further explicitly stipulated in paragraph 2 of Article 14 that they *"shall be provided with appropriate support in order to allow them to enjoy their rights and*

comply with the obligations in the procedure for international protection stipulated by this Act." Furthermore, paragraph 1 of Article 37 specifically states under the personal interviews rules that an official *"shall conduct a personal interview in a manner allowing the applicant to exhaustively present the grounds or individual circumstances in the procedures pursuant to this Act. The official shall consider the individual and other circumstances, including the person's cultural background, gender, sexual orientation and identity, as well as their vulnerability."* Concerning the rights of applicants who are unaccompanied minors, paragraph 5 of Article 16 stipulates that *"prior to receiving an application, unaccompanied minors shall be informed of the rights and obligations of applicants; such provision of information shall take a form appropriate to their age and degree of maturity."* The first paragraph of Article 17 stipulates that *"an unaccompanied minor and his or her statutory representative shall be notified in writing, in a language that the unaccompanied minor understands, of the possibility of having to undergo age assessment by an expert. The notification must include information on the manner of examination and on the possible consequences of the assessed age on the processing of his or her application, and on the consequences of unjustified refusal to undergo such an examination."*

The Ombudsman asked the Ministry of Interior for an explanation of how the provision of information to the aforementioned categories of people was actually adapted in practice. We also wanted to know specifically what it means that the provision of information takes a form appropriate to the age and degree of maturity of the unaccompanied minors. We invited the Ministry to illustrate this with a concrete example from practice, so that a difference can be established between the provision of information adapted to the minors and the provision of information to an adult. The Ministry did not provide such an illustration, but only replied in abstract terms that the rights and duties of unaccompanied minors are *"explained to them in terms that are as simple as possible, and the form in which the information is provided is always adjusted to their age and their ability to understand the presented content. All the questions of an applicant are answered in order to facilitate the understanding of the facts. During the provision of the information on their rights and obligations, a legal representative is always present and ensures the well-being of the minor and the provision of all the necessary information and rights"*. **Of course, this raises doubts about how this standard is actually implemented in practice.**

We also did not receive a tangible answer to our additional question, i.e. what particularities in the practical provision of information to the people declaring the intention to file or to the applicants take into account the special needs of children (besides the ones above) and families (including with regard to the child's right to education).

Alarming circumstances in the area of age assessment

We asked the Ministry of the Interior, *"Which is the most frequent way to assess the age of unaccompanied minors in the Republic of Slovenia and what kind of methods are most frequently used by the experts to assess the age of such applicants?"*. Our findings on these issues are alarming. The Ministry initially only sent an explanation that the *"International Protection Act (Official Gazette of RS, No. 22/16 and 5/17) stipulates in paragraph 2 of Article 17"* that *"where, in the processing of an application for international protection, officials or people involved in work with an unaccompanied minor are of the opinion that doubts have arisen as to the actual age of the accompanied minor, the competent authority may order that an expert opinion be prepared."* In accordance with the third paragraph of the same article, the expert opinion is prepared by a medical professional, who may consult other relevant experts as part of the preparation of the opinion, if necessary. The methods used by the experts are therefore within the competence of the medical profession or other relevant experts. We replied to the Ministry that we are familiar with the provisions of the ZMZ-1 (since we have obviously stated that we were interested in the methods most often used by the experts to assess the age of such applicants, which should have been known to the competent authority, since it orders the preparation of such expert opinions in the procedure and is most likely familiar with them). Furthermore, we asked the Ministry to at least explain whether the competent authority is facing any specific difficulties when instructing the preparation of expert opinions or during the work of such experts (e.g. not enough experts available, lengthy procedure of preparing an opinion, refusal to produce an opinion). The Ministry replied with letter No. 2142-1084 / 2016/10 (131-01) on 6 June 2017 and stated the following: *"Since 2012, three expert opinions have been prepared to assess the age of unaccompanied minors; in all cases, the Paediatric Clinic, which was asked to prepare the expert opinion, did so on the basis of the clinical examination of a minor. This year, the Paediatric Clinic informed the Ministry that it would no longer produce expert opinions and refused to issue three opinions. Given the increasing number of abuses, when applicants that clearly look like an adult person state that they are unaccompanied minors (we were also warned about this by the NGOs), the Ministry is currently under discussion with several institutions to prepare expert opinions"*. The Ombudsman enquired further with regard to these statements and finally received the following explanation: *"The Paediatric*

clinic informed the Ministry of the Interior that it would no longer carry out these procedures due to ethical concerns. According to international expert findings and consequential guidelines based on medical findings, it is impossible to determine the chronological age of a person between the ages of 10 and 20. Therefore the expert council of the Department of Endocrinology, Diabetes and Metabolic Diseases of the Paediatric Clinic decided to no longer provide this service. The possibility of error in the assessment of chronological age on the basis of medical examinations is so great that it can cause injustice or harm to an individual and society. At the moment, the Ministry of the Interior is discussing the possible preparation of expert opinions with the Institute of Forensic Medicine at the Faculty of Medicine of the University of Ljubljana."

In five years and with all the procedures for international protection involving unaccompanied minor applicants in this period (e.g. the publication of the Ministry of the Interior entitled REPORT ON MIGRATION, INTERNATIONAL PROTECTION AND INTEGRATION IN 2016, states these numbers for the year 2016 alone: *"There were 244 unaccompanied minors; 242 boys and two girls."*), **only three expert opinions on their age were prepared in total.** It is true that the interpretation of statistical data and deriving conclusions should always be done with care. However, **these numbers clearly raise serious doubts about how fair** (the requirement for *"fairness"* of the evidence-taking proceedings also follows from constitutional case law: see e.g. Slovenian Constitutional Court Decision No. Up-94/95 from 24 November 1998: *"According to the arguments of the constitutional complaint, it is thus essential in the present case to assess whether the administrative authorities and the court have provided the complainant with fair proceedings for the taking of evidence ..."*) **the process of age assessment really is, even if an official person would (personally) doubt the applicant's age, i.e. in a situation normally regulated by Article 17 of the ZMZ-1 (previously Article 44a of the ZMZ).**

What does preferential examination of applications for vulnerable people with special needs (primarily minors) actually mean?

In one of the cases, we asked the Ministry of Interior for an explanation of the difference between preferential examination and *"non-preferential' examination of applications. The Ministry did not answer this question in its first reply, so we asked for an answer again. This time, we received an explanation that the preferential examination referred to in Article 48 of ZMZ-1 "means that in addressing applications (carrying out actions in the procedure), the Ministry of the Interior gives preference to these applications over those applications that were filed earlier but not by people considered vulnerable"*.

The Ombudsman's visits to unaccompanied minors

In 2016 and 2017, we repeatedly checked the situation in the student house of the Secondary School for Forestry and Wood Technology in Postojna and in the Nova Gorica student house. The Government of the Republic of Slovenia, as the authority of the executive power and also the highest authority of the State administration of the Republic of Slovenia, issued a Decision No. 21400 -6/2016/8 on 28 July 2016 that these two student houses would provide appropriate accommodation to the unaccompanied minors who reside in Slovenia illegally, are granted international protection status, or are applicants for international protection, within the pilot project of accommodation and care for unaccompanied minors in the period from 1 August 2016 to 31 July 2017.

The pilot project has already been evaluated and it was decided that the minors should no longer be accommodated in the Nova Gorica student house. We still want to list some of our most noteworthy remarks about this student house.

In one of the visits, six minors talked to the representatives of the Ombudsman (separately in pairs, in their living quarters) and said that their biggest problem was the attitude of the student house principal towards them. He was allegedly very loud, aggressive, offensive, disrespectful, talked to them as if they were animals, treated them poorly, and badly (we use the expressions that they used to describe his behaviour). They also claimed that the principal had publicly stated on several occasions, so that anyone else present could also hear him, that he could deport them back to Afghanistan, that he would take care of their *"one-way -ticket back to Afghanistan"*, etc. During the aforementioned visit, all of them described such an event that had taken place a week before. They were at the entrance to the student house by the benches at around 1-2pm, when the principal arrived and started talking to them in a loud voice, asking them what they were doing, saying that they should work, clean, pick up trash, paint the benches, go get the paint from the janitor, that he would send them back to their country etc. They also said that the principal would come into the room of one of them and said, with the doors open so that the others could also hear, that he had 10 minutes to pack because he was sending him back to Afghanistan. The minors only acknowledged verbal violence. All of them denied any kind

of physical violence of the principal towards them. The statements of the minors were most alarming, because they all separately described the same experiences and events, albeit with different words and expressions. Their distress was also very obvious, because they repeatedly asked the Ombudsman's representatives if the principal could really deport them to Afghanistan and if he could really talk to them like that. They also emphasised that they never saw the principal speak this way to the other residents of the student house. The minors also said it had not always been like that, and that the principal's attitude towards them had changed considerably after they started to refuse various tasks in the student house or its immediate surroundings (raking, picking up and removing leaves, cleaning trash, painting benches, helping the janitor and the cleaner in other ways). They said they found it unfair, because they never saw other residents of the student house carry out such tasks.

The principal first avoided our question on whether he had ever mentioned to the minors the possibility of their 'deportation to Afghanistan' in any way – in his reply, he only stated that Afghanistan is beyond his reach. We explained to the principal that it is clearly known to the Ombudsman that none of the existing regulations of the Republic of Slovenia give any principal the power to *"deport"* anybody to any other country, so this is not what we were asking. In the second reply, the principal said that he had apologised to the minors at a meeting in the dorm room, that he did mention deportation to Afghanistan to them and that he would not say it again (we later also asked the minors about this, and they confirmed that the principal had apologised and that he no longer talked to them in this way; they also did not complain about their communication with him, which we found very encouraging).

Many minors also pointed out problems with the attitude of the kitchen and dining room personnel towards them. One of them allegedly imitated the sound of pigs every day when distributing food to the minors (which the minors understood as an intent to insult them based on their Muslim religion and their related views regarding pork meat). They also described an incident that had taken place a month before. They did not receive all the ingredients (chicken eggs) that they needed to prepare their meals during the weekend, so they went to the student house kitchen and asked for eggs. From what we understood, one of the employees pulled down his pants and said *"Here, take these!"* With regard to this, the principal told us that he had asked the kitchen staff (the head of the kitchen, the cooks and assistants) and also the other expert associates of the pilot project about this incident, but we were surprised that he did not mention talking to the minors about it. It turned out that the principal had only decided to talk to them later. This time, he told us that during the interview in the dorm room, the minors had confirmed that the employee in the kitchen was imitating the pigs in the distribution of food, and that he really did tell them to *"take"* the eggs – but that he did not pull down his pants, but only made a gesture with his hand, showing that part of the body. The principal told us that he had had a conversation with the employee in the kitchen and with the kitchen manager, in which he emphasised the importance of a proper relationship and communication with the minors. He also wanted the Ombudsman to provide an explanation for the statement in her first letter that *"one of the employees pulled down his pants and said..."* in order to avoid unwanted interpretations. We should further explain that the first record of findings was made on the basis of an interview with the minors with the help of a translator. In such circumstances, there is a possibility that some things get lost in translation – which seems to be have been the case during this visit. At that time, the translated statements of the minors indicated that the incident in the kitchen took place as described in the Ombudsman's letter addressed to the principal. In a subsequent interview, the minors also told the Ombudsman's representatives that the employee did not pull down his pants when saying *"Here, take these"*, but only pointed to that part of his body with his hand.

The described events clearly indicated two things: first – that the principal's intervention with the kitchen employee and the head of the kitchen had obviously been successful, since the minors also later confirmed that they were no longer exposed to inappropriate communication by the kitchen staff (whereby the principal's intervention was the result of previously having talked to the minors in the dorm room, which he decided to do after being prompted by the Ombudsman); and second – it turned out that the Ombudsman's practice of writing down reports on her visits and sending them to the management of the visited premises in order for them to comment is very much appropriate. This was also the course of action in the present case of the Ombudsman's visit of the student house and, as evident from the above, it enabled the clarification of one of the reported incidents in the end.

In his second letter, the principal also pointed out the problem of the description in the Ombudsman's first letter regarding the maintenance of order and cleanliness. In this context, *"in order to avoid unwanted interpretations,"* the principal hoped for clarification of the Ombudsman's statements *"... cleaning the toilet bowl – not only after one's own use..."*, categorically denying that anyone would give such a task to minors on any occasion – which the minors themselves also confirmed at the aforementioned meeting in the dorm room. In this regard, the Ombudsman explained that the principal had obviously made the (wrong) conclusion that

the Ombudsman claimed that anyone gave such tasks to minors. The statements quoted by the principal from the first letter of the Ombudsman are, in fact, only part of the question which the Ombudsman addressed to the principal, the full text being: *"Can the sanitary facilities on the third floor, the cleanliness of which is to be maintained by the minors, also be used by other residents of this floor, and what exactly does this maintenance of cleanliness include (mopping floors, cleaning the toilet bowl – not only after one's own use, etc.)"* It was clear from the cited question that the cleaning of the toilet bowl is only given as an example and as one of the possible tasks that could be implied by the *"maintenance of order and cleanliness"* (the question was asked precisely in order to establish what exactly this expression implies).

On our first visit to the Postojna student house, the management explained that they had a security guard (*"Matej"*) present *"most of the time"* and that he also came to the premises where the minors are accommodated. The minors did not indicate any kind of inappropriate behaviour by the security guard in their interviews with us. Two of the minors (from the same room) thought that he was a police officer (they addressed him as the police officer who checks their rooms at night). We asked how the student house presented the security guard to the minors and how the minors were informed about his tasks in the student house. The student house replied that *"this was not explicitly presented to them, but they were told that we (immediately) take action if any breach of the conditions of stay in the student house is detected. We do not have a real security guard, but at night, the worker on call employed by the student house is always the first to intervene. If the latter and the expert associate establish that additional treatment is necessary, the discussion is further conducted by the expert associate."*

We place particular emphasis on the case of the youngest, eleven year old boy from Afghanistan, who said among other things that he always had to clean the room, the toilets and the kitchen (and that he also had to clean up after the *"Arabs"*), that he bought himself a football, but he *"lent it"* to the other boys and he could not show it to us, that he was forced to wear girls' underwear and the like. This could point to various forms of exploitation (including sexual exploitation with regard to the wearing of girls' underwear) of the weakest person in the informal hierarchy established between the minors. The Ombudsman decided to contact the boy's guardian, the Radovljica Social Work Centre, who then visited the student house on 29 September 2016 and conducted an interview with the minor. In the end, this minor told them that he had been sexually abused.

2.6.2 DENATIONALISATION

General findings and implementation of the Ombudsman's recommendations

The number of petitions received and processed in 2017 concerning denationalisation points to the fact that denationalisation is still a problem. The Denationalisation Act was adopted in 1991, yet we still report on unfinished procedures for the return of seized property.

A review of the processed petitions shows that petitioners contacted us and expressed their disagreement with the content of final administrative decisions or judgements passed by the administrative court. In individual well-founded cases, the Ombudsman established that the failure of the administrative body to respond, or its actions in contravention of Article 18 of the Decree on Administrative Operations, constitute a violation of the principle of good administration.

No special recommendation was issued in this area in 2016. Only the Ministry of Public Administration responded to our findings and presented the measures which it has adopted, as the coordinator of administrative units, so as to facilitate denationalisation procedures. The Government of the Republic of Slovenia obviously did not find it necessary to respond to our findings, even though the text of the 2016 Annual Report clearly shows the Ombudsman's belief that the return of seized property (not only in administrative units) lasts too long and should be facilitated.

Example:

An administrative unit instructed the client to pay for an inappropriately prepared expert opinion
The Ombudsman processed a complaint where the client was instructed to pay an incorrectly prepared expert opinion. A denationalisation procedure was run by the Ljubljana Administrative Unit (Ljubljana AU) on behalf of the petitioner who contacted the Ombudsman. In the context of this procedure, an expert was appointed for the preparation of the allotment analysis, i.e. Mejnik, d.o.o.. The analysis which this company submitted to the Ljubljana AU did not contain the prescribed components for the Surveying and Mapping Authority of the Republic of Slovenia (GURS) to implement the procedure of recording the regulated border and allotment. In addition to substantive errors, the analysis lacked the date, stamp and signature of the surveyor responsible. GURS and Ljubljana AU asked Mejnik to update the analysis, which the company failed to do. The petitioner had already paid for the analysis and Ljubljana AU had remitted the amount to Mejnik.

In this respect, the Ombudsman believes that the administrative authority (Ljubljana AU) should not have been satisfied with the poor analysis prepared by Mejnik, which GURS was unable to implement. Furthermore, the financial consequences of the inappropriate surveying service (and non-responsiveness of the land surveying company) and the careless actions of the administrative authority should not have been borne by the client. Ljubljana AU did not agree with the Ombudsman's viewpoint and belief in the case, and the Ombudsman submitted the matter for resolution by the Public Sector Inspectorate – the Administrative Inspection Division.

The inspection of the work of the Ljubljana AU by the Administrative Inspection Division also included a review of the case in hand and was conducted in 2017. The administrative inspector investigated the claim that the client was not obliged to pay the costs of the analysis, as the latter had not been prepared in accordance with the decision on the choice of the provider. It was established that in the case in hand, the analysis had been ordered as an expert opinion by a decision of the administrative authority. The provider had been instructed in excatly what to do and the client paid for the analysis, yet the provider had not prepared it in a manner allowing GURS to continue the appropriate procedures. The administrative inspector, in the same way as the Ombudsman before her, established that officials at Ljubljana AU violated the stipulations of the General Administrative Procedure Act. On this basis, the inspector proposed to the Head of Ljubljana AU to adopt appropriate measures in this respect. On the basis of the findings of the Administrative Inspection Division, Ljubljana AU issued a decision instructing the provider, i.e. Mejnik, to pay (or reimburse) the costs.

We think that the petition filed with the Ombudsman was well-founded and our intervention successful. We do point out that the issue could have been resolved faster had Ljubljana AU observed the Ombudsman's opinion, as then no procedure would have been required to be started by the Administrative Inspection Division, which eventually provided the same findings as the Ombudsman. 5.3-7/2014

2.6.3 LEGAL PROPERTY MATTERS

General findings and implementation of the Ombudsman's recommendations

In 2017, we processed 31 cases, which is fewer than in 2016 when 47 cases were processed. However, in 2017 almost 30% of the cases were well-founded, while in 2016 this percentage stood at 13.2%. The majority of the cases concerned land registry disputes with municipalities. There were also several private disputes between natural persons, which the Ombudsman is not competent to process. In such cases, our work mainly encompassed counselling and directing the petitioner towards competent authorities and institutions.

Recommendation No. 37 (2016), in which the Ombudsman called on the Government of the Republic of Slovenia to adopt a suitable strategy and schedule specific measures to enable a regulated and lawful situation regarding the general issue of municipal roads, remained unimplemented. On page 19 of its Response Report for 2016, the Ministry of Infrastructure (MI) noted a partial implementation of the recommendation, as they have prepared a draft Act which would be used by the Slovenian Infrastructure Agency to establish uniform records for all managers of public roads (including municipalities) to manage and maintain information about the corresponding land of public roads for the needs of the land cadastre. The Ministry also reported that the methodology for data collection has been prepared. The Ombudsman is outraged. All the planned activities are only in the proposal phase and refer to the possibility of insight into the actual situation of legislative regulation

of disputed land as reported by the MI. No information is provided on the timetable and the required financial resources for resolving this problem. We reiterate: If the municipality failed to conclude a legal transaction with road owners for the acquisition of land and failed to implement expropriation procedures, the article of the municipal ordinance on categorisation, which categorises a public path on private land, is inconsistent with Article 69 of the Constitution of the Republic of Slovenia (Expropriation) and Article 33 of the Constitution of the Republic of Slovenia (Right to Private Property and Inheritance), which the Constitutional Court of the Republic of Slovenia has repeatedly established in its decisions when it annulled such disputed municipal ordinances. These are unconstitutional situations which occur not only at the municipal but also at the state level. None of the responsible parties are showing any kind of legal interest in resolving this case, and it seems as though only judicial channels remain for the wronged owners of private land who need to file a request for a review of constitutionality and legality with the Constitutional Court of the Republic of Slovenia. We therefore reiterate the Ombudsman's recommendation.

2.6.4 TAXES

General observations

The term taxes in this section refers to the circumstances concerning the tax burdens of present or former taxable persons. The section on taxes further focuses on the problems concerning the payment, collection, and enforcement of contributions and other statutory duties which are collected and monitored by the Financial Administration of the Republic of Slovenia (FURS), and which are used, together with taxes, to top up the national budget, the budget of municipalities, the Health Insurance Institute of Slovenia, the Pension and Disability Insurance Institute of Slovenia, and indirectly also the European Union budget. **The majority of the tax-related petitions are characterised by contradiction and opposition to the imposed tax obligations, regardless of whether these are concrete problems or systemic irregularities.** There were petitioners who wrote to us complaining about lengthy and exceeded decision-making deadlines in complaint procedures. We also received complaints concerning the actions of competent authorities in tax procedures for deceased taxable persons and letters from dissatisfied migrant workers.

In 2017, the Ombudsman processed 60 cases concerning taxes, with 12.6% of the petitions being well-founded. No special comment is necessary with regard to last year, when we processed 77 cases with 15.9% being well-founded.

The cooperation with the competent authorities can be commended. We mostly communicate in writing and within arranged deadlines. Meeting at the Ombudsman's office, we discussed the current problems and searched for solutions together with the FURS Director-General, Jana Ahčin, the Labour Inspector, Nataša Trček, and their associates, and discussed the problems concerning the failure to pay social security contributions with the Minister of Labour, Family, Social Affairs and Equal Opportunities, Dr Anja Kopač Mrak.

Adopted legislation. We are convinced that the Act Amending the Pension and Disability Insurance Act (ZPIZ-2E), which became applicable on 1 January 2018, will contribute to improving the situation concerning the payment of salaries and social security contributions. The new Act anticipates not only the Labour Inspectorate of the Republic of Slovenia but also FURS as the responsible authority when it comes to commencing minor offence procedures against employers for whom it has been established that they have not filed the assessment of withholding tax, which is also used to calculate social security contributions, because they have not paid out salaries to their employees.

Implementation of the Ombudsman's recommendations

Recommendation No. 38 (2016), that the Ministry of Finance (MF) regulates the right to special tax relief for dependent family members (parents and adoptive parents), so that taxpayers can claim this tax relief when they actually support family members, regardless of whether they live with them in the same household or they have been placed in institutional care and pay the costs of services for them, has remained unimplemented. The MF believes that the regulation under the Personal Income Tax Act (ZDoh-2) is not discriminatory and disproportionate, and it therefore refuses to implement the Ombudsman's recommendation. The Ombudsman stands firmly behind its recommendation as it is based on the processed issue. The flat-rate system is unfair, as it is not based on actual subsistence costs but originates exclusively in administrative simplicity. The possibility

of claiming tax relief for dependent family members of the taxable person – parents or adoptive parents – only if they live in the same household or they have been placed in institutional care and the taxable person is paying the costs of services for them, places such taxable persons in an unequal position compared to other taxable persons when it comes to special tax relief. It is the Ombudsman's belief that the key factor when claiming this tax relief is the actual contribution to supporting another person and not the circumstances of where this person lives. We therefore repeat our recommendation, and this time address it to the Government of the Republic of Slovenia.

Recommendation No. 39 (2016), in which the Ombudsman advocated that Ministry of Finance should prepare an amendment to the Personal Income Tax Act (ZDoh-2) so that the list of revenues from compulsory pension, disability and health insurance, which are exempt from income tax, be supplemented by adding a survivor's pension received by children under the age of 18 or under the age of 26 if involved in full-time education, had not been implemented due to the disagreement of the Ministry of Finance. We insist on our recommendation. The Ombudsman believes that an amendment to the Tax Procedure Act (ZdavP-2I) must mean that the calculation of income tax is now sent to everyone. It had previously not been sent to people with a too low income. Regardless of the convincing and understandable explanation by the MF, the Ombudsman believes that an important and ill-considered circumstance must not be neglected, i.e. that these are families who have lost a family member, have been affected in the material and emotional sense, and who will now have to have to pay personal income tax every year because a child receives the parent's pension, mainly because such a pension recipient is not entitled to a general tax relief which is not recognised for a resident for whom another resident is enforcing a special tax relief for dependent family members. As this will affect an already vulnerable group, i.e. children, who have lost one or both parents and are receiving a survivor's pension, we demand this injustice be eliminated and repeat our recommendation.

Findings arising from the processed petitions

In 2017, we processed petitions concerning legally determined deadlines for decision-making being exceeded. We specifically emphasise a case of lengthy decision-making on an objection against an informative calculation of income tax and a case of lengthy decision-making in an appeal procedure. We point out the necessity of effective tax procedures. Tax uncertainty plays an important role, as it can negatively affect the operations of entities and hinder the adoption of strategic developmental decisions.

Example:

The burden of delay in decision-making on an objection against an informative calculation of income tax is borne by the taxpayer

In a petition addressed to the Ombudsman, the petitioner stated that the employer had terminated his employment relationship. The Labour and Social Court ruled that the termination was unlawful and that the employer must include him in social security from the day of unlawful termination, assess and pay salaries for this period, and assess all corresponding taxes and social security contributions. Due to insolvency, the employer did not pay the salaries; however, it did submit the assessed withholding tax for income from the employment relationship (REK forms). On this basis, the tax authority imposed a personal income tax surcharge for 2014 in the amount of EUR 9,551.89. The petitioner filed an objection against the informative tax assessment on 15 June 2015, but no decision had been made on the appeal by April 2016, when the petition was filed with the Ombudsman.

We enquired with FURS about the petition. FURS explained that the main condition for the occurrence of obligation of assessment and payment of social security contributions is the fact that this is an insured person, together with payments or receipts of income from which social security contributions are paid. The obligation to assess and pay contributions for insured people employed by an employer domiciled in the Republic of Slovenia is, in accordance with the rules and regulations on social security contributions, related to the actual payment of income and the obligation of the employer. **In the petitioner's case, the supervision procedure showed that the salaries were not paid, and the obligation of assessment and payment of social security contributions from the subsequently established employment relationship did not arise.** The employer was therefore asked to recall the REK forms for the unpaid income. The tax authority considered the changed data in the procedure of processing the objection against the informative tax assessment. FURS further notified us that the notice of personal income tax assessment for 2014 is being prepared and would be sent to the petitioner shortly.

We agreed with the petitioner that the procedure concerning tax assessment for 2014 lasted too long, as 13 months had passed from the issuing of the informative tax assessment until the issuing of the decision on its objection, and the latter was issued only once we had intervened. In accordance with Article 100 of the Tax Procedure Act, the taxable person is entitled to interest on overpaid personal income tax or incorrectly assessed and paid personal income tax from the 30th day after the notice of personal income tax assessment which had led to the first decision on the tax obligation from personal income tax has been served. We know that the decision was issued at the end of June 2016, and the funds were remitted to the petitioner's account on 12 August 2016. We do not know the exact date on which the decision was served, so we assume that the payment was made within 30 days. In the light of the quoted statutory provision, the petitioner is not entitled to interest for late payment, despite the too lengthy procedure.

The petition was well-founded. FURS did not act in accordance with the principle of good administration, and we informed them of this fact. 5.5-21/2016

As taxes and other compulsory charges are an area which partially covers the entire population, and so the sensitivity towards tax regulations and tax burdens is consequently that much bigger, notifications on regulations, instructions, and explanations concerning this area are that much more important, a fact which the legislator was also aware of. **The taxpayer's right to be notified is regulated by Article 13 of the Tax Procedure Act (ZDavP-2) and Article 7 of the General Administrative Procedures Act (ZUP), in the context of the main principle of the protection of the rights of parties and the protection of public benefits.** In general, it stands that ignorance of the workings of the law is harmful, yet under the ZUP, the task of administrative authorities, which decide on administrative (and tax) matters, is not only the implementation of authority but also of providing assistance to parties in a way allowing them to effectively enforce the rights pertaining to them in accordance with an Act or other regulation.

2.6.5 ADMINISTRATIVE PROCEDURES

General findings and implementation of the Ombudsman's recommendations

This section of the Annual Report reports on petitions which related to irregularities in administrative procedures. It is important to emphasise that this refers to procedural errors, concrete or systemic, while the content of administrative matters is discussed separately according to individual areas of work. We are aware that occasionally we cannot distinguish between the two, and individual petitions which refer to irregularities in the procedure are discussed in other parts of the report. We therefore recommend that the report be read in full.

In 2017, we processed 88 petitions with 19.7% being well-founded. This is slightly fewer than in 2016, when we processed 96 petitions with 22.2% being well-founded. **A look at past reports shows that the percentage of well-founded petitions in administrative procedures has always been quite high; since 2014 close to 20%.**

The main topics studied were the registration of permanent residence, lengthy decision-making, and inspection services, among others. No special recommendations were made in the area of administrative matters in 2016. However, recommendations made in other areas indirectly referred to administrative procedures. Recommendation No. 43 (2016) advocated that the Government of the Republic of Slovenia determines the priority tasks of inspection services in a regulation; Recommendation No. 51 (2016) that the Government of the Republic of Slovenia ensures that procedures in all supervisory institutions are carried out within reasonable time limits; and the Ombudsman's proposal on page 277 (2016) that, in accordance with Article 18 of the Decree on Administrative Operations, inspection services inform the applicant that their report has been received, as this is an example of good administration of inspection services. With regard to lengthy decision-making, we reiterate Recommendation No. 62 (2016), which refers to a programme to eliminate the backlogs of the Ministry of Labour, Family, Social Affairs and Equal Opportunities in relation to the resolution of all complaints on social care rights.

With regard to the processed petitions and questions concerning administrative procedures, we found violations of legality, the constitutional principle of Slovenia being a state governed by the rule of law and a social state, the right to equal protection of rights, and the principle of good administration.

Findings arising from the processed petitions

Example:

Intolerable backlogs in the resolution of complaints at the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ)
A number of petitioners have turned to the Ombudsman due to lengthy decision-making by the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ) on their complaints concerning decisions issued in the area of social welfare. In accordance with its authorisation, the Ombudsman asked the MDDSZ about the reasons for the alleged lengthy resolution of these complaints.

The MDDSZ explained that the resolution of a large number of complaints was a very complex task. The criteria for determining the priority list for resolving complaints about decisions on financial social assistance and income support derives from the purpose of the rights. Other complaints are resolved in the order in which they arrive at the Ministry. The MDDSZ further explained that all complaints were resolved in accordance with the General Administrative Procedures Act (ZUP); however, staff shortages and a number of new complaints had made it very difficult to decide on a case in the proposed deadline of two months. So as to simplify social legislation, lift the load from social work centres, and consequently eliminate backlogs, the MDDSZ has started a project of reorganisation of social work centres.

The Ombudsman considered the MDDSZ's explanations but still sees the petitions as well-founded, as when deciding on the complaints the MDDSZ is not observing the two-month deadline stipulated by the ZUP. The Ombudsman has therefore been pointing out the intolerable backlogs in the resolution of complaints for several years, which destroy faith in the rule of law and a social state. With its lengthy decision-making, the MDDSZ is violating the right to equal protection of rights which is guaranteed by Article 22 of the Constitution of the Republic of Slovenia, and the principle of a social state and a state governed by the rule of law from Article 2 of the Constitution of the Republic of Slovenia. The Ombudsman has been striving for the resolution of cases without backlogs and within the legally determined deadlines, and has been highlighting the problems concerning lengthy decision-making in all its annual reports and annual meetings with the responsible ministers. 5.7-6/2017

2.7 ENVIRONMENT AND SPATIAL PLANNING

	Cases processed			Resolved and well-founded		
Area of work	2016	2017	Index 17/16	No. of resolved cases	No. of well-founded cases	Proportion of well-founded cases among those resolved (in %)
7 Environment and spatial planningr	**125**	**182**	**145.6**	**129**	**26**	**20.2**
7.1 Spatial projects	44	80	181.8	52	11	**21.2**
7.2 Spatial planning	28	35	125.0	26	1	**3.8**
7.3 Other	53	67	126.4	51	14	**27.5**

2.7.1 GENERAL OBSERVATIONS

Da People are becoming increasingly aware of the importance of a healthy living environment for life and work, and of its effect on human health as the greatest value for each individual. This is also evident from the number of processed cases in the area of environment and spatial planning, which increased by 45.6% compared to 2016. From the viewpoint of the total number of petitions, this also represents the largest increase in the number of petitions from all areas of the Ombudsman's work. The percentage of well-founded petitions is correspondingly similar, standing at 20.2%. If we also consider the number of broader and more complex issues which we processed in this area on our own initiative, i.e. 16 cases, the scope of work becomes even more comprehensive.

With regard to the content of the processed problems which were brought to the Ombudsman's attention, nothing substantially different from 2016 can be noted. There were again unresolved issues which caused hindrances, problems and discontent, and related numerous violations of rights. Spatial projects are an issue that cause concern to a number of petitioners who contact us every year, especially due to the distinctly non-transparent actions of decision-makers. In this respect, allow us to remind the authorities of the area **surrounding the Mura River,** of pristine nature, farming, and the tourism economy. The planned construction of several hydroelectric power plants on the Mura River, paired with an ignorant and belittling attitude from the competent authorities, have caused major upset among the local population. The case has been studied by the Ombudsman. Furthermore, **we also received a number of complaints against the construction of wind turbines in the Dolenjska and Koroška regions, and are still processing them.** We specifically studied the sidestepping of the public in environmental and spatial decision-making. This was discussed at meetings with the Minister of the Environment and Spatial Planning, Irena Majcen, the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning (IRSOP), the Environmental Agency and non-governmental organisations, and during the Ombudsman's visits to municipalities with individual mayors. Together, we searched for solutions to improve the situation.

In September 2017, we organised the 4th international conference in Ljubljana on the Environment and Human Rights: Public Participation in Environmental Matters, with an emphasis on public participation in environmental decision-making. At the conference, we established a Network of Ombudsmen for the

Environment and Human Rights, and expressed our commitment to a closer cooperation and exchange of knowledge, findings, experience, and best practices, all so as to contribute to the development of cooperation between ombudsmen in the field of the environment. We adopted the conference resolutions and published them.

The issue of environmental pollution from particulates (**PM10** and smaller), waste, heavy metals, and other sources of pollution (e.g. light pollution, liquid manure, slurry, phytopharmaceuticals) is always topical and was also discussed in 2017. **It mainly stands that the authorities are not reacting quickly enough to current events, which has become especially clear with the situation in Kemis. In this respect, we point out the too slow rehabilitation of individual heavily polluted areas such as the Mežica Valley, the Celje Basin, Zasavje, and other endangered areas,** which require prompt and continuous rehabilitation of both soil and air. It is especially important to raise the public's awareness of all the circumstances surrounding pollution and its potential consequences on life and health. We emphasise the urgency of including public health services in these efforts.

It needs to be emphasised that the problems surrounding emissions of unpleasant smells remain unresolved. We received petitions from complainants from Vrhnika, Brezovica, and north-eastern Slovenia. Biogas plants, composting plants, fertilisation with liquid manure, animal farms, and other sources are the origin of unbearable smells. There are no regulations or odour meters to measure excessive smells, even though we have been writing about this, alerting the authorities to it, and demanding solutions since 1999.

Petitioners also complain about noise, which is especially disturbing when residential areas are also intended for production and service activities. We have repeatedly warned municipalities that they need to pay special attention to spatial planning, while administrative units must be careful when issuing permits for public events. We cannot overlook the issue of noise caused by traffic, which needs to be addressed with all seriousness. More about this can be read below. The actions of the Ministry of the Environment and Spatial Planning (MOP) concerning noise are clear from the process of amending the Decree on Limit Values for Environment Noise Indicators, which is discussed below.

The processed cases, which have been recorded as well-founded, have shown violations of the right to a healthy living environment and the principle of good administration.

2.7.2 IMPLEMENTATION OF THE OMBUDSMAN'S RECOMMENDATIONS

In 2016, the Ombudsman addressed 5 recommendations to the MOP. As the MOP wrote *"partially implemented"* for all five recommendations in the Response Report of the Government to the Annual Report of the Ombudsman for 2016, a comment needs to be made on our part.

With regard to Recommendation No. 40 (2016), addressing the measure which needs to be taken to protect buyers of real estate, the MOP said that amendments concerning the implementation of the Ombudsman's proposal are anticipated in the new construction and spatial legislation. The protection of buyers should specifically be regulated by the spatial planning information system anticipated by the Spatial Planning Act (ZUreP-2) and planned to be in full use in 2021. We note that this does not enable us to draw any conclusions on the potential implementation of our recommendation. Only the legal groundwork has been adopted (the Construction Act and the ZUreP-2) which will enter into force on 1 June 2018, and which anticipates the setting up of a spatial planning information system in 2021. The latter will be public and connected with real estate records and the land register, which will enable the protection of buyers before buying real estate for which an appropriate permit has not been issued. Due to the remoteness of the planned implementation and the unresolved issues, we repeat our recommendation.

With regard to Recommendation No. 42 (2016), concerning the urgently required adoption of a regulation on odour emissions, the MOP wrote that it had concluded an agreement with an outsourced provider for assistance in the drafting of the regulation. As the Ombudsman has been demanding that this area be regulated since 1999, and our annual reports have already presented our opinion on outsourcing in the public sector, we find the actions of the MOP and its opinion on the partial implementation of the recommendation to be unreasonable, and we repeat our recommendation.

Recommendation No. 43 (2016) has also been deemed not implemented. The criteria for determining the priorities of the inspection services of the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning have been determined on the website and not in a regulation as recommended by the Ombudsman, due to the urgently required greater trust of the public in the objectivity and impartiality of inspections. We therefore repeat our recommendation.

Recommendation No. 44 (2016) related to ensuring work conditions for the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning. As it has not been implemented, the recommendation is repeated.

Despite the claims by the MOP that it has been partially implemented, Recommendation No. 45 (2016) must be repeated. For several years the Ombudsman has been demanding that the MOP implement changes in the area of operational monitoring. The current regulation, under which the polluter finances the measurements itself, is not appropriate. We therefore support the MOP in its announcement of changes in this area. However, as it has not been implemented, the recommendation is repeated.

2.7.3 COOPERATION WITH NON-GOVERNMENTAL ORGANISATIONS FROM THE AREA OF THE ENVIRONMENT AND SPATIAL PLANNING

In 2017, the Ombudsman organised eight meetings with non-governmental organisations (NGOs), five at the Ombudsman's office, two in the field, and one in the context of the 4th international conference on the Environment and Human Rights: Public Participation in Environmental Matters.

2.7.4 INTERNATIONAL CONFERENCE: ENVIRONMENT AND HUMAN RIGHTS: PUBLIC PARTICIPATION IN ENVIRONMENTAL MATTERS

In September 2017, the Ombudsman organised the fourth international conference on the Environment and Human Rights: Public Participation in Environmental Matters, which was held at Ljubljana Castle. The conference was organised so that representatives of foreign ombudsmen, Slovenian state authorities, the local community, and professional public and civil society, together with the Ombudsman, can present their previous experiences and problems concerning public participation in environmental matters, with an emphasis on the adoption of environmental regulations. **The conference participants focused on various circumstances concerning public participation. They emphasised that often provisions on public participation are formally met, while substantive standpoints on the stakeholders' comments and their consideration are avoided.** An effective discussion of the content of a draft regulation is often impossible, which is in contravention of the Aarhus Convention, and the provisions of the Resolution on Legislative Regulation are not satisfied, as well as the Instructions on Public Participation in Adopting Regulations that Could Significantly Affect the Environment. Of more than one hundred conference participants, almost one half were representatives of non-governmental organisations, civil initiatives, and local communities. On behalf of the honorary sponsor, the President of the Republic of Slovenia, Borut Pahor, the conference participants were addressed by the Secretary-General of the Office of the President of the Republic of Slovenia, Nataša Kovač. At the conference, the Human Rights Ombudsmen of Bosnia and Herzegovina, Croatia, Montenegro, Kosovo, Macedonia, Slovenia, and Serbia signed a Declaration on the Cooperation of Ombudsmen in the Areas of the Environment and Human Rights. This set up a network which aims to establish closer cooperation and exchange of knowledge and good practice, to further develop forms of Ombudsmen's responses in the area of the environment, and to provide mutual support in fulfilling the mission of the Ombudsmen in this respect.

The conference participants adopted the following resolutions:

- **Public participation in environmental decision-making is in practice often merely formal. Regulation drafters often see to the fact that legislative provisions on public participation are formally met, while avoiding substantive standpoints on the comments and their consideration.**

- **The participants have found that both the civil and professional public are often included in the drafting of regulations too late.**

- **The public must receive high-quality, comprehensive information, as only such information enables their effective participation.**

- **The participation of a broad circle of the interested public must be ensured; it is no longer a question of whether the public should be included, but of who else should be included.**

- **It is important for the public to have the right to know who affects legislation. The purpose of such a legislative footprint is to record all activities of all participants, to identify the participating professionals, and to disclose lobbying as a work method of interest groups.**

- **Claims of lack of staff or time constraints cannot be the reason for the poor implementation of public participation in the drafting of regulations.**

- **The public expects its comments and proposals to receive careful consideration during regulation drafting procedures, and that the reasons for not incorporating them into the regulation are explained.**

- **New communication approaches and the advantages of information technologies must be included in procedures of public participation in the adoption of environmental regulations.**

2.7.5 ADOPTION OF ENVIRONMENTAL LEGISLATION

In 2016, we focused on the adoption of the Decree on the Status of Soil (the Decree). The draft Decree was published on the MOP website, and numerous comments and obvious inconsistencies have caused the procedure to come to a standstill. This issue and the related problems associated with the urgently required rehabilitation of polluted sites remain unresolved, and continue to cause problems. We address this issue in this report despite the time distance, as it remains topical.

We received letters from petitioners claiming that the Decree was in contravention of the Environmental Protection Act, which stipulates that environmental pollution must be prevented and not increased. They further established that the Decree was in contravention of Directive 2004/107/EC of the European Parliament and of the Council. The petitioners also pointed out the necessity for measures for the protection of human health, and the unacceptability of reducing standards for the protection of people. They further noted that every administrative increase in the permitted values of dangerous substances in the soil (in playgrounds in kindergartens, farming land, industrial areas) was unacceptable and unprofessional.

At the time, the petition did not meet the requirements to be processed by the Ombudsman; however, the importance of the anticipated regulations in the Decree could not be overlooked. The Ombudsman agreed with the petitioners that amendments to environmental legislation must never go against public interest and the effective assurance of a healthy living environment. The procedures of adopting environmental regulations must be well-considered and the decisions on the amendments prudent. The principle of prevention (Article 7 of the Environmental Protection Act (ZVO-1)) must be considered, which stipulates that emission limit values, environmental quality standards, rules of conduct, and other environmental protection measures must be designed accordingly and each activity affecting the environment planned and carried out in such a way that it causes the minimum environmental burden. Public participation in the procedure must be ensured and the arguments of all stakeholders considered. The solutions must be based on professionally explained viewpoints. **In principle, the Ombudsman supports the belief that the interests of capital must never prevail over the interests of individuals and their right to a healthy living environment. Potential legislative amendments must not limit the constitutional right to a healthy living environment.**

Noise. We warn about potential fines due to the violation of EU legislation concerning lengthy procedures in the preparation of the Operational Programme for Noise Protection. With Slovenia's accession to the European Union, our country was required to transpose the Environmental Noise Directive (2002/49/EC) into its legal order. Slovenia undertook to implement all tasks of protection against noise and to include the public in all procedures concerning the adoption of the legislation and plans. The MOP has been delayed since 2008. In November 2017, the MOP published the Operational Programme for Noise Protection 2013-2018 on its website for public discussion. We expect that, after almost a decade of delay, the noise protection programme will be adopted, and that the MOP will not have to be compelled to do so by the European Commission or worse by a procedure before the Court of Justice of the European Union and its decision.

The adoption of environmental legislation and public participation at municipal level are clearly shown by the analysis of Article 34a of the Environmental Protection Act (ZVO-1) at the local level. The analysis was first implemented by the Ombudsman in 2010 and again in 2017. This report provides only the findings of the 2017 analysis, which are still similar to those from 2010:

- Municipalities still do not sufficiently utilise the possibilities and jurisdictions that are available with regard to managing environmental issues, as since 2008 only slightly more than one quarter have adopted regulations from the area covered by the ZVO-1. In this way, they are themselves closing their opportunities for regulating environmental impacts;

- Municipalities are still not sufficiently familiar with the legislative provisions governing public participation in adopting regulations that could significantly affect the environment, as in answer to the Ombudsman's inquiry, almost one half spoke about the procedures of adopting spatial planning documents, and only a few stated that they are aware that these procedures are governed by another regulation;

- Of the municipalities that have adopted regulations in this area since 2008, only 65% (which is 15% more than in 2010) correctly implemented all the provisions of Article 34a of the ZVO-1;

- The municipalities' answers on the procedures of adoption of spatial planning documents show familiarity with public participation procedures in spatial planning. The municipalities manage these procedures in line with the provisions of the ZPNačrt.

More about the analysis and its results is available on the Ombudsman's website.

2.7.6 INSPECTION PROCEDURES

With regard to the inspection procedures concerning the environment and spatial planning, it must be said that there are numerous complaints about these procedures, with individual petitioners stating the following relevant circumstances: lengthy inspection procedures, a lack of transparency or priority of discussing individual cases, and a lack of response by inspection services.

The Ombudsman warns the inspection services of their legal jurisdictions, including their preventive role, which also represents good administration of public sector entities, reduces the possibility of violations, and consequently affects the number of inspection procedures in the future. Article 33 of the Inspection Act, which concerns preventive measures taken by inspectors and warnings, also stipulates the obligation of the inspection services to answer written questions from individuals, companies or institutions and to raise public awareness.

Example:

Inspection obligations in the context of preventive actions
A petitioner contacted the Ombudsman concerning the unresponsiveness of the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning (IRSOP) to her letters. On the basis of inquiries and appeals made to the IRSOP, the Ombudsman established that the petition was well-founded. The submitted documents clearly showed that the IRSOP, Ljubljana Regional Unit, answered the petitioner's letter of 21 December 2016 on 14 March 2017 with letter No. 06121-175/2017-5. That was almost three months after receiving the letter from the IRSOP head office, which sent the letter for discussion to the IRSOP, Ljubljana Regional Unit on 22 December 2016. As this represents a violation of the deadline stipulated by Article 18 of the Decree on Administrative Operations, the Ombudsman decided that in this case, the IRSOP had violated the principle of good administration as stipulated by Article 3 of the Human Rights Ombudsman Act.

We also highlighted our Article 33 of the Inspection Act (ZIN), which stipulates that: *"with a view to taking preventive action, inspection services shall answer written questions from individuals, companies or institutions relating to the operation of the inspection service; inform the public via the media of the identified irregularities and the consequences of violations of laws and other regulations; and raise public awareness via other methods."* This means that during their work, inspectors, in addition to repressive measures, which they adopt so as to eliminate the established irregularities, also take preventive action.

Article 33 of the ZIN requires inspection services to process all written claims and answer them in accordance with the regulations it controls, i.e. to also provide explanations concerning the valid legislation. If the inspection services receive questions which relate to regulations outside their jurisdiction, they must immediately send them to the competent authority and notify the client of this fact (as stated in Bojan Bugarič et al.: Komentar zakonov s področja uprave, Ljubljana: Inštitut za javno upravo pri Pravni fakulteti, 2004, pp. 921-931).

The Ombudsman therefore believes that the IRSOP's claims that the Inspectorate was not competent to interpret regulations was not in accordance with the meaning of Article 33 of the ZIN. The IRSOP's explanations, which were provided to the petitioner in this case, are therefore not appropriate in this part and are in contradiction of the obligations of inspection services as stipulated by the applicable legislation. In consideration of all of the above, the Ombudsman asked the IRSOP to process letters more consistently and in the context of its jurisdictions and in accordance with its authorisations under the binding regulations of the area of work of the IRSOP. 7.0-7/2017

2.7.7 ENVIRONMENTAL POLLUTION

Page 250 of the Ombudsman's Annual Report for 2016 concerns the MOP's delay with its report on the state of the environment in the country. According to the ZVO-1, such a report should be prepared every four years, but the last report in Slovenia was prepared in 1999. The MOP prepared a new report which was put out to public discussion until 27 December 2016, and the Government of the Republic of Slovenia published it in March 2017. According to this report, the state of the environment in general is improving, but the state of the environment in individual locations is alarming, especially with regard to air and soil quality. The main message of this report is that better progress is urgently required when it comes to the sustainable use of space. The report also covers the Mežica Valley and the Celje Basin extensively. These are also the cases processed, studied, and monitored by the Ombudsman.

With regard to the **Mežica Valley,** we are concerned about the fact that the state is not providing the funds for the rehabilitation which was anticipated by the rehabilitation ordinance by 2017. This hinders or disables the continuation of rehabilitation measures for reducing the effect of pollution on the environment and human health. The presence of heavy metals in waste, including biological waste, requires rehabilitation with full, unreduced funds. Levels of lead in the blood of children from this area are a reminder of this fact. For there to be progress, all measures must be implemented appropriately, and the state of the environment must continually improve with careful maintenance of what has already been achieved.

We specifically mention the **Celje Basin,** as the Ombudsman has been processing a petition made by civil initiatives from Celje with regard to the pollution of the Celje Basin since 2011, and recommends the comprehensive rehabilitation of this area. We have repeatedly demanded that the rehabilitation runs faster, as this is the only way to prevent numerous violations of the right to a healthy living environment and to protect people's right to live in a healthy and protected environment. Unfortunately, we can once again report no progress of any kind in 2017.

2.8
PUBLIC UTILITY SERVICES

	Cases processed			Resolved and well-founded		
Area of work	2016	2017	Index 17/16	No. of resolved cases	No. of well-founded cases	Proportion of well-founded cases among those resolved (in %)
8. Public utility services	**77**	**69**	**89.6**	**51**	**5**	**9.8**
8.1 Municipal utility services	20	33	165.0	21	3	**14.3**
8.2 Communications	14	5	35.7	5	0	**-**
8.3 Energy	14	12	85.7	9	0	**-**
8.4 Transport	17	11	64.7	9	1	**11.1**
8.5 Concessions	5	2	40.0	2	0	**-**
8.6 Other	7	6	85.7	5	1	**20.0**

2.8.1 GENERAL OBSERVATIONS

In the area of public utility services, the Ombudsman processed approximately 10% fewer petitions and questions in 2017 than in 2016. This is a relatively low number which does not require any additional commentary. The same applies to the percentage of well-founded petitions, which stood at 9.8% in 2017 and 9.9% in 2016. However, this percentage is significantly higher than in 2013, 2014, and 2015, when we processed more cases and an average 6.5% were well-founded.

A regular feature in this area is citizens' complaints against issued invoices for individual services or supplies of goods. **The Ombudsman believes that the claims put forward by petitioners that they do not understand the invoices and their specifications are very serious, and must be emphasised and studied by the responsible parties.** We alerted decision-makers to this problem on page 256 of our 2015 Annual Report, which should have caused the responsible parties to take action. We also received a number of letters concerning the high costs of services or supply of goods by public utility services. Social distress, loss of employment, and other reasons mean that people are unable to pay the high costs. They ask us where to seek help, how to avoid the consequences of failing to pay the invoices, and how to enforce their rights with the competent authorities. We advised these individuals and directed them towards a resolution of their problems.

Several letters referred to circumstances surrounding the possible disconnection of the water supply and ensuring the right to clean water. This leads us to conclude that it is not enough to just put the right to water into the Constitution of the Republic of Slovenia; implementing regulations must also be adopted. The petitioners also complained about connections to the public water supply and sewage networks, poor internet connection, the television licence, suspended supply of electricity, manner of assessing and charging heating costs, irregularities in the implementation of chimney sweeping services, use of road vignettes, ensuring a

decent funeral, and other complications and irregularities in the implementation of public utility services or regulated activities which are described in this section of the Annual Report.

Cooperation with the competent authorities We mainly communicated in writing. We met with the Minister of the Environment and Spatial Planning, Irena Majcen, and her colleagues at the Ombudsman's head office, as well as with Dragica Hržica, Chief Inspector of Environment and Spatial Planning. We also discussed individual cases and how to resolve them with mayors at monthly meetings away from the Ombudsman's office.

Legislation We emphasise the adoption of all implementing regulations on the basis of the Chimney Sweeping Services Act.

2.8.2 IMPLEMENTATION OF THE OMBUDSMAN'S RECOMMENDATIONS

With regard to public utility services, no specific recommendations were noted in the Ombudsman's 2016 report. This does not mean that the Ombudsman was fully satisfied with the situation. We therefore repeat the already stated criticism of the issuing of invoices and their specifications.

The Ombudsman's recommendation concerning the urgency of regulating taxi services (more on this on page 257 of the Annual Report of the Human Rights Ombudsman for 2015, and on page 256 of the Annual Report of the Human Rights Ombudsman for 2016) **remains unimplemented.**

2.8.3 MUNICIPAL UTILITY SERVICES

Even though the right to drinking water was added to the Constitution of the Republic of Slovenia in November 2016, we came across issues in 2017 concerning disconnection from the water supply due to a failure to pay costs or to accrued debts. **The state still has time, until 25 May 2018, to adapt the legislation in order to protect the constitutional right to water.** We were therefore unable to help in such cases in any other way but with advice to petitioners and requests addressed to providers of public utility services supplying water to try to come to an agreement about the payment of the debt prior to disconnecting the debtor from the water supply. The currently valid regulation stipulates that disconnecting the water supply to debtors is legally permissible, but must be made in a manner and following a procedure which is stipulated by a corresponding municipal ordinance.

There were also a number of cases concerning the removal of municipal waste and connection to the public sewage network. In such cases, the petitioners mainly complained about the high costs of municipal utility services and the confusing invoices. **We therefore call upon the state, municipalities, and providers of public utility services to prepare understandable and transparent invoices which do not leave any room for doubting the correctness and fairness of charges.** Only such actions by those responsible for public utility services will correspond to the principles of good administration and follow the expectations of the public.

2.8.4 ENERGY

In the energy sector, the processed petitions mainly referred to circumstances associated with the inability to pay the costs of supplied electricity, which could or did result in the suspended supply of electricity. The petitioners inquired about their rights in such cases and where to turn to for help. These petitions mainly concluded with explanations.

2.9 HOUSING MATTERS

	Cases processed			Resolved and well-founded		
Area of work	2016	2017	Index 17/16	No. of resolved cases	No. of well-founded cases	Proportion of well-founded cases among those resolved (in %)
9. Housing matters	**91**	**106**	**116.5**	**93**	**4**	**4.3**
9.1 Housing relationships	46	48	104.3	47	2	**4.3**
9.2 Housing economics	43	52	120.9	42	1	**2.4**
9.3 Other	2	6	300.0	4	1	**25.0**

2.9.1 GENERAL OBSERVATIONS

The number of petitions, cases, and systemic issues processed and recorded in 2017 concerning housing matters has slightly increased compared to 2016. However, compared to the previous years, no special commentary is required (an average 111 cases a year have been processed since 2013). It must be emphasised that the issues processed mainly related to the circumstances surrounding the situation of people who have found themselves in a housing crisis, and problems of how to find a new place to stay due to subsistence problems, loss of employment or other reasons.

The petitioners mainly contacted us due to problems concerning the shortage of housing units, especially non-profit housing, inappropriate housing conditions, eviction, jurisdiction of housing inspection services, management of multi-dwelling buildings, payment of rent and operating costs, subsidised rent, disposal of funds from the reserve fund, and neighbour disputes.

As already stated on page 263 of the Ombudsman's 2016 Annual Report, looking only at the number of received and processed cases cannot be deemed a reflection of the actual situation in housing matters. This area is closely connected to others, especially social security, and as such the petitions are also discussed in other parts of the Annual Report.

Due to the Ombudsman's jurisdiction, the percentage of well-founded petitions (4.3%) is lower than the average percentage, as the Ombudsman is allowed to study and process only those violations which are caused or committed by the authorities.

Over the years, we have found that there has been no progress in this area. In this respect, we cannot overlook the constitutional provision which governs the right to proper housing in the section on Economic and Social Relations, as it requires the state to create opportunities for citizens to obtain appropriate housing (Article 78 of the Constitution of the Republic of Slovenia). This is a constitutional right originating in the constitutional principle of a social state. **The state is under obligation to implement measures and activities (which is the emphasis of constitutional democracy) to enable the implementation of the right to appropriate housing, which is written into the Constitution of the Republic of Slovenia and in international documents.**

New legislation The Act Amending the Housing Act (SZ-1C) was adopted, which, under the decision of the Constitutional Court No. U-I-109/15 of 19 May 2016 (with regard to the Ombudsman's request for the review of constitutionality), equalises the right to subsidised rent for non-profit and market rent housing. The amendment has also brought a change concerning the possibility of verifying the meeting of conditions for obtaining non-profit rental housing for tenants prior to 2003, with exceptions, which was also recommended by the Ombudsman on page 266 of the 2016 Annual Report (and earlier). This is a welcome fact, even though we cannot overlook that it is high time to comprehensively amend the housing legislation and regulate the open issues and dilemmas.

2.9.2 IMPLEMENTATION OF THE OMBUDSMAN'S RECOMMENDATIONS

Recommendation No. 46 (2016), which relates to the need to more clearly define the additional obligations of municipalities in the area of housing, has not been implemented and so is repeated. In its Response Report for 2016, the Government or the Ministry of the Environment and Spatial Planning (MOP) wrote that the recommendation has been partially implemented, since a public presentation of the draft starting points for the reform of housing legislation had been organised for June 2017. However, the Ministry also expressed its disagreement with the Ombudsman's recommendation that the obligations of municipalities concerning the provision of housing must be stipulated in more detail. The Ministry wrote that there are municipalities in which there is no demand for non-profit rental housing, that the obligation of publishing regular calls for applications for non-profit housing would impose additional costs on municipalities, and that people renting non-profit and market rent housing are in an equal position with regard to subsidised rent. It further mentions a survey which was implemented by the public Housing Fund of the Republic of Slovenia (SSRS) with regard to the housing needs in municipalities. We support such activities by the SSRS in the implementation of its authority, as well as its measures of co-financing the provision of new public rental housing and housing units in local communities and supporting the local community. However, we cannot overlook the fact that the SSRS is a public financial and real estate fund which has been established to finance and implement the national housing programme, to facilitate residential construction, and to reform and maintain the housing programme. Municipalities, on the other hand, are self-governing local communities which independently carry out local matters of public importance (original tasks), which they determine by means of a general document issued by the municipality or which are stipulated by the law. In addition to meeting the other needs of its residents, municipalities create conditions for residential construction and manage the increase in the rental social fund of housing as stipulated by Article 21 of the Local Self-Government Act (ZLS), while concrete authorisations of municipalities with regard to housing are stipulated by the Housing Act (SZ-1). The Ombudsman believes that these should be updated within the meaning of the Ombudsman's recommendations, and appropriate financial support provided to municipalities so as to meet their obligations under Article 78 of the Constitution of the Republic of Slovenia.

Recommendation No. 47 (2016) originated in the Ombudsman's findings that the management of multi-dwelling buildings is unclear, that managers can perform their work without any legally determined competences, and that there is no control over their work. This recommendation remains unimplemented, even though the MOP has reported its partial implementation, i.e. with the publication of the starting points for the reform of the housing legislation on its website.

Recommendation No. 48 (2016) has also not been implemented, even though the Response Report states that it has been partially implemented. We find the MOP's intention to redefine public interest while reforming the housing legislation and its awareness of the necessary additional staff positive, albeit inefficient. The number of inspectors has not increased, despite the increased jurisdiction of housing inspection services. We therefore repeat last year's recommendation about additional human resources.

2.9.3 ANALYSIS OF THE PETITIONS PROCESSED

The analysis of the subject matter processed by the Ombudsman with regard to housing clearly shows that there are systemic irregularities. These require the competent authorities to implement the Ombudsman's recommendations and proposals. The results of the analysis substantiate the necessity of the authorities to adopt these recommendations and proposals.

With regard to the final status of the cases, the following can be said:

- 4.3% of the petitions were well-founded;

- 11.8% of the petitions were unfounded;

- 45.2% of the petitions were not in the Ombudsman's competence to process;

- In 19.4% of the petitions it was established that the procedure had not yet been concluded with the competent authorities;

- 10.8% of the petitions lacked the conditions for processing;

- 7.5% of the petitions were incorrectly supplemented or were not supplemented at all.

The analysis of the processed petitions shows the following problematic sets which are the most frequent reason for requesting the Ombudsman's assistance:

a) Non-profit rental housing and the possibility of changing it

In terms of content, the majority of the petitions in 2017 related to problems with non-profit rental housing, i.e. 24 petitions or 25.8%. Nine of those petitions referred to the possibility of changing non-profit rental housing. The petitioners claimed lengthy processing of their request for a different flat, the award of a too small flat, and the award of a too large flat which incurs high operating costs.

We were also contacted by petitioners who are high on the waiting list for being awarded non-profit rental housing, but the competent municipality does not have a sufficient number of flats to award to all applicants on the waiting list. It must be noted that such petitions, which showed that petitioners had applied to several successive calls for applications for non-profit rental housing, and each time made the list but were not awarded a flat due to a shortage of available housing, were classified as well-founded.

The petitioners also complained of other circumstances surrounding rental housing. They spoke of inappropriate living conditions (poorly maintained flats, humidity, mould, etc.), problems renovating rooms, unkempt surroundings, and other.

b) The private sector and relationships with neighbours

The second set for which we received a large number of petitions is the private sector and neighbour relationships. These are cases which the Ombudsman is not competent to process. The petitioners claimed a number of irregularities on the part of private landlords, problems with neighbours due to noise, smells, and other troubles, the violation of the fundamental rules of neighbourly coexistence, changes to common use areas or walls, and poorly implemented refurbishments, among other things. These petitions required the Ombudsman's explanations, advice, and guidance.

c) Terminations of tenancy agreements and evictions

There were a number of petitions in which the petitioner complained of terminations of tenancy agreements and consequential evictions, which had, in individual cases, already happened, while in others it had just been announced. In 2017, there were 16 such petitions, or 17.2% of all resolved petitions in this field. In a number of cases, the petitioner's tenancy agreement had been terminated due to the inability to pay rent and operating costs or a failure to meet the obligations of the agreement. One of the municipalities contacted the Ombudsman and informed us of the problems of municipalities in cases where its citizens find themselves without a home and request immediate assistance. It must be added that the Ombudsman receives even more petitions concerning evictions, but the majority are processed in the area of justice, as petitioners claim irregularities in judicial proceedings and in social matters when the petitions originate in social distress.

d) Management of multi-dwelling buildings

This year, we again processed a number of petitions concerning the work of managers of multi-dwelling buildings, i.e. 14 of the 93 completed petitions, or 15.1%. The petitioners again emphasised the non-transparent work of managers, their unresponsiveness, and irregularities in the assessment of operating and maintenance costs, among other things. We also received a petition with a description of a situation in which the manager, without the authorisation of the commonhold unit owners, took out a large loan for façade refurbishment.

e) Housing inspection services

We processed 4 petitions (4.3%) which referred to the work of the housing inspection services, which operate in the context of the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning. No irregularities or violations were established in the work of the housing inspection services, as in the majority of the cases the procedures had not yet been completed or the petitions referred to the petitioner disagreeing with a decision taken by the housing inspection services.

2.10 LABOUR LAW ISSUES

	Cases processed			Resolved and well-founded		
Area of work	2016	2017	Index 17/16	No. of resolved cases	No. of well-founded cases	Proportion of well-founded cases among those resolved (in %)
10. Labour law issues	**217**	**209**	**96.3**	**177**	**26**	**14.7**
10.1 Employment relationships	102	95	93.1	82	11	**13.4**
10.2 Public sector employees	70	77	110.0	67	11	**16.4**
10.3 Scholarships*	24	18	75.0	16	2	**12.5**
10.4 Other	21	19	90.5	12	2	**16.7**

This is presented under Item **2.15.8 Scholarships,** on page 408

2.10.1 GENERAL OBSERVATIONS

In the area of labour law issues, which, in the broadest sense, also includes cases from the area of scholarships, approximately the same number of petitions were processed as in 2016. No comment is therefore necessary with regard to the statistical data, as the difference is minimal and the numbers do not have any great meaning. However, we can write with great certainty that these data are the consequence of the constitutionally and legally determined jurisdictions of the Human Rights Ombudsman of the Republic of Slovenia, who processes only violations and abuse of human rights (in the context of this section the rights of employed and unemployed people) by the authorities.

The percentage of well-founded petitions for 2017 is slightly higher than in the previous year, i.e. it stands at 14.7% (compared to 14.4% before).

The main questions and dilemmas that we studied were: the failure to pay salaries and social security contributions, and the related work of supervisory mechanisms; retroactive deregistration from social insurance; precarious work (agency work, providers of port services, etc.); labour market reform; workplace violence (bullying, mobbing, tormenting, inappropriate payment of overtime work, inappropriate working conditions, etc.); and the position of workers with disabilities. With regard to public sector employees, we mainly focused on the following issues which have been present for several years: the status and payment of employees in the Slovenian prison system and the Slovenian Armed Forces, and the return of overpaid salaries which were required from public sector employees.

Adopted legislation: We are pleased with the amendment to the Labour Market Regulation Act (ZUTD), and more on this can be read in the section on unemployment. We are pleased with the adopted Act Amending the Labour Inspection Act (ZID-1A), and the expanded authorisations awarded to the Labour Inspectorate of the Republic of Slovenia. We are also pleased with the Constitutional Court Decision No. U-I-200/15-21 Up-21 Up-936/15-20 of 16 March 2017, which annulled the fourth paragraph of Article 88 of the Employment Relationships Act (ZDR-1), and decided that until a different legislative regulation has been prepared for the serving of notices of cancellation of employment contracts, the rules of legal procedure concerning personal

serving shall apply. We are also pleased about the Act Amending the Criminal Code (KZ-1E), which, in Article 196 of the Criminal Code (KZ-1), as a condition of the criminal offence of violation of fundamental rights of employees, and in Article 202, for the criminal offence of violation of rights from social insurance, eliminates direct intent, which used to be a problem in the past by preventing offenders from being sanctioned when they claimed that the violation was not conscious or intentional. We believe that this will contribute to a more effective control of the violation of the rights of employees and therefore welcome this change, which was implemented due to the Ombudsman's warnings. The Transnational Provision of Services Act (ZČmIS) was also adopted and became applicable on 1 February 2018.

Implementation of the Ombudsman's recommendations

In its interim Response Report to the Ombudsman's 2016 Annual Report, the Government of the Republic of Slovenia announced solutions for voluntary traineeship. There are still no amendments to the Civil Servants Act or amendments to the state bar exam which would prevent unpaid traineeship in the public sector and other potential abuse.

We also cannot report additional human resources being allocated to the Labour Inspectorate of the Republic of Slovenia (IRSD). With the expansion of the Inspectorate's jurisdictions, this is of key importance for providing the effective control and protection of the rights of employees. Recommendation No. 51 (2016) has not been implemented and is therefore repeated.

In Recommendation No. 49 (2016), we demanded that the Government should immediately prepare amendments to the Public Finance Act (ZUJF) and, as an exception to the limitations of annual leave, acknowledge the criteria for caring for severely physically and moderately, severely or profoundly intellectually disabled people. The Government or the Ministry of Public Administration (MJU) refused the implementation of this recommendation, stating that it would be more appropriate if the regulation under the Act Regulating Measures Relating to Salaries and Other Labour Costs for 2017 and other Measures in the Public Sector remained unchanged (i.e. without distinguishing between different groups of employees), and that the rights of parents and of course children with special needs would be regulated by the rules and regulations under the jurisdiction of the MMDSZ. We see this viewpoint as fake ignorance. The Ombudsman has written about this issue in several of its annual reports (for 2013 on pp 241-243 and for 2016 on p 275), and proposed and demanded changes at face-to-face meetings with the Minister of Public Administration and the Minister of Labour, Family, Social Affairs and Equal Opportunities. We emphasise: It is not really important which regulation finally brings order to this area; what is important is that the exception from the limitation of annual leave for parents of children with special needs employed in the public sector is recognised. We leave it up to the Government of the Republic of Slovenia to decide the competent ministry and regulation to resolve this issue.

With regard to Recommendation No. 50 (2016), concerning the supervision system for the payment of salaries and contributions, the following findings have been added: the Ombudsman supports the proposed measures aimed at improving the situation concerning the payment of social security contributions, which have been prepared by the FURS and the IRSD. These measures present a good foundation for discussion and the adoption of potential legislative amendments which would provide the framework for the observance of employee rights. The same applies to the reshaping of the regular work of the competent authorities, especially more effective protection of the employed and unemployed. We will closely and actively monitor the activities that the Government of the Republic of Slovenia, the FURS, and the IRSD announced in this area in the 2016 Response Report. We therefore repeat the same recommendation.

2.10.2 NON-PAYMENT OF SALARIES AND SOCIAL SECURITY CONTRIBUTIONS

The Government of the Republic of Slovenia and other responsible authorities are aware of the complexity of the issue of non-payment of salaries and contributions, and the consequences for individuals and society as a whole. Numerous measures have been adopted in order to limit and mitigate this issue, i.e. clearly defined legal groundwork which provides employees with greater financial security in cases of extraordinary cancellation of their employment contract due to non-payment, substantially smaller payment or late payment of the salary and non-payment of social security contributions. The written assessment of the salary is deemed an authentic document; high fines have been determined for violations concerning payment for

work (Employment Relationships Act – ZDR-1); there have been amendments to the work of labour inspection services; amendments to criminal law; and safety mechanisms have been put in place in the Companies Act (ZGD-1) which prevent dishonest employers from setting up a new company in the future. However, all this is not enough for a healthy business environment and a humane society. **In a number of the cases processed, we saw that non-payment of salaries and social security contributions has trampled upon human dignity as a fundamental human right recognised by our legislation, the revised European Social Charter, and other regulations.**

2.10.3 AGENCY WORK

There were only a few petitions processed concerning the protection of agency workers. This does not mean that there are no problems; rather the contrary. The Ombudsman believes that the high unemployment rate, the desire to work regardless of the circumstances, fear, desperation, and care for the survival of the family are the reasons why agency workers often do not publicly express their problems, distress, and the pressure exerted over them. In this section of the report, we write about two cases which were also covered by the media.

The Ombudsman first wrote about issues concerning the providers of port services in the Port of Koper in its 2011 Annual Report (p 245 and Case No. 113 on pp 247-248). At the time, and later, we met and spoke with the employees, the trade union, and the management.

At our enquiry, the IRSD informed us of the irregularities that it had established on the part of the employers (providers of port services) in the territory of the Port of Koper. At the time, control was also implemented by the Tax Administration of the Republic of Slovenia (DURS). Despite regular visits by supervisory institutions, the situation has not changed significantly for providers of port services. In 2017, the IRSD issued the decision that with regard to the Port of Koper, hiring providers of port services through Encon Ljubljana constituted the provision of work and not services to the Port of Koper, which can only be conducted through temporary work agencies in accordance with the terms and conditions of the ZUTD. The decision became final on the basis of a Decision by the Administrative Court, Nova Gorica Unit, No. III 10/2017-13 of 8 December 2017. This represents a demand made to the state, as the largest owner of the company, to adopt all the necessary measures to eliminate the violations established by the inspection services in labour law legislation and taxes, thus protecting providers of port services. **The Port of Koper cooperates in the same or similar manner with all providers of port services, and the Ombudsman's conclusion that other providers are also violating the rights of employees is justified and the warning to regulate the conditions for all providers of port services appropriate. The Ombudsman is already studying this matter on its own initiative and will report on the final findings in the next annual report.**

2.10.4 WORKERS WITH DISABILITIES

In 2017, we again came across cases relating to the circumstances surrounding workers with disabilities. This issue confirms our findings from the 2016 Annual Report that the situation of workers with disabilities in the labour market and their employability is unfavourable, including a possible disputable discriminatory practice of terminating employment relationships of workers with disabilities, even though protective mechanisms have been put in place so as to protect them from such actions of employers. This is described in detail by the MDDSZ in the Government's Response Report to the Ombudsman's 2016 Annual Report. However, as evident from the concrete cases, the Ombudsman's findings show that the employment of workers with disabilities and their treatment are neither legal nor legitimate with regard to their expectations.

This section of the report focuses on problems in enterprises employing people with disabilities, whose provision of employment to people with disabilities makes them enterprises of special importance. They represent one of the few possibilities for employment and social inclusion of people with disabilities. At first, these were sheltered workshops, which have evolved into enterprises employing people with disabilities, with the state using various subsidies (salaries, contributions) to facilitate the employment of people with disabilities, thus increasing their employability. **Enterprises employing people with disabilities are a form of social economy and generating profit must not be their primary intent. In accordance with the Vocational Rehabilitation and Employment of Disabled Persons Act (ZZRZI), supervision of enterprises employing people with disabilities is also implemented by the MDDSZ; however, this supervision is inappropriate,**

too slow, and does not sufficiently protect the rights of workers with disabilities. Enterprises employing people with disabilities must meet specific organisational and technical requirements, including appropriate working conditions which have been adapted to the work abilities of employees with disabilities. The greatest possible level of care for achieving and protecting a healthy work environment must be ensured, which is of key importance for obtaining the status of an enterprise employing people with disabilities under the ZZRZI, and which is governed by the minister responsible for disability protection (MMDSZ).

Example:

A successful petition by the Ombudsman to update the Register of Enterprises Employing People with Disabilities with the reason for the termination of their operations

The Ombudsman processed a number of petitions which referred to irregularities in the operations of enterprises employing people with disabilities. As we have noted an increase in the number of reports concerning the operations of these enterprises, we believe that the systemic supervision of these enterprises must be stricter. We communicated our opinion to the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ), and asked the Ministry to publish the reasons for the termination of the operations of enterprises employing people with disabilities, which would contribute to preventive control over these enterprises.

The MDDSZ informed the Ombudsman that it could not publish such data as no legal groundwork for this existed. The Ministry believes that such information constitutes business secrets and that their publication would cause enterprises employing people with disabilities disproportionate business damage.

The Ombudsman does not agree with this viewpoint of the MDDSZ, as, in accordance with the Access to Public Information Act (ZDIJZ), public information can refer to any activity in all areas of work of the body connected with its official activities or decisions and originating in its public authority. In accordance with the ZDIJZ, access to information can be denied for information which is defined as a business secret in accordance with the Act governing companies (Item 2 of the first paragraph of Article 6 of the ZDIJZ). Business secrets constitute information which gives the company any kind of competitive advantage, e.g. a new procedure for manufacturing a product, the list of regular customers, or market analysis. This can also apply to disadvantageous information which could, if provided to an unauthorised person, negatively affect the company's competitive position (e.g. a large number of complaints, payment issues, or production problems).

However, the third paragraph of Article 39 of the Companies Act must be observed, stipulating that information which is by law in the public domain, or information on the violation of the law or good business practices, cannot be considered a business secret. The disclosure of this information is not affected by the desire of the entity in question. Furthermore, the third paragraph of Article 6 of the ZDIJZ stipulates that without prejudice to the provisions of the first paragraph of Article 6, access to information is allowed if the information refers to the use of public funds. Control by the public is that much more important when we are dealing with the use of public funds.

This means that every entity entering a business relationship with a state body must be additionally aware that their freedom in determining information which is deemed a business secret is limited, due to the exceptionally important principle of transparent use of public funds.

The MDDSZ supported the Ombudsman's endeavours to improve the operations of enterprises employing people with disabilities, and to publish a complete register of such enterprises and not only its abstract, as has been the case so far. In addition to the list of all companies with the status of enterprises employing people with disabilities, the complete register now also contains all companies, active and inactive, which no longer have this status for any reason whatsoever. The entry on the cancellation or termination of this status can also contain the basis for the cancellation or termination of the status, e.g. failure to meet the conditions, serious violations of legislation, or termination of the status due to bankruptcy or liquidation. The updated Register of Enterprises Employing People with Disabilities is available at: http://www.mddsz.gov.si.

The Ombudsman welcomes the MDDSZ's decision to publish this extensive Register of Enterprises Employing People with Disabilities, as we believe that easier access to public information and its better transparency significantly contribute to greater trust of the public in the operations of enterprises employing people with disabilities, and consequently also to the realisation of their purpose. Furthermore, the Ombudsman believes that making public the reasons for the termination of operations of enterprises employing people with disabilities significantly contributes to achieving preventive effects in these enterprises as employers, i.e. reducing the number of violations of legislation in their operations. Processing this issue has brought a positive

result. The petition was well-founded, and we established the violation of the rights of people with disabilities, freedom of expression, and the principle of good administration. 4.1-92/2015

2.10.5 PUBLIC SECTOR EMPLOYEES

In 2017, special attention was paid to non-responsiveness, lengthy decision-making, the situation in the Slovenian Armed Forces and the Slovenian prison system, and the return of overpaid salaries which were required from public sector employees. Due to our findings and recommendations, this subject matter also is required to be part of the Annual Report.

With regard to passivity, we focus on the MMDSZ, and the examples below clearly explain the situation.

We also spoke with representatives of the **Prison Administration** and the SDO Public Authorities Trade Union about the situation in Slovenian prisons. The most pressing problems refer to human resources, especially the issue of the number of employees, the performance and payment of overtime to judicial police officers, ensuring conditions for required rest, and material conditions for work. In 2017, the Government of the Republic of Slovenia discussed staffing problems at the Prison Administration and adopted a decision to employ 30 new judicial police officers, which the Ombudsman supports, as it sheds light on the problems concerning human resources and the related issues (overtime) stated in each of its annual reports.

With regard to the Slovenian **Armed Forces,** we ask the Government of the Republic of Slovenia to ensure appropriate financial, human, and other resources for working in a reliable and safe environment, enabling the employees of the Slovenian Armed Forces to provide national security for the Republic of Slovenia. This must be provided under stable conditions and the appropriate conditions in the Armed Forces must be ensured with the utmost seriousness and responsibility.

2.11 UNEMPLOYMENT

	Cases processed			Resolved and well-founded		
Area of work	2016	2017	Index 17/16	No. of resolved cases	No. of well-founded cases	Proportion of well-founded cases among those resolved (in %)
Unemployment	**31**	**24**	**77.4**	**19**	**6**	**31.6**

2.11.1 GENERAL OBSERVATIONS

The area of unemployment covers matters which mainly refer to the circumstances of the unemployed, whether unemployed people who have just now found themselves in this situation and are only just organising their life under these new and different circumstances and therefore expect the help of professional services, or long-term unemployed people who require greater sensitivity in all procedures as well as decent, considerate, correct, and highly professional action and help by those responsible.

In 2017, the Ombudsman processed a similar number of cases in this area as in the last decade, while the percentage of well-founded petitions was also similar.

However, this does not allow us to conclude that the rather low number of processed cases means that the situation in the area of unemployment has drastically improved. On the contrary, the manner of recording the studied cases, and the questions, dilemmas, and distress which people report to the Ombudsman at meetings away from the head office and through the usual channels, show that the situation in the labour market and related unemployment is very serious, much more so than evident from the Ombudsman's statistical data.

The main subject matter that we processed confirms the comprehensive nature of unemployment. People mostly enquired how to find work and employment, about the rights and obligations of the unemployed, the available measures of the active employment policy (AEP), how to register in the unemployment register of the Employment Service of Slovenia (ZRSZ), and about the role of the ZRSZ, among other things.

The Ombudsman's general finding must be emphasised: according to Article 66 of the Constitution of the Republic of Slovenia, security of employment is a constitutional category. This is a binding norm. The state must adopt measures which convincingly, unambiguously, and provably enable work and employment and observe the constitutional provisions on the freedom of work (Article 49 of the Constitution) and the right to social security (Article 50 of the Constitution).

Failing this, we are dealing with a violation of these and other constitutional rights (especially the right to personal dignity and safety under Article 34 of the Constitution) and a violation of international documents. In particular, we point out the repeated violation of Article 1 of the European Social Charter, which specifically determines the obligation of the state to implement a full employment policy and the right of workers to earn their living in an occupation freely entered upon. This involves mandatory actions and measures by the state and the achievement of appropriate results, which is assessed by the EU Committee on Employment and Social Affairs for each state.

Adopted legislation. We are pleased that when amending the ZUTD the MDDSZ also considered the Ombudsman's opinion that the penalty for missing the deadline for registering in the unemployment register with the ZRSZ, which would mean losing the right to the unemployment benefit, was an excessive measure. Another positive ZUTD amendment is also the introduction of gradual sanctions of violations relating to the active employment policy in 2017.

2.11.2 IMPLEMENTATION OF THE OMBUDSMAN'S RECOMMENDATIONS

I**n Recommendation No. 66 (2016),** we required the MDDSZ to withdraw the proposed amendment to the Labour Market Regulation Act (ZUTD) so that missing the deadline for registering in the unemployment register would not lead to ineligibility for this right (except in cases when the deadline has been suspended). In its Response Report to the Ombudsman's 2016 Annual Report, the Government of the Republic of Slovenia wrote that it has withdrawn this proposal from the legislative procedure. The recommendation has been implemented.

With Recommendation No. 67 (2016), we recommended that the MDDSZ amends Article 63 of the ZUTD so that an individual does not lose the right to unemployment benefit because they fail to file a lawsuit on its illegality within 30 days of being served a notice on the termination of their employment agreement, if they discover a violation or illegality regarding the termination of employment at a later time. The 2016 Response Report states that the Ombudsman's recommendation does not justify the deviation from the general regulation under the eighth indent of the second paragraph of Article 63 of the ZUTD, which serves as a basis for the right to unemployment benefit for workers for whom special protection from termination applies under the Employment Relationships Act (the ZDR-1), to be conditioned upon their active behaviour. The MDDSZ therefore rejected the Ombudsman's recommendation. The Ombudsman adds: on the basis of the cases processed, we have been drawing attention to this problem for years, i.e. when due to unfamiliarity with the law, people lose their unemployment benefit, and to the urgency of finding a regulatory solution. We also wrote about this on page 258 of our 2012 Annual Report, where we presented the case of a worker with disabilities whose employer had cancelled the employment contract without previously obtaining the opinion of the committee for establishing the basis for the cancellation of the employment relationship, which, due to the worker's disability, should have been done. The worker did not know that and came to the ZRSZ after the expiry of the 30-day deadline from being served the cancellation of the employment contract. He therefore missed the deadline for filing a complaint against such, presumably, unlawful cancellation, and the possibility of enforcing the unemployment benefit. We maintain our position. The worker is at a disadvantage due to loss of employment and being the obviously weaker party of the contractually established employment relationship.

He must therefore not bear the burden of ignorance of the law and consequently lose the right to unemployment benefit, which is an excessive and unfair measure. For the repeatedly stated reasons, we again make the same recommendation.

2.11.3 ACTIVE EMPLOYMENT POLICY

We find it a positive fact that the Government has allocated EUR 188.93 million for 2017 and 2018 to the implementation of active employment policy measures (AEP). In accordance with the Plan for the Implementation of Active Employment Policy Measures in 2017 and 2018, 54,515 people will be included in the programmes. The measures will mainly focus on the most vulnerable groups in the labour market, i.e. people who need assistance in joining the labour market despite a more favourable economic situation. This aims to reduce the number of long-term unemployed and to increase employability and the employment rate, with the emphasis being on the young, elderly, and poorly-educated. All this is commendable.

We make the following recommendation aimed at ensuring greater publicity and transparency and avoiding potential reproaches to the ZRSZ for favouring individual groups of the unemployed (and employers) while not offering any measures to others for years: information on how individual AEP measures are dispersed and allocated to various groups of the unemployed should be published, as well as information on the number of measures into which individual unemployed people have been included the most frequently, the number of unemployed individuals who were not included in any of the measures, and other information, all in consideration of the period of unemployment and inclusion in the ZRSZ register.

For years, we have been receiving letters about the problematic circumstances surrounding inclusion in AEP measures. We therefore believe that the criteria for being included in an individual measure should be clearly defined and its success rate monitored, a fact which cannot be currently established. We explicitly pointed out this problem in our 2015 Annual Report and Recommendation No. 76, which required the MDDSZ to examine the selection of seminars and workshops available within AEP measures, and to monitor the connection between the obtained knowledge and increased employability and employment rate. We wrote that only public and clearly presented information would strengthen trust in the work of the MDDSZ and the ZRSZ. We therefore ask both bodies to continue observing the practice of implementing this recommendation and upgrading it.

The fact that AEP measures are not as they should be has also been established by the Supreme Court of the Republic of Slovenia in case VS0005102 of 4 October 2017, when it suspended the audit procedure until the decision by the Constitutional Court of the Republic of Slovenia on the request for the review of constitutionality of Article 47 of the ZUTD.

Example:

Repayment of the unemployment benefit
The Ombudsman was contacted by a petitioner who informed us that she had filed a request to be recognised the right to unemployment benefit with the Employment Service of the Republic of Slovenia (the ZRSZ). The ZRSZ issued a decision recognising this right; however, it was not in accordance with her expectations. She therefore filed a complaint against the decision by the ZRSZ with the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ), which issued a decision annulling the decision by the ZRSZ and rejecting the petitioner's complaint. The ZRSZ then sent the petitioner a Claim for the repayment of overpaid unemployment benefits, with which it demanded the repayment of the unemployment benefit.

The Ombudsman addressed this specific case at a meeting with the ZRSZ management. The ZRSZ management said they were not familiar with the case but would study it and inform us of their standpoint in writing.

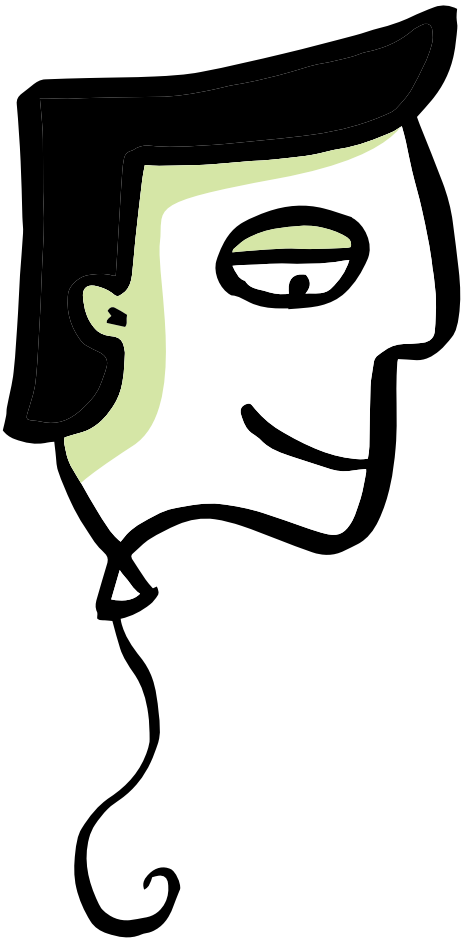
Reviewing the MDDSZ's decision and its reasoning, the Ombudsman established that the only reason cited for the annulment of the ZRSZ's decision on being granted the right to unemployment benefit was that the ZRSZ had violated substantive law on the basis of Article 247 of the General Administrative Procedures Act (ZUP), and referred to its jurisdictions on the basis of Article 247 of the ZUP, without providing any concrete information on the violation. For this reason, the petitioner spoke by phone to an MDDSZ employee, who explained that the ZRSZ's decision had been annulled because it lacked one day of the employment period, which is considered the mandatory condition for obtaining the right to unemployment benefit, and that the *"employee counted the employment period using mental calculation"*. The MDDSZ did not include this information in the reasoning, and the reasoning also does not contain a single tangible fact which would allow the petitioner to understand or explain a potential action or claim. **This makes the legal instruction in the MDDSZ's decision useless, as the effectiveness of an eventual legal remedy against such a decision is very questionable, if not void.**

As the MDDSZ decision does not provide clear legal grounds on which the MDDSZ adopted its decision, the Ombudsman believes that in this case the MDDSZ decided on the basis of the fourth paragraph of Article 214 of the ZUP (this is also not explained in the reasoning of the decision). This Article stipulates that in simple matters in which only one party participates, and in simple matters in which two or more parties participate, but no party objects to the claim set, and in which the claim is granted, the reasoning of the decision may include only a short explanation of the claim by the party and a citing to legal regulations on the basis of which the matter was resolved. In such matters a decision may also be issued on a prescribed form or on a computer print-out. In consideration of the petitioner's statement that even after the MDDSZ's decision had been issued the ZRSZ's information system still showed her employment period to be 6 months and 3 days, i.e. the period which enabled the issuing of the ZRSZ's decision, and the fact that the reasoning of the MDDSZ's decision does not contain all the required elements, and in accordance with Article 214 of the ZUP, the Ombudsman believes that the procedure, which ended to the detriment of the petitioner, was not managed correctly or legally. Based on this, the Ombudsman made the recommendation that the Public Sector Inspectorate should implement control over the performance of the ZUP in the decision-making of the ZRSZ and the MDDSZ. The Inspectorate established that the reasoning behind the MDDSZ's decision was incomplete, that the problem was already being processed, and that it had instructed the minister to adopt appropriate measures to improve the situation on the basis of the established irregularities.

The Inspectorate believes that with regard to the proposed implementation of supervision of the work of the ZRSZ, the question of whether the body should have issued the claim for the repayment of overpaid funds in the form of an administrative act should be considered. It also said that in the part referring to the actions

of the ZRSZ, the case would be included in the IJS's annual work plan for next year and thus receive priority treatment.

The Ombudsman believes that it is in contradiction with the principle of equality for the petitioner to carry the full burden of the repayment of the funds (with regard to the petitioner's financial situation, this is extremely unethical) exclusively for reasons of a mistake made by the body deciding about her rights. In this case, the fact that the public officer will not be held accountable for the mistake cannot be ignored. The Ombudsman will continue monitoring the issue of decision-making by the ZRSZ and the MDDSZ. The petition was considered well-founded. 4.2-13/2017



2.12
PENSION AND DISABILITY INSURANCE

	Cases processed			Resolved and well-founded		
Area of work	2016	2017	Index 17/16	No. of resolved cases	No. of well-founded cases	Proportion of well-founded cases among those resolved (in %)
11. Pension and disability insurance	**99**	**120**	**121.2**	**114**	**13**	**11.4**
11.1 Pension insurance	60	78	130.0	74	5	**6.8**
11.2 Disability insurance	39	42	107.7	40	8	**20.0**

2.12.1 GENERAL OBSERVATIONS

In 2017, the Ombudsman processed 30% more petitions than in the previous year. Their content did not significantly differ from that of the previous years – after the entry into force of the Pension and Disability Insurance Act (ZPIZ- 2). The petitions mainly expressed dissatisfaction with the amendments concerning retirement, as the conditions for retirement have become more restrictive compared to the previously valid Act. The petitioners mainly emphasised that legislative amendments have encroached upon their acquired rights. Opinions on this matter still vary, even though this issue has been discussed by the Constitutional Court of the Republic of Slovenia, which found that the Act has not encroached upon the acquired rights in this case. It is, however, indisputable that legislative amendments encroached upon people's expectations, which were based on the then-valid regulations. More on this can be read below.

2.12.2 IMPLEMENTATION OF THE OMBUDSMAN'S RECOMMENDATIONS

In our 2016 Annual Report, we recommended that the Pension and Disability Insurance Institute of Slovenia carry out a comprehensive analysis and assessment of the work of experts participating in procedures for evaluating the work capacity of insured people, and take suitable measures against those violating the rules **(Recommendation No. 53 (2016)).** We have not been informed whether the recommendation has been implemented; however, we did receive a petition concerning the work of experts, which is presented in more detail in the part of the report on disability insurance.

In the 2016 Report, we also pointed out that our **Recommendation No. 69 (2015)** Annual Report has not been implemented. At the time, we recommended that the Ministry of Health, in agreement with the Ministry of Labour, Family, Social Affairs and Equal Opportunities, should immediately determine the types and levels of physical impairments which serve as the basis for enforcing rights to disability insurance. This recommendation, which has also been adopted by the National Assembly of the Republic of Slovenia, has still

not been implemented, and we expected a decisive reaction by the Government of the Republic of Slovenia concerning the meeting of obligations which the Ministry is obviously avoiding.

2.12.3 PENSION INSURANCE

Individual provisions of the pension reform have affected a number of people from the older generation, especially those born between 1950 and 1960. In the first half of the year, the petitions mainly contained criticism due to a failure to consider the period of voluntary payment of contributions as the pension qualifying period without purchase. In the second half of the year, when information on the expected amendments to the ZPIZ-2 became public, under which voluntary inclusion in pension and disability insurance would again be counted towards the pension qualifying period without purchase, such petitions ceased.

We have again processed a number of petitions concerning the purchased periods of study and military service. In this respect, the Ombudsman followed the proposals put forward by a number of petitioners, and in 2015 requested a review of the constitutionality of individual provisions of the ZPIZ-2. The Constitutional Court decided on our request in September 2017 and found that the contested provisions were not inconsistent with the Constitution (Decision U-I-100/15). Numerous petitioners were greatly disappointed. They also inquired about the possibilities for all who have purchased these periods, and who have had these years entered into their employment booklet as years of service, to enforce these years in the meeting of conditions for earlier retirement.

The Ombudsman accepts the decision of the Constitutional Court of the Republic of Slovenia, but nevertheless believes that the issue of various pension qualifying periods, which individuals have obtained with voluntary payment of contributions, should be regulated comprehensively. We believe that the amendment, which was adopted in November 2017 and entered into force on 1 January 2018, only partially resolves this issue, as it does not relate to the purchased periods of study and military service. The people who paid the required contributions for these periods did so because of the then-valid regulation, which enabled a more favourable assessment of the pension. The majority of the purchases took place in 1992, when these were even co-financed by the state for redundant workers. Over the last twenty years, many have already enforced their right to a more favourable assessment of their pension on the basis of such purchases. The Ombudsman believes it is unfair that this privilege is available only to some and not to others. The state or the Pension and Disability Insurance Institute (the ZPIZ) have received substantial funds from the purchase of the pension qualifying period, and it is questionable whether there will ever be a return on this financial investment (through a higher pension). **The Ombudsman believes that resolving the problem of one group of people but not also resolving the issue of other periods which people have purchased in the good faith of benefiting from such a purchase, is not in line with the principle of equity.** The expectation of these benefits was justified as it was based on a legislative regulation, and the payers of these contributions cannot be accused of speculation. It would be in line with the principle of equity for the state to enable the return of the paid funds, as it was its decisions (legislative amendments) which caused the purpose of the payment to become moot.

We also had cases of individuals complaining to the Ombudsman about the allegedly wrong assessment of the amount of the pension. We inquired with the ZPIZ in this respect, as we do not have the required information to check these facts. The fast responsiveness of the ZPIZ must be emphasised, as we received appropriate answers to all our inquiries, often even before the set deadline. Numerous petitions also reflected the distress of individuals due to very low pensions even when meeting the 40-years of service condition. The ZPIZ-2 amendment increasing the minimum pension to EUR 500, which became applicable on 1 October 2017, was therefore appropriate and welcome. The Ombudsman nevertheless still believes that the situation of numerous retirees is still bad. Their pensions are not enough for a decent living and often do not provide sufficient means of subsistence. The Ombudsman will continue to strive for amendments aimed at improving the situation of retirees.

2.12.4 PENSION AND DISABILITY INSURANCE OF PRISONERS

It was recommended to the Ombudsman to file a request for a review of constitutionality of pension and disability insurance which does not enable prisoners who work while serving their prison sentence to be included in pension insurance. Consequently, they do not have the associated rights, even though they have worked in the same manner as employees in an employment relationship.

There have been numerous changes to the legislative regulation of this area, and the currently valid Act (the ZPIZ-2) explicitly excludes prisoners from insurance, as Article 23 stipulates the mandatory cancellation of insurance if the prisoner is unable to perform their activity or work for more than six months due to serving a prison sentence. The Act stipulates the obligation of disability insurance for prisoners working, and for cases of disability or death due to an accident at work.

We know that there are a number of judicial proceedings running with regard to this issue and a request for a review of constitutionality has been submitted to the Constitutional Court of the Republic of Slovenia. We have therefore decided not to also file such a request. **We believe that prisoners who work while serving their prison sentence in the same way and scope as employees in an employment relationship should have equal rights deriving from work.**

Example:

A specific problem was brought to the Ombudsman's attention by a petitioner who had the ZPIZ stop paying part of her pension which she had been awarded for her years of service in Slovenia, without providing any kind of explanation. The petitioner worked in Croatia for a number of years, and for a few years also in Slovenia. She retired in 1991, and throughout the years regularly received her pension: EUR 216 from Croatia and EUR 170 from Slovenia. The ZPIZ regional unit was unable to explain the change and she was advised to file a complaint. The petitioner also did not receive an explanation of her complaint but just a short answer that they would again start remitting the Slovenian part of the pension on 1 November 2017, and that they had sent a request for the review of her case to the Croatian Pension Insurance Institute. It turned out that after seventeen years the Croatian Pension Insurance Institute established that for a while (in the beginning of the year 2000 when the interstate agreement on social insurance was concluded between Slovenia and Croatia) overpayments of the pension were made, as for a few months the petitioner received the pension from the Croatian institute for the total years of service (i.e. in Croatia and Slovenia), plus the part of the Slovenian pension. In this regard, we alerted the ZPIZ that it should have provided the petitioner with an appropriate explanation before they stopped paying the Slovenian part of the pension. The ZPIZ subsequently explained the problem to the petitioner and sent her a written apology.

2.12.5 DISABILITY INSURANCE

In 2017, we processed only a slightly higher number of petitions in this area than in 2016. However, 20% of them were well-founded. In terms of content, the majority presented complaints against the activity and attitude of disability committees to the insured. The Ombudsman again draws attention to this problem and has also done so when meeting with ZPIZ representatives in December at the Ombudsman's head office. The ZPIZ representatives have assured us that they specifically alerted members of disability committees of this problem at annually organised training courses. Furthermore, they have recommended that the competent state authorities reorganise the committees; however, their recommendations have not yet received serious consideration and deliberation on what needs to be changed in this area.

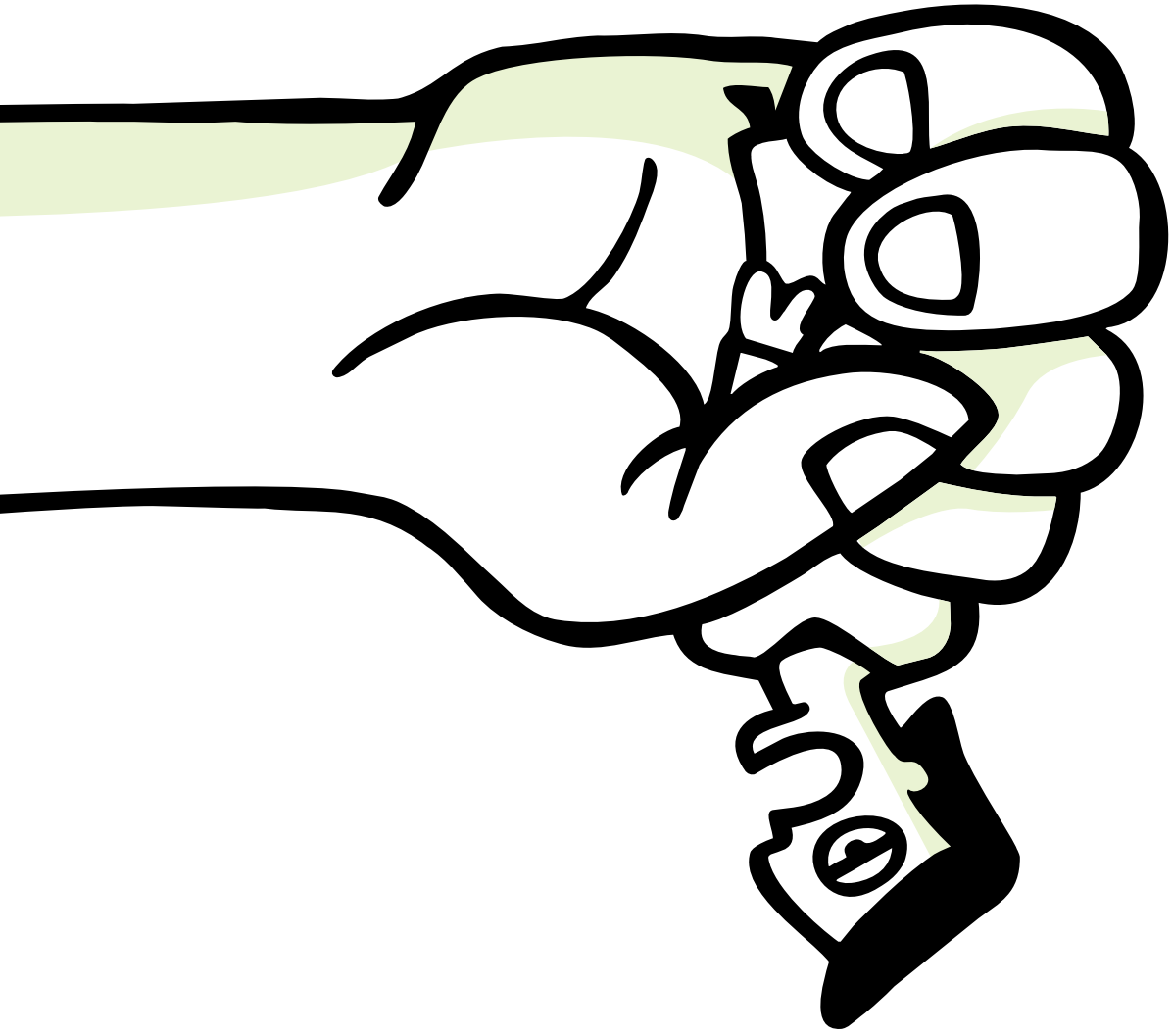
At the end of December 2017, we received a letter from the Pension and Disability Insurance Institute (ZPIZ) pointing out that a unified solution of claims in all areas which require the opinion of medical experts should be ensured. The procedures for enforcing the right to temporary absence from work, decision-making on the necessity to use a medical device, medical rehabilitation, disability assessment, the need for assistance and attendance for satisfying basic needs, vocational rehabilitation, adaptation of the workplace, employability, and other rights should be unified and standardised. The current procedures very much differ and are in line with local legislation. The inconsistency of procedures and criteria causes considerable differences in assessments and the unnecessary duplication of procedures.

The ZPIZ has also pointed out the decision of the ECHR and the Constitutional Court of the Republic of Slovenia that experts who are part of the ZPIZ administrative procedure are not independent. Due to such opinions being biased the court must appoint a court expert, which prolongs and increases the costs of procedures of enforcement of rights.

The ZPIZ has therefore put forward a petition to establish an independent and autonomous body for medical expertise, which would ensure the independence of experts in all procedures associated with rights from

social security, unify the procedures of enforcement of rights, and facilitate the transition between different procedures where a medical expert opinion is required.

The Ombudsman supports this petition and recommends that medical expertise in procedures of enforcement of rights from social insurance be regulated.



2.13 HEALTH CARE

	Cases processed			Resolved and well-founded		
Area of work	2016	2017	Index 17/16	No. of resolved cases	No. of well-founded cases	Proportion of well-founded cases among those resolved (in %)
12. Health care and health insurance	**144**	**133**	**92.4**	**124**	**15**	**12.1**
12.1 Health Insurance	43	44	102.3	42	5	**11.9**
12.2 Health care	101	89	88.1	82	10	**12.2**

2.13.1 GENERAL FINDINGS

The total number of petitions in the area of health care and health insurance decreased in 2017 (by 7.6% in comparison with 2016), with 12.1% of the petitions being justified. The reduction in the number of petitions in this area can be explained by an increased amount of telephone counselling, where professional employees direct the petitioners to appropriate procedures. Although telephone counselling is recorded, we do not classify these conversations as petitions, as mostly we try to present the petitioners with possible ways of solving their problems, but do not identify those who have infringed their rights. When directing the individuals to appropriate procedures for the exercising of their rights, we note the usefulness of the assistance offered by the representatives of patients' rights, since they can help the individuals more effectively than the Ombudsman. These representatives can also represent people in individual proceedings, which the Ombudsman cannot and must not do within the framework of her duties.

In the introduction, we must point out the poor responsiveness of the Ministry of Health to the petitions, proposals and complaints filed by individual citizens and to the Ombudsman's inquiries. We only seldom receive an answer within the set deadline, and often only after a second urgent letter. This is a direct violation of the Human Rights Ombudsman Act and of regulations from the area of administrative management, and is, moreover, a bad practice that indicates poor organisation of work, not to mention an inappropriate attitude towards clients.

We also note that the Ministry often responds only after the issue arises in the media, even though it has had enough time to prepare its viewpoint and answer. The problem with the special department for the treatment of children of the Ljubljana Psychiatric Clinic is an example of this. The Clinic used its own means to build and equip the premises, but was not able to start implementing the services because it was not provided with funds. The Ministry publicly promised the funds only after the publication of the issue on television.

We note that the general information that patients have with regard to possible procedures for exercising their rights is very poor. They are not aware of where and how to complain if they are dissatisfied with the health service provided for any reason. Therefore, they often send their complaints to various bodies (the Ministry, the Medical Chamber, the Ombudsman), and not to the body authorised by law to address the complaint. In such

cases, they often do not receive a timely notice that they did not send their complaint to the correct address, and consequently they miss the legal deadline for exercising their rights.

We again repeat our reproach to the Ministry of Health that it did not prepare a new health care and health insurance act in due time, as it could have had a significant impact on the accessibility of health services, thereby reducing waiting lists, which are seen by the public as the fundamental problem of the current regime (however, this is not reflected in the number of petitions received by the Ombudsman).

2.13.2 REALISATION OF THE OMBUDSMAN'S RECOMMENDATIONS

In Recommendation No. 54 (2016), we proposed that the Government of the RS should require all state authorities drafting individual regulations with the help of external experts to publicly publish how their working groups are structured, what their basic duties are, and what the time limits for drafting expert groundwork are. We note that this recommendation has not been implemented, in the health sector in particular. It would be right for the public to know which experts participate in individual legal projects, since these experts have a much greater chance of influencing the content of regulations, thereby increasing the likelihood of corrupt practices and the imposition of parochial interests. The Ombudsman will propose to the Commission for the Prevention of Corruption to pay more attention to this issue.

In Recommendation No. 55 (2016), we advocated that the Ministry of Health should cooperate with the Information Commissioner in order to study the option for the Patient Rights Act to determine the possibility of releasing doctors from their obligation to professional secrecy when a patient has already publicly disclosed sensitive information about their medical condition. The Act was amended in September 2017, but the Ombudsman's recommendation was not taken into account.

In Recommendation No. 56 (2016), the Ombudsman proposed that the Ministry of Health should, within health care reform, also study the regulation of the emergency paediatric psychiatry service, which should also provide suitable triage. We have no information on this recommendation being implemented.

In Recommendation No. 57 (2016), we proposed that the Ministry of Health should have drafted legislation concerning the performance of psychotherapy services in 2017. This recommendation was not implemented.

In Recommendation No. 58 (2016), we proposed that the Health Insurance Institute of Slovenia and the Ministry of Health study the possibility of a price breakdown of health care services (to labour costs and cost of materials), as this would enable a greater overview of the funds spent, and it would make it possible for petitioners to select a surcharge for above standard services. This recommendation was not implemented.

The Ombudsman's recommendation No. 59 (2016), stating that the rights of individuals that arise from compulsory health insurance and depend on their place of residence must be governed by law has not yet been implemented.

The Ombudsman's recommendation No. 60 (2016), stating that the payment of an inadequate amount of sick leave compensation based on false grounds and concerning which no court procedures are pending should be governed by law retroactively, thus ensuring equal treatment for all beneficiaries, was also not implemented.

The Ombudsman's recommendation No. 61 (2016), stating that the new Health Care and Health Insurance Act should lay down equal wage compensation or compensation for loss of income for blood donors and donors of haematopoietic stem cells was not implemented because the Act has not yet been adopted.

2.13.3 HEALTH SERVICES ACT

The announced changes in health legislation should enforce greater accessibility of patients to health services. Unfortunately the amendment to the Health Services Act, which entered into force on 17 December 2017, has not implemented some very much needed systemic changes.

The amendment maintains the definition of public service, which can only be carried out by public institutions and private individuals on the basis of a concession. Services performed within the framework of a public service

are paid by the Health Insurance Institute of Slovenia (ZZZS), which, however, does not have any possibility of selecting the providers who carry out their work on its account. If the ZZZS Act enabled an agreement with all healthcare providers with regard to terms, conditions and price under which they would provide their services on the account of ZZZS, this would definitely increase the accessibility of services, while also controlling the prices of the services provided, as the providers would compete with each other.

We encountered complaints about discrimination in several petitions, because ZZZS pays for treatment abroad on the basis of an invoice from any health service provider, while at home it only pays for public institutions and private health service providers with a concession. It was also emphasised in the complaints that a referral to a foreign health care provider enables people to jump the waiting list, the money is unnecessarily spent abroad, and all the taxes and contributions from the services are also paid there, which means an additional loss for public finances.

We believe that a large part of the issue of organisation and the extent of the public service could be resolved by determining a network of health care providers, which has been required by law since 1992, but has not yet been implemented. Determining a network of health service providers is also anticipated in the Resolution on the National Healthcare Plan 2016-2025 *"Together for a Healthy Society"*. **Until a network of health service providers is established, any decision to grant a concession will be arbitrary, as it will be based on more or less subjective assessments as to which services in which area can be provided by public institutions, the latter being granted a kind of monopoly by the law.**

Article 42 of the Health Services Act establishes the following:
"A concession shall be granted if the awarding authority determines that a public health institution cannot guarantee the provision of health care activities to the extent determined by the network of public health services, or if a public health institution cannot provide the necessary access to health services."

This in fact means that it is not possible to grant new concessions until the determination of the network of health service providers.

2.13.4 PATIENT RIGHTS ACT

Every year, the Ombudsman organises a meeting with representatives of patients' rights, who send their reports beforehand (an obligation under the second paragraph of Article 80 of the Patient Rights Act (ZpacP)).

The most frequent violations of rights established by the representatives are as follows:

- Violation of the right to adequate, high-quality and safe health care (Article 11 of ZpacP),

- Violation of the right to respect of patients' time (waiting times and waiting lists) (Article 14 of the ZPacP),

- Violation of the right to information and cooperation (explanatory duty) (Article 20 of ZPacP),

- Violation of the right to free choice of a physician and health-care service provider (Article 9 of ZpacP),

- Violation of the right to a second opinion (Article 40 of the ZPacP),

- Violation of the right to consider a previously expressed wish (Article 32 of ZPacP).

The representatives also pointed out the existence of problems because some healthcare providers do not send the anonymised minutes of complaints proceedings. This issue is more common with private physicians. They also warned us about the inadequate system of complaints against a medical certificate issued by a specialist in the area of occupational, traffic and sports medicine. The complaint can be submitted to a special medical committee, which charges the costs of the examination to the patient. The costs are borne by the patient and can amount up to 500 EUR or even more.

The number of petitions related to long waiting lists for health services has increased. The Ministry has regulated the waiting lists normatively by means of rules. However, the rules can not completely solve this problem, but can only help to increase transparency and the possibilities for individuals to find health services with the provider with the shortest waiting lists. The Ombudsman's view is that much more attention should

be paid to the organisation of work, as some healthcare providers achieve much better results in terms of the accessibility of their health services under the same operating conditions.

2.13.5 ACT REGULATING THE OBTAINMENT AND TRANSPLANTATION OF HUMAN BODY PARTS

We received a complaint about the conduct of the Institute of Anatomy at the Faculty of Medicine at the University of Ljubljana. In 2009, the petitioner decided to leave his body after death to the Faculty for pedagogical and scientific purposes. In 2017 he received a notification from them that spatial capabilities were very limited and therefore they could not guarantee that they would be able to act in the manner described in the donation statement. The initiator was appalled by the method of communication and also felt that his rights had been violated.

We examined the contents of the notification and established from the submitted documentation that his statement of donation is a unilateral statement indicating intention and does not establish a contractual relationship between the individual and the Faculty. In the light of the above, we did not establish any violations of human rights or breaches of the rules of procedure. We also assessed that the notification was correct, as the petitioner was only notified that it was not certain if his body could be accepted and used for pedagogical and scientific purposes after his death, which does not mean that this will or will not actually happen. This initiative was not well-founded and is only described as an example of how care should be taken in the adequacy of the content of patient notifications.

2.13.6 SENSITIVE GYNAECOLOGICAL EXAMINATIONS OF SEXUALLY ABUSED CHILDREN

A petitioner informed us of a tragic story of sexual abuse, in which she was examined by the gynaecologist on duty, who was male and in her opinion by no means qualified to deal with children who were victims of sexual abuse. The petitioner did not want an intervention in the concrete case, but suggested that each gynaecological clinic in Slovenia should appoint two gynaecologists as court experts, of which one should be male and one female, who could also respond to such calls, so the affected individual could be given a choice between them. They would also be trained to work with victims of sexual violence.

2.13.7 RESTRAINT WITH BELTS AS A PART OF HEALTHCARE

The Ombudsman received a complaint against the conduct of hospital staff. The petitioner lost consciousness in the treatment process due to weakness and high body temperature. When he woke up, he was strapped on the bed with belts and remained strapped all night despite his pleas to the nurse. The petitioner extensively described the hardship and terror that he had experienced that night. The unpleasant experience affected him very deeply, so he also reported the incident to the representative of patients' rights, the State Prosecutor's Office, the Medical Chamber of Slovenia and the Fides Medical Union.

This petition drew attention to a problem that the Ombudsman had already dealt with in the past. We first noticed years ago that health care providers often use special precautionary measures (often designated only as precautionary measures) outside departments of a psychiatric hospital under special supervision and secure departments of social care institutions. Within these departments, the use of special precautionary measures is permitted by the Mental Health Act, but they are used without a legal basis in all other health and social institutions. Any possibility of restricting freedom of movement must be determined by the law, as we have already pointed out in our Annual Report for 2010. We suggested that the implementation of special precautionary measures should be regulated in all health institutions, and not only in psychiatric hospitals. We also repeated this recommendation in our Annual Report for 2011.

Upon the proposed amendments to the ZPacP in February 2017, the Ombudsman again sent a proposal to the Ministry of Health (MZ) to also regulate the use of precautionary measures outside departments of psychiatric

hospitals under special supervision and secure departments of social care institutions. Our recommendation has been considered. The Act Amending the Patient Rights Act (ZPacP-A), which became applicable on 6 January 2018, brings a new Article 31a, which regulates in detail the application of special precautionary measures in all health institutions.

We find that our proposal has finally been adopted after seven years, which is noteworthy, but we can by no means overlook the seven years of ignorance of this proposal, which was also supported by healthcare providers and in fact did not have any opponents.

2.13.8 PALLIATIVE CARE

The Ombudsman recognised the problem of palliative care in Slovenia a long time ago (in the mandate of the former Ombudsman). At that time, we visited the Institute of Oncology (OI), as we wanted to find out how patient palliative care works there. At that time, palliative care was already well-established in the OI, but the problem of palliative care for non-cancer patients remained. For this reason, in 2017, the Ombudsman decided to arrange a discussion with the National Council of the Republic of Slovenia on palliative care and euthanasia. The discussion, entitled *"Reflections on Issues at the End of Life"*, was very well attended, and a collection of all contributions will be published by the National Council of the Republic of Slovenia to present the starting points for the regulation of this area. The discussion reaffirmed the very good cooperation of the Ombudsman and the National Council in addressing and bringing attention to some of the outstanding issues that arise in today's society. The purpose of the discussion was not to raise basic philosophical or legal questions about life and death, nor the ideological or religious views on this issue. We wanted to draw attention to some of the dilemmas that arise in everyday life when we are dealing with issues of care for the elderly, relatives and loved ones, and to find answers to some of the questions that are raised in our work but which require some greater knowledge, perhaps also empathy, and above all, understanding of all the circumstances of patients at the end of their lives.

2.13.9 HEALTHCARE-ASSOCIATED INFECTIONS

The Ombudsman has already addressed the issue of healthcare-associated infections in the past, especially from the perspective of residents in retirement homes, which are mostly inadequately prepared for the treatment of people with infections. We have been informed that the problem is also pressing in hospitals, which do not have common protocols. The underlying problem is supposedly the lack of knowledge of healthcare professionals and employees, who only gain a very limited amount of information on healthcare-associated infections during their training. Experts in this area point out that appropriate preventive activities would mean additional costs for hospitals, but their introduction would surely save much of the funds that are now used to treat the infections.

2.13.10 HEALTH INSURANCE

Cooperation with the Health Insurance Institute of Slovenia (ZZZS) is running smoothly. The Institute sends us all the required replies in a timely manner, and fully answers the dilemmas or questions brought forward.

A key law in the field of health insurance, which would significantly change the payment of mandatory contributions, and in particular determine the rights of insured people, was not adopted. According to the discussion so far, it is not expected to be adopted until the end of the mandate of the government, since general elections are scheduled for June 2018. The new law has been announced several times, and individual solutions have already been presented to the public, but then the starting points have apparently changed and the drafting of the law has been extended. The Ministry apparently did not set out clear and politically coordinated starting points for basic legal solutions, which was also demonstrated in the latest political coordination of the proposed solutions, which were not acceptable to the ruling majority in the National Assembly of the Republic of Slovenia.

The Ombudsman emphasises that the delay in such a significant law also causes an increasing distrust in the professional competence of all those involved in the preparation of legal solutions. For this reason, we

stress once again that all experts involved in the preparation of expert bases in any way should be known to the public, as this would make it possible to verify the criticisms about lobbying connections and conflict of interests that are constantly appearing in the public media.

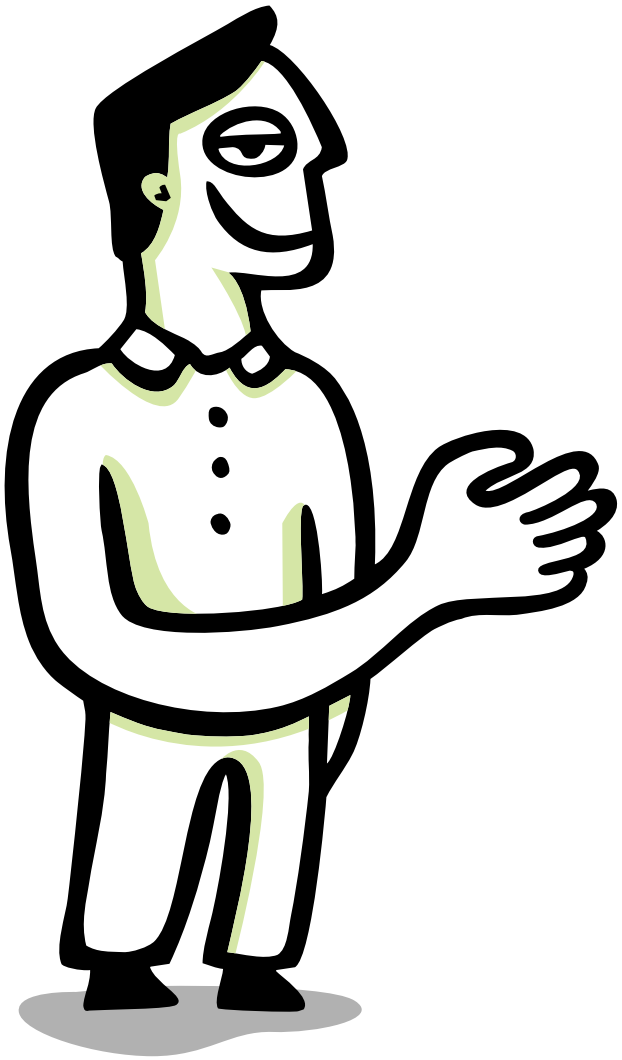
2.13.11 MENTAL HEALTH ACT

The amendments and annexations to the Mental Health Act have also been in preparation for too long, and it does not appear that they will reach the point of public debate any time soon. At a meeting with the coordinators of involuntary community treatment appointed by law, we discovered that their status is not clear because their employment contracts remained unchanged after taking over these tasks.

In addition to the regular work, the coordinators of the involuntary community treatment also carry out work in departments, in community treatment, and so on. Payment of their work is regulated very differently, although ZZZS provides the same funds to all hospitals. Some employers (psychiatric hospitals) pay overtime, while others enable them to be compensated for the hours worked by taking time off. In some areas where only one coordinator is appointed, it is not possible to provide the 24-hour access expected by the Ministry. The coordinators of involuntary community treatment also warned us about the disputed conduct of the judges who request sensitive information from them in trials (name and surname, residence) in front of their patients, which could jeopardise their safety.

The Ombudsman considers that for the needs of court proceedings, the information about the psychiatric hospital in which the coordinators are employed should be sufficient.

The coordinators of involuntary community treatment also pointed out that given the complexity of their work, they miss greater professional support and organised supervision.



2.14 SOCIAL MATTERS

	Cases processed			Resolved and well-founded		
Area of work	2016	2017	Index 17/16	No. of resolved cases	No. of well-founded cases	Proportion of well-founded cases among those resolved (in %)
3. Social security	**242**	**203**	**83.9**	**181**	**26**	**14.4**
3.1 Social benefits and assistance	89	59	66.3	53	6	**11.3**
3.2 Social services	21	16	76.2	14	1	**7.1**
3.3 Institutional care	42	37	88.1	33	8	**24.2**
3.4 Poverty - general	24	19	79.2	19	2	**10.5**
3.5 Violence - anywhere	8	7	87.5	7	0	**-**
3.6 Other	58	65	112.1	55	9	**16.4**

2.14.1 GENERAL

The number of petitions in the narrower area of social affairs (social security is accounted for separately) decreased by more than 16% in comparison to 2016. The greatest decline in the number of petitions occurred in social benefits and assistance (by more than 35%). We do not know the reason, but we expect that the majority of individuals who have been living on social welfare for a long time are fairly well acquainted with their rights, so they do not expect additional (especially financial) assistance from the Ombudsman, but only turn to her when they consider that certain of their rights have been violated. This is probably the reason why the share of well-founded petitions in relation to social benefits and assistance increased (from 12.9% to 14.4%).

We cautioned about the alarming high proportion of well-founded petitions in the field of institutional care already in the previous annual report, which at that time amounted to 17.9 percent. In 2017, it increased to 24.2 percent, which means that in practice, every fourth initiative to the Ombudsman is actually well-founded. This was also the reason why we decided to pay more attention to the protection of the elderly in 2018.

Representatives of non-governmental organisations dealing with issues of the elderly warned us that in this area they miss a similar state authority (an office) as the one established for young people. They are also seeking to establish an advocate for the rights of the elderly who could help them in exercising their rights.

At every meeting held away from the office, which is organised every month in a different municipality's headquarters, we also acquire information from the municipal leadership on how they take care of the social welfare of their residents within the framework of their tasks. **Municipalities are aware of their obligations but are also limited by their financial options, which are mostly dependent on the size of the municipality. Municipal monetary assistance is usually granted on the basis of the authorisation of a competent social work centre well acquainted with all the life circumstances of the applicant.** We hope that this will not change with the new organisation of social work centres, which is expected to be implemented in the second half of 2018.

Realisation of the Ombudsman's recommendations

In the report for 2015, we proposed two recommendations, which were not even partially implemented, so we would like to repeat them once again:

In Recommendation No. 74 (2015), we proposed that the Ministry of Labour, Family, Social Affairs and Equal Opportunities enhances staffing at social work centres. This recommendation was already adopted by the National Assembly of The Republic of Slovenia after the consideration of our 2014 report, but there are still no results. We can only hope it will be implemented within the announced reorganisation of social work centres in the second half of 2018.

In recommendation No. 75 (2015), we proposed that the same Ministry drafts a programme to eliminate backlogs, which it should then publish, and monitor its realisation on an ongoing basis. The recommendation was not realised, so we repeated it in the report for 2016 (recommendation no. 62), but the situation did not improve in this area, which we discuss hereinafter.

In the report for 2016, we also proposed the following in the area of social matters:

Recommendation No. 63 (2016): In cooperation with the Ministry of Justice, the Ministry of Labour, Family, Social Affairs and Equal Opportunities should study the option of allowing the enforcement of social rights to take place in accordance with a special regulation, as the General Administrative Procedure Act is not adapted to the specificities of this area. There has been no response to this recommendation.

All state authorities drafting regulatory instruments should consistently observe the Resolution on Legislative Regulation, and the reasons for any exceptions should be specifically substantiated in the documentation that forms an integral part of the proposal for the regulation. The recommendation and the said resolution are still too often violated. More on this is explained in the section on disability insurance.

The Ombudsman is the only one concerned about the delays in deciding on rights

In the previous Annual Report, we wrote about catastrophic delays in deciding on individual rights, which are the responsibility of the Ministry of Labour, Family and Social Affairs as the body of second instance. Despite last year's recommendations and specific warnings, the situation did not change at all during the year. Individuals must wait up to two years for a decision on some of their rights, even though the general legal deadline is no more than 60 days from the day of filing the complaint. Many complainants are not aware of the possibility of bringing an action for failure to act before the Labour and Social Court, so they wait patiently for the decision of the Ministry. The Ministry should provide information to the complainants on when they can expect a decision, so we suggest that a counter be re-established on the Ministry's website, which will allow everyone to determine which period the complaints that are currently being resolved by the Ministry come from. Such information would probably convince many to actually resolve the complaints in the order of arrival instead of taking some (illegal) shortcuts.

Consequences of the lengthy decision-making of the Ministry of Labour, Family and Social Affairs on complaints

The consequences of the lengthy decision-making of the Ministry of Labour, Family and Social Affairs on complaints can be demonstrated by the case of a petitioner who complained against the decision rejecting her application for recognition of the right to financial social assistance.

The decision on the complaint took place one year after it was filed. The Ministry of Labour, Family and Social Affairs upheld the complaint and granted the petitioner the right to financial social assistance, the right to payment of compulsory health insurance contributions, and the right to cover the difference in the full value of health services for a period of three months.

The Social Assistance Benefits Act (ZSVarPre) stipulates in paragraph 1 of Article 36 that financial social assistance may be initially granted for a maximum period of three months, while paragraph 2 of the same article stipulates that if the assistance is granted again, it may be granted for a maximum period of six months. The petitioner, who was not aware of this, did not file a new application for the recognition of rights while waiting for the decision of the Ministry of Labour, Family and Social Affairs. She was therefore denied the

possibility of having these rights recognised for the whole period until the decision on the complaint, and was thus also deprived of the means of subsistence during that period.

Delays in deciding on complaints are not acceptable. In order to avoid similar cases, it is necessary to provide a decision within the statutory deadlines, or to notify the parties not familiar with legal issues in due time about Article 36 of the ZSVarPre and of the possibility of re-exercising their rights. Such a notice could be a part of the decision in the first instance or of the letter by which the decision was sent.

Example:

The Ministry of Labour, Family and Social Affairs took four years to provide a wrong answer
The Ombudsman was contacted by a petitioner who asked the said Ministry in 2013 for a calculation of the amounts of financial social assistance received, but the Ministry did not respond to her application. The petitioner claimed that she repeatedly urged an answer, but to no avail.

After our intervention, the Ministry responded to the petitioner, while explaining to the Ombudsman that due to a large number of questions they receive in writing and by telephone, it is difficult to reply to them all. They also noted that the petitioner did not urge them as she claimed, because they would have responded more quickly in that case.

The Ombudsman considered that four years, which is how long the petitioner waited for an answer, is an unacceptable delay, regardless of whether the petitioner urged them or not, and that this breaches the principle of sound administration. In addition, the Ministry does not record all its telephone calls, so it cannot determine whether someone has urged it or not.

We should also point out that the Ministry sent the petitioner an incorrect calculation and she notified them about this, but did not receive the corrected calculation until after the Ombudsman intervened again. 3.0-52/2016

2.14.2 SOCIAL BENEFITS AND ASSISTANCE

Still no changes with regard to funeral allowance beneficiaries

In the Annual Report for 2014, we criticised the Social Assistance Benefits Act (ZSVarPre) in the part that defines the beneficiaries of the right to emergency financial social assistance for covering the costs of a funeral (funeral allowance). ZSVarPre substantially narrowed the circle of funeral allowance beneficiaries; now even some relatives that (expectedly) arrange the funeral in practice and pay for its costs (e.g. brothers, sisters, aunts, uncles, nephews, grandchildren, etc.) are no longer entitled to this right, let alone a person not related to the deceased who has arranged the funeral. The Ombudsman therefore considers that the current legislation is unfair and impractical. We also pointed out that reimbursement of the funeral costs only to the relatives of the deceased would imply an unacceptable discrimination against all those who arrange for a funeral but are not related to the deceased. Absence of family ties should not constitute grounds for exclusion when it comes to exercising the assistance offered by the state on the death of an individual. At that time, the Ministry of Labour, Family and Social Affairs agreed that the circle of beneficiaries of the funeral allowance was too narrow, and that it should also extend to nephews, brothers, sisters and grandchildren (but not to people who had no family ties to the deceased person), and promised that the issue would be taken into account in the analysis and financial impact assessment in the preparation of changes to social legislation which were planned by the end of 2016.

The social legislation was subsequently amended in the years 2015 and 2016, but the said problem was not resolved. The Ministry promised in 2017 that the proposal to extend the circle of funeral allowance beneficiaries would include amendments to the Act planned by the end of 2017 (with entry into force at the beginning of 2018).

2.14.3 SOCIAL SERVICES

Example:

Who can be a home care assistant?
A petition pointed out the unequal position of people pursuing an activity as sole proprietors and employees under the contract of employment in obtaining the status of home care assistant. The petitioner has a child with special needs and is a sole proprietor. The right to the status of home care assistant was recognised as part-time in her case. Subsequently the decision was annulled, due to an established non-compliance with the provision of Article 18b of the Social Assistance Act, according to which only a person who leaves the labour market entirely (ceases to pursue their activity) may become a home care assistant. The Act lays down an exemption, i.e. that employed people can also obtain this status if they conclude a part-time employment contract. This exemption does not apply to sole proprietors.

We examined the reasons for this unequal treatment of employees and sole proprietors in establishing the status of home care assistant at the Ministry of Labour, Family and Social Affairs. We repeatedly asked them for an explanation, and we either did not get any response to our calls or the answers were inappropriate. After several attempts, we could make the explanation that sole proprietors and members of one-person companies cannot conclude employment relationships with themselves. It was also stated as a reason for the different treatment of employees under the employment contract and people pursuing an activity as a sole proprietor that the exemption for employees was introduced because in 2004 the Parental Protection and Family Benefits Act (ZSVDP) enabled part-time work. Finally, the Ministry provided us with the explanation that the exception (from the rule of complete withdrawal from the labour market) was determined for employees so that an individual who is a home care assistant could remain in contact with the labour market with his employer, in case the invalidity committee establish that this is not contrary to the needs of the disabled person with regard to their need for assistance. If the need of the disabled person for a home care assistant ceases, the assistant who retained part-time employment would be able to return to the labour market more easily.

We note that employees also cannot conclude contracts of employment with themselves, so this is not only the case for people pursuing an activity as a sole proprietor. In 2004, the ZSVDP enabled a reduction in working time for both employees and people pursuing an activity in Slovenia as a sole proprietor or as an entity that independently carries out an activity as their main or sole profession, since Article 48 of the ZSVDP applied to all insured people under Article 6 of the ZSVDP. We also believe that the consequences of the withdrawal from the labour market (or services market) are fully comparable for those who carry out their work on the basis of an employment contract and for those who carry out their work as a sole proprietor. In both cases, it is about keeping in touch with the profession and its development, with employers and customers, because it is more difficult to reinstate the connection once it has been completely severed. The answers from the Ministry of Labour, Family and Social Affairs explain the alleged reasons for the statutory regulation for the employees under an employment contract, but despite repeated requests, we did not get any explanation as to why a comparable arrangement is not or cannot also be established for people pursuing an activity as a sole proprietor. In our opinion, both employees and people pursuing an activity as a sole proprietor are in a comparable situation when it comes to the care of people with special needs.

Since we were not provided with a justifiable reason as to why these two categories of people should be treated differently in recognising the home care assistant status, we consider that the people pursuing an activity as a sole proprietor are unjustifiably in an unequal position in comparison to employees under an employment contract, which is contrary to Article 14 of the Constitution of the Republic of Slovenia, which also requires equality before the law for people with disabilities accessing their rights pursuant to Article 52 of the Constitution of the Republic of Slovenia, since people with disabilities are thus unjustifiably impeded in choosing their home care assistant.

Pursuant to Article 7 of the Human Rights Ombudsman Act, we proposed that the Ministry amend the practices and regulations correspondingly in order to enable people pursuing an activity as a sole proprietor to obtain the status of a home care assistant under comparable conditions as employees under an employment contract.

The Ministry of Labour, Family and Social Affairs referred our proposal to the Ministry of Health, which informed us that our proposal was examined and will be taken into consideration as much as possible in the preparation of regulations on long-term care that apply to the fulfilment of conditions for a personal assistant (which should be the new term for home care assistant in the new regulations). 3.6- 5/2017

2.14.4 INSTITUTIONAL CARE

In 2017 we also received some complaints about allegedly inadequate care in retirement homes (an immobile resident not put into a sitting position often enough, not provided with fresh air, not assisted in feeding, the employees take too long to respond to call buzzers, and so on). The petitioners often believed that the retirement home was understaffed with regard to the direct assistance required by the residents and the complexity of nursing care. We have already pointed out the problem of staffing norms in retirement homes, but we have not yet made progress in adjusting staff norms to the current situation in retirement homes and the increasing needs of today's residents.

Since we plan to carry out an in-depth review of the issue of the elderly in 2018, we will try to find out how their rights in institutional care are exercised through the processing of responses to a specific questionnaire and through personal visits to at least ten retirement homes. We intend to pay special attention to capacity issues (according to the current data, about 7,000 older people are waiting for a vacancy), nutrition, healthcare (especially management of healthcare-associated infections) and issues of custody.

The amount of *"pocket money"* of beneficiaries of institutional care

A social care institution has filed a petition on behalf of its residents at the Ministry of Labour, Family and Social Affairs to arrange pocket money of the same amount for all residents. The social security threshold or the amount that must remain available to the beneficiary after payment of institutional care is set at 10% of the established income of the beneficiary, but no less than 30% of the basic amount of the minimum income. The beneficiaries of institutional care who are recipients of financial social assistance are entitled to the right to cover the difference up to the full value of health services under the law governing health insurance; other beneficiaries, including those with the lowest social security, must pay supplementary health insurance alone from their *"pocket money."* The residents of the institution believe this treatment is unequal, so they filed a petition to set the *"pocket money"* for all residents at the same amount regardless of their status.

The Ministry responded only after being asked by the Ombudsman. They notified us that they are examining the possibility of regulating this issue by changing the relevant legislation. The Ombudsman proposes and expects that a fairer regulation of this issue will be established as soon as possible.

Admission of people with healthcare-associated infections to retirement homes

With the given occupancy rate of retirement homes, admission of people infected with multidrug-resistant bacteria (healthcare-associated infections) that come directly from hospitals presents an additional problem.

We asked hospitals whether they are facing problems in relocating their patients to retirement homes and how these problems are being handled. We received answers from 14 out of 17 hospitals. Their answers differ, indicating that the situation on the ground is different, as well as the performance of hospitals in dealing with this issue.

The time needed for the patient to be transferred to institutional care after hospital treatment varies from a few days to half a year or more. Patients usually wait in non-acute treatment departments, and in some cases they occupy beds intended for acute treatment. The problem with such admissions to institutional care is the need for single-room accommodation, since such rooms have the greatest occupancy and are also the most expensive. When placing infected patients in multi-bedded rooms, all the residents in the room must have the same type of infection, which presents an additional obstacle. One of the hospitals pointed out that, in addition to patients with MRSA and ESBL, the first cases of patients with carbapenem-resistant bacteria (CRE) began to appear some years ago. The Association of Social Institutions of Slovenia pointed out that in addition to the occupancy of retirement homes, they are also facing a lack of staff providing adequate healthcare to people with healthcare-associated infections.

Seven hospitals pointed out that they also have a problem with the admission of patients under the age of 65 to retirement homes, since many also need complex medical care in addition to having a healthcare-associated infection. In the light of the above, the Ombudsman believes that the state should pay special attention to this group in future.

The issue of equal access to social services also opens another dilemma of admission to institutional care, i.e. data on the presence of healthcare-associated infections are only required in (direct) admission from hospitals, while in admission from a home environment, these infections are checked only exceptionally and only in some homes.

Financing of healthcare in social care institutions

The Association of Social Institutions of Slovenia pointed out the unbearable conditions in the area of health care prices in social care institutions. Among elderly residents, 75.62% are classified as care level III. Service providers spend almost all payments for performed health services to cover the costs of health care personnel. The payment received for the performed medical services is no longer sufficient to fulfil the legal obligations to these workers. The daily price charged for healthcare in a social care institution has been decreasing for many years, and the losses of these institutions are therefore increasing.

The Ministry of Health replied that the problem of healthcare finance is even greater than indicated by the Association of Social Institutions of Slovenia. The whole financing system needs to be thoroughly revised, so they have started to prepare amendments to the relevant legislation. Long-term sustainable health finance should be provided by the new Health Care and Health Insurance Act. In the General Agreement for 2017, The Government of the Republic of Slovenia adopted a decision to set up an inter-ministerial working group to prepare a new accounting model for healthcare in social care institutions. The group is expected to start operating in autumn.

Delays in the annual verification of the right to be exempted from the payment of institutional care

Once a year social work centres carry out a compulsory verification of the amount of right to exemption from payment of institutional care on the basis of Article 30a of the Exercise of Rights from Public Funds Act (ZUPJS). One of the social care institutions informed us that the residents spend their money and thus cannot settle any possible balance upon recalculation, resulting in unnecessary debts and problems with their payments. In this regard, the Ministry of Labour, Family and Social Affairs informed us that the proposed amendments to the ZUPJS, which are already in the legislative procedure, will introduce automatic informative calculations of the rights from public funds and relieve social work centres of administrative procedures, thus also having a positive effect on the timely verification and issue of those decisions.

Example:

Payment of one-off municipal financial social assistance prior to the final decision
The Ombudsman was contacted by a petitioner under threat of having her electricity disconnected. The municipality had approved a one-off municipal social assistance. The decision did not become final because the petitioner appealed against it, therefore the payment of the approved assistance was not possible.

The Ombudsman sent an opinion to the municipality that it would be more appropriate if the appeal against the decision did not delay its execution. If the complaint had been upheld, the difference could have been paid off. The decision on the recognition of the right to one-time monetary social assistance does not interfere with the rights or legal advantages of others; therefore, in our opinion, there is no valid reason for the decision to be enforced only after it was final. This could discourage beneficiaries from lodging complaints, since this would result in a late payment of funds that the socially disadvantaged undoubtedly need.

The municipality reviewed the Ombudsman's opinion and announced that they would propose to the municipal council an appropriate amendment to the rules on the allocation of municipal monetary assistance. The municipality also reported that after they received her complaint, the petitioner was urged to contact them as soon as possible in order to find the fastest possible solution. The petitioner's case was solved in such a way that her electricity was not disconnected. The Ombudsman believes the response of the municipality to be an example of good practice. 3.0-39/2017

Exercise of the rights of people with disabilities

The Ombudsman was not yet a national institution for the protection of human rights, since only the Act Amending the Human Rights Ombudsman Act in 2017 enabled us to fulfil all the requirements set up for such organisations under the United Nations' *"Paris Principles"*. The Amending Act will enable the Ombudsman to set up a Human Rights Council, involving civil society organisations, including representatives of disabled people, human rights experts and representatives of the executive branch of power. The Council is designated by law as the Ombudsman's consultative body, acting on the principles of professional autonomy.

In 2017, we received a request from the UN Committee on the Rights of People with Disabilities for a report on our views on the implementation of the protection of people with disabilities in our country. On the basis of the received petitions, we prepared a report, some of whose essential content is summarised below. It is also published on our website. The issues of people with disabilities in the form of discrimination on the basis of personal circumstances are described in the section on constitutional rights, and some open questions are also addressed in other parts of this report (for example, under disability insurance).

Summary of the issues raised at meetings with people with disabilities

The Ombudsman occasionally meets with representatives of individual societies which people with disabilities are members of, and in these meetings, they mainly present the systemic problems that prevent them from exercising all the rights guaranteed by the legislation.

People with impaired mobility

The Ombudsman has occasionally addressed the issue of the accessibility of buildings in the public sector and the problems of people with impaired mobility in overcoming obstacles in public areas. The Construction Act stipulates the provision of unobstructed movement of people with impaired mobility. Within the consideration of such petitions, we supported the efforts of people with impaired mobility and their associations to amend the existing regulations with provisions on universal construction and adjustments to facilities and all public areas (roads, pavements, parks, access to buildings) for the needs of people with impaired mobility. We note that the situation is improving, and that we did not receive any such petitions in the past year.

Blind and visually impaired

In this area, we discussed the petitions of individuals to ensure the right to comprehensive treatment of blind and visually impaired, including the treatment and rehabilitation of blindness and visual impairment in accordance with the current World Health Organisation classification. The implementation of comprehensive rehabilitation was also supported in 2012 by the Health Council at the Ministry of Health.

The Ombudsman finds that the period of seven years, which is the length of time that the legal basis for exercising the right to complete rehabilitation of blind and visually impaired people has been established, is too long, regardless of the complexity of the procedures that had to be carried out so that this right could actually be implemented.

Deaf and hearing impaired

The representatives of the organisation of deaf and hearing impaired presented their issues with obstacles to communication to the Ombudsman, especially their difficulty in understanding hearing interlocutors, since the majority of people who can hear rarely speak sign language as the natural language of the deaf. Due to the desire for less dependence of the hearing impaired on the hearing environment, the Ombudsman has installed an induction loop in her premises. This electromagnetic communication system allows users of hearing aids to understand spoken words in noisy premises, because it blocks echo, noise, crackling and other disturbances that may occur. The hearing impaired who turn to her with their problems will thus be provided with better quality communication in the Ombudsman's conference room, as the Ombudsman is fully aware of the gravity of this invisible disability hindering the deaf and hearing impaired from equal participation. The Ombudsman also called on the state authorities, local authorities and public authorities to do everything necessary for more dignified and the best possible independent and sovereign communication with the deaf and hearing impaired. The state should monitor the application of legislation in the area of building construction more

closely. For new constructions and adaptations, all adjustments for the needs of people with disabilities should be considered (including the installation of an induction loop). The Ombudsman will also enable such communication to the hearing impaired by portable induction loops at meetings held away from the head office conducted each month. In accordance with invalidity legislation, the deaf can still only have a maximum recognised invalidity rate of 70%, which they find unjust, so they should also be considered in this area and these regulations should be adjusted.

Deaf-blind

Deaf-blind people face numerous problems in everyday life. These people are classified as having one of the more severe forms of disability, since they are characterised by such impairment of two senses (hearing and sight) that their everyday life is severely obstructed and limited. This disability is not given enough attention in Slovenia. Some of their rights are recognised only by the Equalisation of Opportunities for Persons with Disabilities Act, which stipulates that deaf-blind people must have access to state authorities in such a way that materials are accessible to them in a form that is comprehensible to them, in Braille, in sound format, in an appropriate electronic format and in enlarged black print. They must have the right to technical aids to overcome their communication barriers in order to live a more independent life. Deaf-blind people seek to abandon the *"medical"* definition of deaf-blindness and to adopt the Nordic definition of deaf-blindness. In this way, deaf-blindness would be recognised as a specific form of disability. Following the example of other European countries, the functional measure of deaf-blindness should be taken into account by determining the functional state of a deaf-blind person. The existing rules should be supplemented by taking the functional criteria into account. It is necessary to complete a list of physical impairments, and this disability should be defined as an autonomous specific disability.

In addition, the status of deaf-blind people who are unable to obtain an appropriate length of service due to their shortfalls and disability must be solved in order for them to be able to exercise their rights to disability insurance.

People with intellectual disabilities

The content of their petitions applied to their efforts in relation to the problem of employment or relevant work activity. They suggest that, in addition to being included in care and work centres, they should also be able to join the normal work environment in accordance with their abilities and desires. People with intellectual disabilities who have exercised their rights under the Act on Social Care of Persons with Mental and Physical Impairments (ZDVDTP) can now register as jobseekers at the Employment Service of Slovenia, despite the established *"incapacity to be qualified for independent living and work"*, if aged from 15 to 65 years, but in this case, they can no longer claim the rights derived from their *"incapacity of independent living and work."* According to the Ombudsman, such an arrangement is neither appropriate nor practical. There should be the possibility to switch between the two statuses. In addition, people with recognised rights under ZDVDTP are not as a rule able to compete equally in the labour market. Since employment for them primarily represents social inclusion and not the acquisition of means of subsistence, they should also retain their rights under the ZDVDTP. The Ombudsman supports their petitions. More on this issue is discussed in the section on the Mental Health Act.

2.15 CHILDREN'S RIGHTS

	Cases processed			Resolved and well-founded		
Area of work	2016	2017	Index 17/16	No. of resolved cases	No. of well-founded cases	Proportion of well-founded cases among those resolved (in %)
11. Children's rights	**422**	**341**	**80.8**	**321**	**90**	**28.0**
11.1 Contacts with parents	42	30	71.4	28	3	**10.7**
11.2 Child support, child allowances, child's property management	27	32	118.5	27	9	**33.3**
11.3 Foster care, guardianship, institutional care	62	28	45.2	24	8	**33.3**
11.4 Children with special needs	37	25	67.6	24	9	**37.5**
11.5 Children of minorities and vulnerable groups	8	0	-	35	0	**-**
11.6 Domestic violence against children	24	11	45.8	10	1	**10.0**
11.7 Violence against children outside the family	10	6	60.0	6	0	**-**
11.8. Child Advocacy	95	103	108.4	71	44	**62.0**
11.9 Other	117	106	90.6	96	16	**16.7**

In 2017, the number of petitions in this area decreased by almost 20% in comparison to 2016. The biggest decrease was recorded in the area of domestic violence (more than 54%) and in the area of foster care, guardianship and institutional care (more than 55%). The number of petitions to appoint an advocate increased by 8.4%, and the number of petitions on child support and child allowances increased by 18.5%.

We are particularly surprised by the decrease in the number of reports of domestic violence, since it can be concluded from public information that violence is increasing every year. It could be that individuals who are victims of violence are well informed about what procedures to initiate and so they do not need the Ombudsman's assistance.

In our opinion, the reduction in the number of petitions received is also the result of telephone counselling for petitioners. In telephone conversations, which are also officially recorded and briefly summarised, expert associates direct the petitioners towards the procedures for the further exercise of rights, or point out the specific content that must be known to the Ombudsman in order to initiate the procedure as provided for by law. Often, the petitioners find that they have called the Ombudsman too soon as the procedures are still open, and frequently they only need advice on where and how they can exercise their rights, objections, complaints and other legal remedies. The Ombudsman does not provide legal assistance within the scope of her duties, but helps individuals with basic information about the competent authorities, procedures, enforcement dates and so on. We keep a record of telephone conversations in the area of social matters and children's rights. In 2017 we completed as many as 550.

2.15.1 REALISATION OF THE OMBUDSMAN'S RECOMMENDATIONS

In the annual report for 2016, we recommended **(Recommendation No. 68 (2016))** to the Government to draft an analysis of any possible results of the ratification of the third Optional Protocol to the Convention on the Rights of the Child without delay and, based on this, a proposal for an act on the ratification and any necessary statutory changes to enable the ratification of the Protocol. The Government of the Republic of Slovenia informed us that inter-ministerial coordination is taking place and that they are trying to obtain relevant data from some European countries. At the time of writing this report, we were informed that the Government of the Republic of Slovenia had submitted a proposal for an Act on the ratification to the legislative procedure.

We recommended that the Ministry of Education, Science and Sport ensure the ongoing production of tailored textbooks and workbooks specifically designed for blind and visually impaired schoolchildren **(Recommendation No. 69 (2016)).** The Ministry explained the process of preparation of textbooks and indicated that ongoing adaptation cannot be guaranteed due to their large number.

In Recommendation No. 70 (2016), we proposed that the Ministry of Education, Science and Sport study the option of preparing suitable diet lunches in school for children with severe allergies to a particular type of food or ingredient. The Ministry explained that Slovenia has a unique system for providing food to schoolchildren and students, and its possible expansion would require its complete renovation.

In Recommendation No. 71 (2016), we proposed that the Ministry of Education, Science and Sport ensure that a unified mandatory subject is prepared, as part of the educational programme, to enable children to use modern communication tools safely. The Ministry explained that digital literacy has been part of the curricula of elementary and secondary schools since 2009, and that they also provide adequate training for teachers to teach this content. At this year's city children's parliament, where representatives of elementary school pupils gathered and discussed the issues they face in school, the children pointed out that they lack computer knowledge and knowledge in the field of communication. We assume that these issues will also be discussed at the National Children's Parliament, which will be held in April 2018 at the premises of the National Assembly of the Republic of Slovenia.

2.15.2 THE ADVOCATE – A CHILD'S VOICE PROJECT IS COMPLETED

The project Advocate – A Child's Voice has been carried out under the auspices of the Ombudsman since 2007. In the 2015 Annual Report, we proposed (Recommendation No. 79) that the role and duties of the Advocate for the Rights of the Child be determined in greater detail by an amendment to the Human Rights Ombudsman Act. The Government of the Republic of Slovenia and the National Assembly of the Republic of Slovenia agreed with the proposal, and the Ministry of Justice, in cooperation with the Ombudsman, prepared the amendment to the law, which came into force in early October 2017.

The legal arrangement of advocacy is based on ten years of experience in the implementation of the project and on the findings of its evaluation carried out by the Social Protection Institute. The law summarises all the solutions that have been developed in the long-term practice of all the participants in the project. The law defines that the purpose of child advocacy is to offer expert help to children to express their opinion in all proceedings and cases they are part of, and to submit the child's opinion to the competent authorities and institutions which decide on the child's rights and benefits. The law specifies that an Advocate is not a child's legal representative.

This is summed up in the law because, in practice, every proposal for the appointment of an Advocate must be examined to establish the purpose of the advocacy, and often we find that the proposers do not fully understand the role and duties of the Advocate, so they confuse them with the role of psychologists, psychiatrists and other experts, and sometimes also with the role of representative in some legal proceedings. We therefore reject such proposals with due justification, which is mainly done in direct contact with the proposer. In order to expand the knowledge of advocacy, we plan to present the advocacy nationwide in 2018, especially to the expert public and the courts.

Since the start of the project, 141 volunteers have been trained in advocacy, and currently we have 61 Advocates on the list, since those who did not attend regular training courses and supervision for various reasons or requested to suspend their advocacy activities were deleted from the list.

Advocates have been appointed for more than 600 children. In 2017, we received 72 petitions for appointing an Advocate. The petitioners were mostly parents (in 29 cases), social work centres (28 cases) and courts (in 8 cases); but interestingly, in three cases the children petitioned for the appointment of an Advocate by themselves.

An Advocate was not appointed in all cases, since some petitioners expected a more specialised expert (psychologist, psychiatrist) who would be able to solve some behavioural or emotional problems of the child due to an incorrect idea about the Advocate's role, rather than someone who would strengthen the child's voice in the exercising of rights.

In 2017, we appointed an Advocate in 36 cases to 51 children. In most cases, the Advocate was appointed with the consent of both parents (28), in one case with the consent of a child over the age of 15, in four cases by a court order, and in three cases by a social work centre decision. The Advocates carried out 327 meetings with children within the framework of their tasks.

Seven supervisory groups were active in 2017. All the advocates from a certain area usually gathered within these groups once a month and addressed the issues that arose on the basis of an actual anonymous case. Twenty hours of supervision were carried out in each group. Regional intervisions were also conducted under the management of regional coordinators. It is agreed that the intervisions in the areas take place every second month. A special intervision for the coordinators took place on the Ombudsman's premises. Twelve meetings were conducted.

Eighteen new Advocate candidates attended advocate training in 2017. The training comprised of 55 hours, and nine Advocates successfully passed the Advocate exam.

Article 25c of the of the Human Rights Ombudsman Act is more important than the aforementioned organisational provisions. It stipulates that the child has the right to an Advocate, while it is the parents' duty to enable the child to be in contact with the Advocate. We expect the most problems will arise with the implementation of Article 25č of the Act, which stipulates that the body deciding on the rights and benefits of the child must specifically state in its decision how it has taken into account the child's statement and acted in the child's best interests. Such operation is already required by the Convention on the Rights of the Child, but it is important that the social work centre, court or other authority specifies how the child's opinion was obtained in the advocacy procedure.

Especially in court decisions, it is very rare to find a specific justification of how the court followed the child's greatest benefit, which, as a general principle, is laid down in the Convention on the Rights of the Child. We should not forget that the provisions of the ratified international treaties are directly applicable, and therefore any possible gap in the law cannot be a reason to disregard the opinion of the child that the latter has formulated in accordance with Article 12 of the Convention. For this reason it will be all the more important to ensure proper supervision over the fulfilment of the legal requirement that the authority should specifically justify how the child's opinion was taken into account. We believe that a very effective way to do this would be to legally define that a lack of such justification in a court decision would constitute an absolute violation of the procedure, which the appellate authority must prevent of its own motion.

The Ombudsman often receives petitions to appoint an advocate for children in cases where children are victims of crime and find themselves in great distress, when an act of a perpetrator has already been exposed and proceedings and hearings have been initiated before various bodies in various institutions. The children have either been left to their parents or to one parent, if the other one is the suspect, and do not get the right support from them, or the parents may even have turned against the child who is the victim, or the child does not have anyone in their social network at that moment that can protect them and take care of their psycho-physical condition.

Child victims of crime in a very vulnerable period are thus left to the care of the state and professional staff of the institutions involved in the protection of their rights and benefits. Social work centres are the first to pay special attention to these cases and do as much as they can for the victims. We note from the examples of such petitions for an Advocate that social work centre experts usually do what is in their power, but soon realise that these children need more than can be provided within their roles. It is a little easier if they succeed in providing the assistance of an appropriate expert outside the social work centre in the shortest possible time after the disclosure of a crime. Children who are victims of crime often do not need only one person but a whole team of experts, i.e. a paediatric psychiatrist, psychologist, social worker, etc. In Slovenia, such a team of experts and comprehensive assistance to the child are not guaranteed. This is especially problematic in smaller and more

remote places, where the social work centres cannot provide any experts for the child, either because none are available or because they are fully booked for several months in advance.

All experts from the social work centres are under pressure because of this. They often explain to us that they have addressed the petition for the appointment of an Advocate to us because the child needs help, but they cannot provide it in the appropriate level and scope, and other relevant external experts are not available locally.

Some social work centres clearly express their expectations and openly acknowledge their distress, while others do not yet understand the legally defined content of advocacy. The model of advocacy for children as designed in the ten years of Advocate – A Child's Voice is not intended for these children in terms of long-term follow-up and provision of psychotherapy. Children's advocates are not trained to provide psychotherapeutic help and work with traumatised children, so we always advise the social work centres to do everything possible to find such assistance for the child or to include the child in various short-term programmes, e.g. in the Rakitna Youth Health Resort. According to the current regulations, the remaining help that the child needs must to be provided by the social work centre, although we know that this is not always straightforward. In our opinion, the children who have no-one should be appointed a special guardian after revealing what has happened to them. Such a guardian could operate in close cooperation with the social work centre in order to ensure that the needs, rights and benefits of this child are properly addressed.

Although children who are victims of crime are at least formally entitled to receive legal assistance from the representatives of juvenile victims of crime, we note that this system is also not working very well. As we have pointed out on several occasions, the representatives become involved too late and often do not even have enough time, let alone the appropriate skills to work with minors. In our opinion, there are not enough people who enjoy the reputation and trust of other professional services dealing with children.

With regard to all the above, the Ombudsman supports the early implementation of the project of the Ministry of Justice, i.e. the House for Children, which should provide significant improvement in the provision of adequate assistance to children who are victims of crime. We have been monitoring the work of the competent authorities in Croatia for more than a decade in this area. They are far ahead of us and can serve as an example and model for learning. At the time of the final editing of this report, we learned that the Ministry of Justice agreed with the representatives of the European Union and the Council of Europe to assure co-financing of the House for Children project (Barnahus), which, according to the example of Iceland and the Scandinavian countries, would provide a fast and effective procedure to disclose all the circumstances of abuse, and treatment for all abused children.

Some examples that we have addressed in the context of child advocacy are described below.

The court did not appoint an Advocate to a child for obvious reasons

The Ombudsman often receives petitions to appoint an Advocate to a child when it looks like the child's wishes will not be taken into account in the court proceedings. Since the expressed desire of a child is not always really their own, nor is it to their greatest benefit, a lot of information is needed to determine whether the appointment of an Advocate makes sense. We present an example where the court did not appoint an Advocate due to the opinion of an expert and the imminent hearing.

The Ombudsman received a petition from a non-governmental organisation to appoint an Advocate to an 11-year-old girl who had not been in contact with her father for a long time. Her contacts with her father had taken place under the surveillance of a social work centre in the past, but were discontinued due to the child's expressed distress. The girl's mother was being assisted by a non-governmental organisation for victims of violence. They also offered assistance to the child and believed that the girl would need an Advocate who would keep her informed and relieve her of the burden and also strengthen her voice while a new procedure for the establishment of the girl's contacts with her father was taking place in court.

In the further processing of the petition, we communicated directly with the mother. She described in detail the father's violence towards her and her daughter when they were living together a couple of years before, and the father had also been convicted by a final judgement for this violence. She expressed that she and her daughter were still afraid of him, even though the daughter had not seen her father for more than a year. An expert was appointed during the court procedure, who was preparing his opinion for the ninth month at the time of the petition, since the father had not responded to his invitations. The court asked the expert to

summon the father and the girl one more time. The expert brought the girl face to face with her father, which put her in great distress.

We explained to the mother that we had received the petition quite late because the court procedure could soon be closed and we would not be able to forward the voice of the child to the court in due time, but the child could also be appointed an Advocate if there was no procedure, as long as both parents agreed. By agreement with the mother, we sent a letter to the father to obtain his consent for the appointment of an Advocate. The letter was returned because the mother no longer had the father's current address or other contact information.

We addressed our proposal to appoint an Advocate to the court. They answered us on the following day and explained that they only communicated with the father through his lawyer and that they would not appoint an Advocate at this point, since the next reading was scheduled in a little more than two weeks and the expert would present his updated opinion there. They sent us a copy of the expert's updated opinion.

From the expert's opinion, we found that the father did not have significant parental capacities nor a genuine relationship with his daughter. The expert also believed that the mother-daughter relationship in this case was an immature pathological symbiosis, in which the daughter no longer had her own opinion on her father but just adopted her mother's opinion. The expert recognised the responsibility of the mother for the situation, as she was unable to distinguish her relationship with her former partner from his parental function. The opinion also stated that the mother's responsibility had also been recognised by the experts from the social work centre during supervised contacts. The expert assessed the contacts between the father and the daughter as beneficial, but did not propose to re-establish them due to the girl's rejection and the way she felt about the father.

After the aforementioned hearing, the mother informed us that the settlement was concluded and non-personal contacts of the daughter with the father were stipulated: in the form of gifts, by telephone and (electronic) mail, whereby all the contacts of the mother, the father and the daughter were defined along with the hours of the day when the father could call, and the voluntary decision of the girl to make contact with her father. At the same time, it was also stipulated that the mother should inform the father orally or in writing about any news regarding the daughter at least every two weeks, irrespective of the contact between the father and the daughter.

Both the mother and the daughter expressed satisfaction with the settlement, so the appointment of an Advocate no longer made sense and we completed the processing of the petition.

We considered the petition as well-founded, since the girl's distress was genuine, as well as the desire to express her own opinion regarding the contacts to the court. It is also understandable that due to the expert's opinion and the imminent hearing, the court did not rule on the appointment of an Advocate. This example reopens the issue of determining what the true benefit for the child is, on which the opinion of experts often differs, and the issue of a (un)reasonable appointment of an Advocate in cases where the child no longer has an opinion.

Example:

The Advocate does not perform the tasks of a legal representative

The Ombudsman received a request from an educational institution for the urgent appointment of an Advocate to an adolescent girl who was placed in an educational institution by the decision of the social work centre. The adolescent had been a victim of violence by two employees in the educational institution, which she confessed to the educator, and some employees also witnessed the violence. After being informed about the event and having talked to the witnesses, the educational institution made a statement on violence to the police station, and both employees were given a summary dismissal. As a result of a complaint from the employees, the council of the institution as the second-instance body decided to re-examine all the evidence.

The educational institution considered that the adolescent, who had been the victim of violence by two employees in the educational institution and suffered psychological consequences, should have an Advocate at the meeting of the institution council. Because of her mental health problems, the girl would not be present at the council meeting, so the educational institution was of the opinion that an Advocate could protect her rights on her behalf.

We informed the petitioner that a child's Advocate is not their legal representative in the proceedings. We also wondered what kind of representation the child, as the victim of violence, would even need during the council

meeting. The Ombudsman believes that the institution's professional staff could protect the adolescent from possible attacks by the perpetrators of the violence and their representatives, especially since they stated that the violence was seen by several witnesses.

We note that appointing an Advocate is not necessary when a child or adolescent has enough support to clearly express their wishes and opinions. We believe that the will of a child should be taken into account, if the child's maturity level permits their free expression and if the child also understands the consequences. The expert associates can evaluate the ability of the child or adolescent to express their opinions and wishes, but they must, in particular, examine whether this wish is consistent with the child's interests. In this case, the institutions that decided on the future of the adolescent took into account her wishes as much as they could and found a solution that the adolescent was also satisfied with.

We did not appoint an Advocate to a boy in the process of determining his contacts with his father

We received a petition from a mother who claimed that her 12-year-old son needed an advocate because he was distressed with regard to the contacts with his father.

After talking to the mother and the competent social work centre, we found that the parents had been divorced since the boy was three, and that the contacts with the father had only gone well in the first few years; later the son began to refuse them more and more often. When he was ten years old, he no longer wanted to have contacts with his father; he experienced psychosomatic problems prior to the weekends that he was supposed to spend with his father, and so on. A good year prior to submitting the petition, he had told the mother that he had witnessed severe conflicts between the father and his new partner, including his father's violence against her, when spending time with them, so his mother filed a complaint against the father and the proceedings had started. The proceedings had not been completed at the time we addressed the petition for appointment of an Advocate.

The contacts of the boy with his father were initially interrupted, and later determined under supervision, twice a month, for a total of three hours. According to information from the social work centre, the supervised contacts have been taking place for several months and the boy was bored during those visits. The boy expressed ambivalent feelings towards his father. The latter was making an effort during the contacts but there was no genuine relationship between them.

In the process of identifying the father's violence, the boy was questioned twice, and the judge talked to him within the process of determining of contacts with the father. In the past year, the boy had already been questioned three times. He had also been treated by a clinical psychologist, but he did not want to go there any more because he did not feel comfortable with her. The social work centre had also offered him the assistance of a psychologist, but he was not motivated for that either. The social work centre told us that the mother was not helping the son in initiating contacts with the father and that the son rejected everything related to his father, including his new partner and her child. The mother and the boy wished to stop the contacts with the father and hoped that an Advocate would help them to achieve this. The social work centre tried to motivate the father to get involved in family therapy and to improve the relationship with his son, but the father refused any help, saying that he did not need it and did not have the time for it. The prosecution in the process of determining violence offered the father inclusion in the programme for perpetrators of violence, but he refused that as well.

We did not appoint an Advocate to the boy. Although the process of determining the contacts with the father was taking place, we decided not to to appoint an Advocate because the boy had clearly expressed his wish to abort contacts with his father and also stated it to the judge and to the social work centre. The boy had psycho-social support from his mother, although this support was not appropriate, but he did not accept any other offered help, so we did not know what the purpose of advocacy would be. We explained to the mother and to the social work centre that we believed the essence of the problem was the disordered relationship between the father and the son, which could not be resolved by appointing an Advocate. The Advocate could not be the one to motivate the boy to maintain the contacts with his father. As both the father and the child had refused professional help in the regulation of their relationship, the Advocate would not be able to compensate for this, so we did not appoint one in this case. We advised the mother to motivate her son to engage in professional counselling to overcome the distress resulting from the disordered relationship with his father.

2.15.3 FAMILY RELATIONSHIPS

In March 2017, the Family Code, which will solve numerous issues that we have been highlighting during the past few years, was finally adopted. Unfortunately, most of its provisions will only apply two years after its entry into force (i.e. from April 2019), but we hope that during this period, all the preparations will be made in courts and social work centres. We note that social work centres in particular are still trying to resolve certain issues as a part of their procedures without involving the courts (for example, arranging contacts between parents and children in foster care). We are aware that judicial proceedings are generally longer and more expensive for all participants, but the centres and the courts should seek to establish effective forms of cooperation, especially when the nature of the pending issue requires quick and effective action. At the same time, a centre must act swiftly and decisively in the framework of its public mandates when it detects (not only after it has established) that a child is at risk. The following example is provided for illustration.

Example:

A social work centre must prevent a child from being at risk if it is informed of this risk
The petitioner stated that due to his wife's violence (psychological and physical violence related to the fact that the petitioner's wife wanted to go to China with their child, against the petitioner's will), he tried to protect the child by escaping with them to the neighbours. After the mother had called the police and said that the child had been kidnapped, after the intervention of the police and the social work centre intervention service, and after the mother had reported that she was the victim of her husband's violence, she was enabled to move to a safe place in a crisis centre together with the child. The system established for the protection and assistance to victims of violence persistently prevented the petitioner from contacting the child, until the mother had carried out all the necessary activities so that, despite the clearly expressed opposing will of the petitioner, she and the child could leave the country. The mother informed the social work centre experts in advance that she did not intend to initiate any decision-making procedures on the protection of the rights and the interests of the child in Slovenia, and that, regardless of the applicable rules and the will of the father, and regardless of the child's best interests, she would take the child to China. Despite all these circumstances, the social work centre did not take any measures to protect the child's interests.

The social work centre took the viewpoint that in this case, it was not necessary to act by interfering with the rights of the parents, since both parents had received explanations of their rights and duties. They considered that the legal conditions for applying the powers that enable greater interference with the rights of the parents were not met. They indeed expected such an unlawful act on the mother's side, but not that it would occur so quickly. They did not perceive a high level of danger to the child, despite the awareness that the mother wanted to take the child to an area where the Convention on the Civil Aspects of International Child Abduction was not in force.

The social work centre also reasoned its position by stating that the father had agreed for the girl to be taken into the crisis centre. We were unable to confirm this in the process, because the petitioner denied giving such consent, and the official documents only showed the consent of the mother to move the child into the crisis centre. We pointed out to the social work centre that a possible consent should be an expression of the true will of an individual, which should be further taken into consideration in procedures in which an individual is designated as the perpetrator of violence (without actually establishing the facts), and where the discussions are taking place in the presence of the police and the social work centre as the holder of public powers, which can cause a lot of pressure on an individual.

In these circumstances, the social work centre generally does not check whether the violence has actually occurred. If a person declares themselves to be a victim of violence, this person is treated as such. In this case, both wife and husband stated themselves to be the victim of the other person's violence. The social work centre recognised the wife as the victim and the husband as the perpetrator without any evaluation of the evidence. The wife was offered the opportunity to move to the crisis centre with the child, while this option was not even mentioned to the husband. We therefore assessed that the petitioner was treated differently from his wife due to his gender, and without specifying the actual reasons why such different treatment is necessary. We believe that this is a typical example of various social stereotypes of men's violence, without an actual assessment of the role of the petitioner and his wife in the conflict in the current case. This affected the father's, and indirectly the child's, right to equal treatment, which is protected by Article 14 of the Constitution of the Republic of Slovenia in connection with the paternity and child custody rights of Article 53 of the Constitution of the Republic of Slovenia, since only full respect of all the father's rights in terms of determining the child's

best interest means that the child's maximum interest is actually protected. This also violates Article 8 of the European Convention on Human Rights.

The social work centre considered that it was unjustified and excessive to interfere with the parental rights and the best interest of the child if it was assumed that the girl would be at risk just because she was leaving for China. Here we want to point out that we did not detect a risk in the fact that the child was leaving for China. This should be considered by the court upon judging whether it is in the child's best interest to move to China with the mother or to stay in Slovenia with the father. However, prior to the commencement of legal proceedings, it was in the child's best interest to enable the competent authority to decide on this issue, and not let one of the parents make an arbitrary decision. When one of the parents impedes the other parent from deciding together, or when the competent authority is deciding on the child's care, this means that the child is at risk, as such arbitrariness is not in the child's best interest.

In the present case, the mother made the decision for the child to live in China. The mother did not have the consent of the father, and nor did she try to obtain the decision of the competent court. However, we believe that in fact (not legally because it was not formally adopted and there was no legal basis) the decision that it was in the child's best interest to follow the mother was made by the social work centre by allowing the mother to take the child away from the father, and later by doing nothing to prevent what was clearly a threat and which actually happened. The social work centre knew about the clearly expressed interest of the mother to leave Slovenia, but did not take into account the child's interest that either both parents or the court should decide on this issue. There was undoubtedly a conflict of interest between the child and the mother, who was the sole exerciser of parental responsibility. Such a conflict of interest should be detected by the social work centre, who should respond to it in accordance with its competences.

The social work centre considered that the damage that would be caused to the child if she were removed from the parents in order to prevent her from leaving the country would be irreparable, and greater than the damage caused to the child by the mother having taken her to China. The documentation does not show how such a weighing of two rights was justified, so we consider that such a position is only generalised and we cannot agree with it. It should be noted that, in our opinion, it does not appear from the documentation that all other possibilities for more lenient measures to protect the best interests of the child were necessarily exhausted, although the only measure available to the social work centre was the removal of the child. Therefore a substantive weighting of the benefits and risks would be expected. The mother's decision does not imply minor damage to the child. It was a decision that will have a significant impact on the child's future life. However, it remains unclear what irreparable consequences would be caused to the child only by being taken away from her parents. Of course, this is an extremely severe interference with the family, but can also be carried out for a very short time and professionally, so that it does not irreversibly and harmfully affect the child. If there are irreversible and harmful consequences arising from the removal of the child, this absolutely implies unprofessional behaviour in the work of those involved, since the entire child protection system is set up precisely in order to protect the child against irreparable consequences through the means of removal. We emphasise that it is also necessary to clearly distinguish between the harmfulness of long-term removals of children in an irregular situation, which we often point out, and between an potential short-term intervention carried out in such a way that it does not cause harmful consequences.

The social work centre did not carry out an assessment of the risk to which the child would be exposed in the event of the most severe measures being applied, nor an assessment of the risk to which the child was exposed due to her mother's announcements of unlawful conduct, nor did the centre carry out a weighing-up of them both, thereby not adequately securing the child's interests.

Article 119 of the Marriage and Family Relations Act enables and requires social work centres to act whenever a potential threat to a child is detected, whereby their actions must either result in the conclusion that there was no actual threat, or in the adoption of measures to deter the threat and eliminate the potential consequences of the threat that have already occurred. In the present case, the social work centre did not recognise the decisions or the unlawful conduct as a threat, thus abandoning their obligation to protect the interests of the child, which were threatened by one of the parents.

Not only was the social work centre aware of the mother's plan for child abduction, but they also contributed to the fact that the father's influence on deciding the fate of the child was severely curtailed by including the mother and the child in the system for protection of the victims of violence. The petitioner's wife made it clear to the social work centre that she had no intention of discussing the girl's future with the father because she had already made all the decisions. Within the network of protection of victims of violence, the father was actually prevented from contacting the child and taking care of her. Formally, the father's parental rights were

not affected in any way, but we believe that for every such case in which the social work centre, as the holder of public powers, enables the alleged victim of violence to be removed to safety and also removes the child, should be considered as actually limiting the rights of the other parent. The other parent does not have the possibility of contacting the child without access to the premises where the child is placed. In the present case, the father actually lost contact with the child against his will. The mother made the decision that her daughter would stay only with her, and the acts of the authority prevented the father from being included in this decision.

When it comes to reporting violence, the nature of things requires that all competent services are involved, including by enabling the alleged victim to be removed to a safe environment. In doing so, it is irrelevant whether the violence actually occurred, because they aim to protect the individual that reported the violence. The police, the prosecution and the court are primarily responsible for determining whether the violence actually occurred. If the (albeit alleged) victim of violence decides to be removed to safety, this does not prejudice the rights of anyone, and is entirely the victim's decision. However, this is not the case when a child is also removed. Such removal may in fact interfere with the rights of the other parent. For this reason, the social work centre should have been particularly careful in this case. They should have taken into account the position of the father, whose child was removed to the crisis centre, and the characteristics of the situation in which the mother wanted to take the child to a country that is not a party to the Convention on the Civil Aspects of International Child Abduction, which means that the implementation of the mother's announcements of unlawful conduct would have even more severe, prolonged and probably at least partially irreversible consequences for the child. In the event of the child's departure to China, the father (outside of China) does not have any legal remedy to effectively protect his and his child's rights. The social work centre should have protected the child from this prior to the decision of the competent authority, i.e. the court.

We sent our opinion to the Ministry of Labour, Family, Social Affairs and Equal Opportunities and to the Inspection for Social Affairs of the Labour Inspectorate of the Republic of Slovenia. We believe that certain standpoints of the social work centre, which we have identified as problematic, are not exclusively the stance of this particular social work centre, but could also arise in the work of others. 11.0-1/2017

2.15.4 CHILDREN IN SCHOOL

The children's parliaments organised each year by the Slovenian Association of Friends of Youth are an excellent form of the implementation of Articles 12 and 13 of the Convention on the Rights of the Child. In 2018 they are addressing education and the school system as perceived and seen by children. Pupils from primary schools in Ljubljana (whose children's parliament we attended) pointed out in particular problematic relations between themselves and also the disrespectful attitude of teachers towards children, which creates the basis for violence; this is addressed very differently in various primary schools. The management of certain schools does not even recognise the existence of violence or gives it very little importance, while other, more successful schools, openly discuss all violent events with all the participants, including the children's parents.

We also think it is important to emphasise the children's comments that they do not see the point of numerical grading of art, music and sports education, as this only serves to assess the specific abilities of individuals and not their knowledge. They therefore stressed that this grading should not affect the overall success of the pupils. We expect the Ministry of Education, Science and Sport to seriously consider the comments of the children and provide its opinion on this.

Example:

Pupils waiting in the cold in front of the school
The Ombudsman processed the petition of a primary school pupil's mother who complained about the school being locked during an extremely cold January. If the pupils not attending the morning care came to school between 7.30 and 8.10, they had to wait in the cold until the school was unlocked. She thought that locking the school was not appropriate and was not even permissible, as these were young children from the lower grades of primary school who should have had the possibility of keeping warm if they arrived at school a few minutes too early. The parents had already discussed this with the headteacher, who remained insistent on keeping the school locked until the start of classes.

We asked the headteacher for an explanation. In his reply, he stated that the parents were asked at the parent-teacher meetings not to send the children to school too early, especially in very cold conditions. He argued that the school could not provide the personnel to ensure additional care for children who came to school too early. According to him, none of the parents had any comments on his explanation. The Inspectorate of the Republic of Slovenia for Education and Sport, who verified the conduct of the school, did not find any irregularities, according to the headteacher. He considered that children coming to school more than half an hour before the start of classes should attend morning care, and then there would be no problems.

With regard to the petition, we did not succeed in having the school open early so that the pupils would be let in when they arrived. The headteacher did not provide satisfactory explanations why the school was locked in the morning until the start of classes. We assumed that there were reasons for this and that such school rules were adopted by the relevant school authorities – the parents' council and the school council – and in any case this should be determined by the school plan. We advised the petitioner to include her child in morning care if she could not send him to school at a suitable time to avoid waiting outside.

We accepted the explanation of the headteacher because we had no reason to dispute his arguments. However, we sent him our opinion for consideration, suggesting that the school could be unlocked at least half an hour before the start of classes in extreme cold (in exceptional circumstances!). We informed him that his occasional presence or the presence of another professional worker in the lobby in conversation with pupils coming to school early would surely prevent any inappropriate behaviour by individual pupils. Upon completion of processing, this petition was assessed as well-founded. 11.0-5/2017

Provision of vegetarian meals in schools

The Ombudsman once again addressed the issue of appropriate vegetarian meals in schools. The petitioner stated that her daughter receives school meals from which the meat is simply removed – for example, pasta without meat sauce. She thought that such conduct was inappropriate and that the school should also provide whole meals for vegetarians. She had tried to resolve the issue at school, but the competent workers told her that they prepared meals according to the rules, and that vegetarians were provided with school meals within the capabilities of the school. The petitioner claimed that this was a violation of the child's right to a healthy and proper diet.

In previous years, the Ombudsman has repeatedly dealt with requests by parents to have kindergartens or schools organise the possibility of vegetarian meals, in connection with the duty of kindergartens and schools to take into account the wishes of parents with regard to the specific type of food. The parents told us that this is their child's right, while the representatives of kindergartens and schools asked us about the limits of respecting the wishes of parents when they come from their beliefs and values, and how much additional financial burden should kindergartens or schools take on. We addressed those issues in the Annual Reports of the Ombudsman for 2007 and 2010. We also mentioned it in the Ombudsman's Special Report (No. 13), which we issued in 2009 and sent to all educational institutions.

We are aware that more and more children in schools have health problems related to certain foods and dietary food is prepared for them. We also know that due to the unchanged staffing standards, the preparation of these meals causes a lot of problems. For these reasons, kindergartens and schools are limited by the personnel, material and financial conditions of work stipulated by the regulations in keeping with the wishes of parents for preparation of special meals.

In considering this issue and before taking a stand on it, we carefully weighed the scope of those children's rights that could impose the obligation to respect the wishes of parents (and children) for a certain type of diet in kindergartens or schools. **The Ombudsman, as the institution for the protection of human rights and fundamental freedoms, does not have a specific position on diets containing only certain kinds of meat, vegetarian diets or various forms of vegetarianism or veganism. We consider that such meals are not a human right that can be judicially enforced, but a free choice that must be respected by everyone by not forcing others into something they reject. However, it is not the obligation of public institutions to provide special meals to individuals with regard to their wishes, beliefs, and other personal circumstances. Their obligation is limited to respecting the individual's decisions and their right to choose and to be different. This would be considered a violation of the child's rights only if the employees in a kindergarten or school insisted and forced a child to eat food of a meat origin.** Nevertheless, when visiting educational institutions,

we recommend that the management take into account the wishes of the parents in the preparation of menus whenever possible. Thus, in the spirit of good cooperation with parents and respect for the right to choose an individual diet, the school should adjust meals for vegetarian pupils accordingly.

We explained to the petitioner that the opinions of experts with regard to a vegetarian (possibly even vegan) diet are changing very slowly. Some time ago, the Ministry of Health prepared some examples of menus that provide wholesome meals for children who do not eat meat. Since the National Institute of Public Health is more specifically devoted to this issue, we asked them to provide their position on the adequacy of vegetarian and vegan diets for children in kindergartens and schools, and to present their activities aiming towards changes in this area. They explained that the Ministry of Health and the National Institute of Education carried out some practical activities in terms of allowing the possibility of meatless meals in educational institutions. Two documents were prepared that make possible the preparation of whole vegetarian meals: Practical Healthy Eating for Pupils and Practical Healthy Menus in Educational Institutions. Both materials are available as booklets and on the website of the Ministry of Health and of the National Institute of Education. Despite all this, the documents are still based on the Dietary Guidelines in Educational Institutions from 2005. The Ministry plans to prepare training for the employees of school kitchens in which the participants would learn to prepare vegetarian meals.

We advised the petitioner to address a written petition to the school headteacher and to the parents' council. In this way the headteacher can explain why it might not be possible to fully meet the wishes of pupils and parents. The parents' council may, however, encourage the headteacher to carry out a survey on nutrition among pupils and parents. They may also recommend the headteacher to introduce some changes into the school menus according to their wishes. The Ombudsman cannot demand that the school complies with such wishes.

According to the explanations of the Ministry of Health, vegetarian meals need to be carefully planned and it does not suffice to only remove meat from them. The vegetarian meals should have the same quality with regard to energy and vitamin intake as non-vegetarian meals. This certainly requires appropriate additional knowledge, a slightly different organisation of work in the school kitchen, some additional staff (depending on the financier), and some good faith. Some schools might really be lacking the latter.

The meaning of children's drawing – different people have different views on what is beautiful

A primary school asked us for an opinion about a painting that the pupils of the school art club had painted on one of the school walls. They painted a spring theme, which included a green man surrounded by butterflies. After the painting was created, a random visitor to the school published a detailed explanation of his disapproval of the painting in the media, as, in his opinion, the painting evoked an association of an *"addict smoking marijuana"*. The issue was also discussed at the school parents' council, where it was decided that such a painting does not belong in a school.

The school headteacher considered that the picture was not controversial. In addition, the painting is the copyrighted work of the pupils who painted it. Removing the painting would send a clear message to the pupils and to the employees that any kind of work not appreciated by someone would be removed, thus suppressing the freedom of creation of the pupils, as well as the motivated and creative work of the teachers.

We explained that the painting is undisputedly the copyrighted work of the children, although the details are also important, since copyrights can also depend on the internal acts of the school regulating the creation of copyrighted works by pupils under the mentorship of the school staff. We believe that every painting or anything else can be seen differently by different people, but, nevertheless, only the clear message should be taken into account when considering whether certain content is acceptable for a school space. We agree with the position of the school that it is dangerous to persecute a copyrighted work because of the subjective views of individuals on the meaning of this copyrighted work. It is not in our competence to assess journalistic or other media pieces or works of art, but the published article that prompted the decision of the parents' council only states that the painting is disputable because of the association of the writer of this article. This association is based on two facts: that the green man, which the painting is supposed to represent, according to the provided explanation, cannot be the Green Man (Zeleni Jurij), because he does not resemble the descriptions on the Wikipedia, mostly because there are no green leaves to be seen, and because the man on the painting is smoking. The author of the article pointed out that the man is (most likely) smoking a water pipe, even though a search for a water pipe on Wikipedia displays results that are completely different from the one that is depicted in this painting. The same web source also explains that a water pipe is mostly used for smoking

tobacco, so if a water pipe was actually painted, it would not necessarily imply the smoking of marijuana, which is insinuated in the article. We believe that the published article on the web trying to prove that a certain painting represents *"an addict smoking marijuana"* will probably inspire others to see the painting in the same way, since this article will surely create similar associations for other people as well. However, the work of art should not be removed only because someone is successful in spreading such a view.

In our opinion, the position of the parents' council does not oblige the school to remove the painting, since it does not encourage the proliferation of illicit drugs, nor is it contrary to the legal order or morality. In accordance with Article 66 of the Organisation and Financing of Education Act, the parents' council does not have such powers anyway. Complying with the decision of the parents' council would actually imply the introduction of a kind of control (censorship) over pupils' products, but without elaborating objective and professional criteria. Therefore, the Ombudsman opposes such attempts to impose one's feelings and perceptions, and in the described case, we did not find any irregularities or possible violations of the rights of the child.

2.15.5 CHILD SUPPORT, CHILD ALLOWANCES, CHILDREN'S PROPERTY MANAGEMENT

Example:

Duty to support a child who is still in school

In 2013, we already pointed out the problem of parents who are obliged to support their adult children as long as they stay in school. The legislation stipulates that parents are obliged to support their children up to the age of twenty-six, if the children are still in school full-time. Case law has already clearly stated that a certificate of enrolment in school is not sufficient proof of full-time schooling; the child actually needs to pass the mandatory school work on a regular basis.

At present, a parent can obtain a certificate of enrolment through the social work centre if their child or their child's other parent does not wish to present this certificate. However, this is not enough to make an unequivocal finding whether a child is in school full-time or not. Parents without custody of the child have no right to access information about actual grades or exams passed by their child, and thus cannot verify whether the child does their school work regularly or not, if the child does not wish to provide this information voluntarily; this is not uncommon in practice.

We informed the Ministry of Labour, Family, Social Affairs and Equal Opportunities about the issue, and they considered that the aforementioned regulation was appropriate. They also explained that it is possible to bring an action before the court with regard to the duty to support the child.

We believe such a reference is problematic, because the judicial route should be the last resort to resolve a dispute when all other options are exhausted. In our opinion, a possible solution would be to legally stipulate that the duty to support the child ceases if the child refuses to provide the parents with evidence that they are actually in school (at least a certificate of enrolment and a certificate of passed exams), or to give the parents the legal authority to obtain such information themselves at the school or faculty where the child is enrolled.

In 2016, the Ministry of Labour, Family, Social Affairs and Equal Opportunities prepared a proposal for a new Family Code, where it was predicted that parents should support the children who have a certificate of enrolment and not only children who are in school. In our opinion, this expands the duties of parents without justification and also does not protect the children in school, but only prevents eventual abuse in terms of obtaining enrolment certificates without actually being in school. The Ministry took our comments into account and changed the legal text back to the old version (the child must be in school in order for the parents to have the duty to support him), but the possibility of the parents acquiring information about the child's actual passing of school obligations is still not regulated. 11.2-11/2017

Example:

Problems in exercising the right to maintenance allowance
Several petitioners have highlighted issues with the payment of maintenance allowance or the duty to repay the maintenance allowance to the Public Guarantee, Maintenance and Disability Fund of the Republic of Slovenia (the Fund). Problems arose when an individual was receiving a maintenance allowance from the Fund, and the maintenance debtor started to pay a part of the maintenance for the same period. The Fund requested the recipient to repay the maintenance allowance in the amount received from the debtor, even when the paid part of the maintenance plus the maintenance allowance did not reach the amount of maintenance awarded.

When addressing these petitions, it was again revealed that the activities of the individuals in the proceedings are extremely important for the exercise of their rights. If the Fund is paying the maintenance allowance and the person receives a partial payment of maintenance from the debtor at the same time, then the person is not entitled to the amount of maintenance allowance equal to the amount of the maintenance paid by the debtor, regardless of whether the total amount of the maintenance allowance plus the paid maintenance reaches the amount of maintenance granted by the instrument permitting enforcement (judgement). However, if an individual files or amends the application for enforcement immediately after the recognition of the right to maintenance allowance in the enforcement proceedings in such a way that this individual only pursues the amount of the maintenance due that exceeds the amount of the maintenance allowance that was paid, then any potential paid amounts of maintenance would not interfere with the right to maintenance allowance, if the total amount of both does not exceed the amount of ordered maintenance.

The Fund notifies all recipients of maintenance allowance about this, but we thought that the notice was too technical and contains terminology that is very difficult or incomprehensible, which is the reason for the problems. We proposed that the Fund rewrites the notice in such a way that it is also understandable to a person with less personal literacy, because this is the only way for the maintenance allowance to achieve its purpose. Otherwise, it can become one of the rights that are less easily accessible for one person than another, since enforcement and exploitation requires a lot of legal expertise in some cases. The Fund followed our proposal and has committed to preparing an appropriate text for the form. We considered the petition as well-founded and the response of the Fund as a positive practice. 11.2-9/2017

Example:

In exercising children's rights from public funds, a Slovenian citizen should not have fewer rights because his father is a foreigner
We received a petition from a Slovenian citizen living in Slovenia with her child (who is also a Slovenian citizen residing in Slovenia), who applied for parental allowance and child allowance. The child's father is a Croatian citizen living and working in the Republic of Croatia. The applicant was denied both rights. The reasons for the rejection of rights were not evident from the decisions of the social work centre, so we asked for further clarification. They answered that under Regulation (EC) No. 883/2004 of the European Parliament and of the Council on the coordination of social security systems (Regulation), if one of the parents is employed in another Member State and the other parent is not employed in the country of residence, the primary responsibility lies with the other EU Member State. For this reason, the social work centre instructed the petitioner to exercise their rights in Croatia.

The social work centre did not act properly, as they rejected the petitioner's application, instead of referring it to Ljubljana Bežigrad Social Work Centre, which is the central unit, according to the regulations. The central unit would then refer the application to the competent Croatian authorities, and after the completion of the procedure in Croatia, they would levy the eventual difference in the amount of rights in Croatia and Slovenia.

We proposed that the Ministry of Labour, Family and Social Affairs withdraw the decisions of the social work centre under their supervisory right, since these decisions were adopted by a non-competent authority. We also pointed out that the rights of the petitioner should be protected from the date of her first submitted application in the Republic of Slovenia, regardless of the continuation of the proceedings. The Ministry followed our proposal and ensured that both disputed decisions would be withdrawn ex officio. 11.2-24/2016

Example:

Rare forms of employment lead to frequent difficulties in exercising rights
A petitioner brought our attention to the decision of a social work centre on the rights from public funds for a seafarer, in which his revenue was considered as current income (the method of notional determination of revenues under the Exercise of Rights to Public Funds Act, which is used when an individual is occasionally employed and occasionally unemployed). The petitioner is a seafarer who receives payment for his work only for the months when he is actually working. However, the employer still pays his contributions during the remaining months and the petitioner should therefore be considered as employed during the whole year – in this case, his actual income would be taken into account instead of his notional income, which was calculated in a higher amount.

In this case, we obtained the position of the Ministry of Labour, Family and Social Affairs, who agreed with us that the seafarer should be considered as an employee, as his employment contract was not discontinued. We informed the petitioner of the position of the Ministry and expressed the expectation that such a position would also prevail in the decision on the complaint lodged against the decision of the social work centre. Since the petitioner did not reply, we assume that the issue was successfully solved. 11.2-19/2017

2.15.6 FOSTER CARE, GUARDIANSHIP, INSTITUTIONAL CARE

Contacts between parents and children can be restricted exclusively by the court

For years we have been dealing with problems in the implementation of contacts between parents and children who have been removed from their parents by the social work centre. This was already pointed out in 2011. At that time, the Ministry of Labour, Family and Social Affairs sent instructions to all social work centres on determining and implementing contacts in cases of the removal of a child. The instructions pointed out the necessity of submitting a proposal to the court for the determination of contacts or the prohibition of contacts at the time when the child is removed. In fact, it happens in practice that social work centres decide on the contacts between the parents and the child, despite not having a legal basis for this. We still note this issue in the operation of social work centres. In the case that we addressed, we pointed out the issue to the social work centre, who then adopted a decision to immediately submit a proposal for the determination of contacts to the court.

We repeat our warning that any decision on the contact of parents and children taken by a social work centre that does not have the powers for this constitutes an infringement of the rights of children and parents, if a proposal for the determination of contacts is not submitted to the court at the same time, and if appropriate together with an application for interim measures. 11.3-10/2017

Example:

A social work centre must not establish contacts between the child and the parents, if the court has banned them
The guardian and foster carer of a minor who had been removed from their parents informed us that the social work centre was trying to establish telephone contacts between the child and the mother. She stated that such attempts were distressing the child and that the contacts between the child and the parents were prohibited by the court.

The centre explained that it was agreed at the team meeting to establish written contact between the child and the mother, whereby the mother would submit a letter for the child to the social work centre, who would then pass it on to the child. We believe that making an effort to establish contact between the girl and her mother was the the right thing to do. However, activities that explicitly interfere with a judicial determination of a situation present a problem. When the court prohibits contact between the child and the parents, the social work centre should not interfere with such a prohibition unless this is explicitly stated as their task. The centre can always propose to the court to adopt a decision that will protect the child from interference with their right not to be subjected to traumatic circumstances, while at the same time ensuring the best possible conditions for ensuring the exercise of the right to contact with parents.

We proposed that the social work centre abstain from establishing (any) contacts between the child and the parents in the case of court prohibition. However, if they find it is essential for the girl and the mother to bond in controlled circumstances over letters, perhaps occasional supervised meetings or in another way that would be professionally recognised as the most appropriate in order to ensure the girl's best interest, they should first obtain consent from the court stating that a complete prohibition of contact is no longer necessary. 11.3-55/2016

Example:

Their name is an important part of a child's identity
We received a petition from a mother who stated that the foster carers had arbitrarily changed the name of her four-year old child who was currently in their care.

We obtained clarifications from the competent social work centres, from which it was evident that they really (not legally) do call the child by a different name, although the name they are using is supposed to be only a nickname. The renaming was correctly recognised as inadmissible. The team that dealt with the issue agreed that the foster carers should change the use of the name at the latest by the entry of the child into primary school. The team considered that the child could not be renamed immediately in order to provide for his healthy psychophysical development.

We asked the social work centre for a more detailed justification as to why a transitional couple of years are necessary for the child to adapt to his birth name. We wanted to know if they had considered the fact that the planned beginning of the use of the new name would fall into the middle of the period that professionals consider as inappropriate for changing a child's personal name. This also follows from the explanation of the proposed amendment to the Personal Name Act (EPA 2004-1711-0017 of 20 October 2005), which states in Article 14 that *"the profession notes that a child identifies much more and much earlier with his name than with his family name, so a change of name is not problematic only in the earliest period of life, but it can affect the child negatively in later periods when the child is trying to fit into a new environment.*

For example, it is proposed that the limit for changing the name of an adopted child should be between the age of four and nine, when the child can give consent to the change. There are not many examples of adoption of older children, but irrespective of the number of cases, a limitation is necessary, because it is derived from the right of the child to a name and to a personal identity connected to it from a very early age."

This provision of the law refers to the renaming of an adopted child, so it is not directly binding in the present case, but in our opinion, this does not reduce the need to respect its content. Given that the child had just passed the age of four, we wondered whether it was not really the last possible time to eliminate the consequences of the interference with the child's rights.

The social work centre insisted that the soft transition to the child's real name was necessary due to the psychological effects of using a nickname. In doing so, they were supervising the implementation of the agreement, and undertook to continue closely monitoring the child getting used to his original name. Monitoring should take place in the form of family visits and conversations with the child and the kindergarten. The parents, who have regular contacts with the child, can also monitor the process.

We believe that the rights of the child were compromised, as the changing of the name interfered with his personal identity, contrary to the regulations and contrary to the child's best interest. The encroachment on the child's rights will not cease until the moment when the child's identity is clearly established with his birth name. The social work centre must ensure that there are no such encroachments on a child's rights and that the consequences of such encroachments are eliminated if they have already occurred.

The Ombudsman does not have the expertise to provide a basis for assessing whether it is really not possible to start using the child's real name immediately and whether the renaming should take place gradually, which is said to be the best for the child in the professional judgement. But we do expect that the social work centre will in fact actively monitor the child getting used to his real name and take appropriate action if this process is interrupted. We forwarded our opinion to the Inspection of Social Affairs, which is competent for assessing the expert nature of the actions and which may, within its powers, provide further recommendations for possible improvements in the handling of this or similar cases. We also obtained the opinion of the Social Chamber of Slovenia, on the basis of which an independent expert was included in the procedure at the social work

centre. This expert also made recommendations for the transition of the child to his real name. According to the latest information we received, progress has already been identified and the child is responding equally to both names. 11.3-56/2016

2.15.7 CHILDREN WITH SPECIAL NEEDS

In 2017, there were 40% fewer petitions in this area than in 2016. It seems that the area of the care and the exercise of the rights of children with special needs is relatively well regulated. We assume that the adoption of the Act Regulating the Integrated Early Treatment of Preschool Children with Special Needs in mid-2017 also contributed to a smaller number of petitions, especially in the pre-school education of children with special needs, although the Act will only start to apply on 1 September 2019. It will ensure that all children will be provided with organised early multidisciplinary treatment directed at each family individually. The Act will provide and upgrade health, social care and education services for the children and their families. They will be provided with integrated treatment, as it is crucial to discover their problems and special needs as soon as possible and to immediately provide appropriate multilateral expert assistance to the children and the parents. The petitions that we addressed were very different in content.

Exercising the right to partial payment for lost income and the right to childcare allowance

Some petitions described problems with exercising the right to partial payment for lost income and the right to childcare allowance. The petitioners disagreed with the right to partial payment for lost income being legally limited to a parent taking care of two or more children with moderate or severe intellectual disability or moderate or severe movement disability. Some disagreed with the opinion of the medical committee that their children were not so badly disabled that they would be entitled to childcare allowance. We informed the petitioners about their appeal options.

One school for everyone

The Ombudsman was contacted by a mother of twins with a mild form of cerebral palsy, who was concerned about their education. They were currently still in primary school with their peers, but they already had problems in school because of their special needs, especially in mathematics. She was increasingly concerned about what would happen if her children would not be able to master the curriculum to the same extent as the other children. She wished that the inclusion of children with special needs would really be a part of the school system.

We explained to the petitioner that the Ombudsman has been making an effort to implement the idea of one school for everyone for quite some time. We support the efforts of parents, associations and experts to extend the possibilities for the education of children and adolescents with special needs within the mainstream (standard, majority) school system. This would require a reduction in pupil-teacher ratio norms, some additional experts for simultaneous work with children with special needs in class, and more funds for modern technical devices that would mitigate the shortcomings and limitations of these children. We point this out to all the ministers of education at the time of their mandate. They are not opposed to our opinions and recommendations, but it seems that they still have a long way to go to find a solution. We will certainly continue our efforts to improve the situation of children with special needs and to exercise their right to education together with their peers.

Placement of pre-school children with special needs only in public kindergartens or kindergartens with a concession

We also addressed a petition criticising the current regulation, under which pre-school children with special needs with a placement decision can only be placed in public kindergartens or private kindergartens with a concession. The petitioners expected the Ombudsman to advocate a change under which these children could also be included in private kindergartens without concessions. We did not support their proposals because, in our opinion, a concession provides a form of guarantee to a public institution for the implementation of a publicly-recognised programme. We believe this is of particular importance in the educational programme

for children with special needs, who in this way have the right to state finance of all forms of additional professional assistance in accordance with their placement decisions.

Simultaneous exercise of childcare allowance and attendance allowance

We were again alerted to the problem concerning the simultaneous exercise of the right to childcare allowance and the right to attendance allowance. The problem arose in 2003, when social work centres demanded that the parents of children with special needs choose one of the two allowances, stating that it was not possible to receive both. In later court proceedings (in 2013 and 2014), it was decided that parents should have been able to exercise both rights at all times, since one is the right of the parents, while the other is the right of the child. Judicial decisions were actually implemented only after 2015, when the Ministry of Labour, Family and Social Affairs notified the social work centres about this. Parents had to re-submit applications for the exercise of the right they had had to give up. The problem is that their right has only been recognised from the next month onwards after the new application has been filed. Damage was caused to them as a result of this and they want the state to recover the damages to everyone in this position. In the contacts with the Ministry, this was promised to them, but nothing happened.

The high costs that municipalities pay for the transport of children with special needs to institutions

The mayor of a municipality turned to the Ombudsman with the issue of increasing costs of provision of free transport of children with special needs to the relevant institution. She pointed out that the costs for this purpose already exceed the costs that the municipality allocates for the transport of pupils to all other primary schools in the municipality. The costs also increase because of the assistants that these children need during transport, and due to the number of trips, as the children finish their daily attendance at the institution at very different hours, and parents demand that the municipality ensures transport as soon as possible after the end of classes. We talked about this issue and its financial aspect in a private discussion with the Minister of of Education, Science and Sport, and informed her about the growing problems of municipalities in providing transport.

Initiative for the review of the constitutionality of the Placement of Children with Special Needs Act

Representatives of several children with special needs who have also been granted a placement decision proposed that the Ombudsman ask the Constitutional Court of the Republic of Slovenia to review the constitutionality of this Act, because they consider that it improperly regulates the right of autistic children to a permanent assistant. The Act allows the Ministry of Education, Science and Sport to arbitrarily determine the amount of the assistant cost to be covered by the municipality, which is designated by law as the payer of these services.

At the time of writing this report, we have not yet decided on the proposal, since all the applicants had had the possibility to exercise their rights in the appeal and later in court proceedings, but they had not made use of this. It is most necessary to examine whether this Act actually permits the Ministry to decide on the amounts contributed by the municipality without any previously established criteria. Since there is a growing number of complaints, particularly from small municipalities, stating that the implementation of school legislation disproportionately burdens their financial resources, we believe that an analysis of the financing of primary education should be prepared, taking into account the burdens imposed on individual municipalities. The potential amendments to the financing of municipalities should be prepared on this basis.

Paragraph 4 of Article 10 of the Placement of Children with Special Needs Act states the following: *"Children with a long-term illness, visually impaired children, children with autism spectrum disorder and children with emotional and behavioural disorders may exceptionally be granted a temporary assistant on the basis of the criteria set by the minister."*

This provision does not meet the requirements of legal standardisation and allows too much arbitrariness in decision-making. There is no criterion in the Act on when the exception should apply, nor can it be understood why only a temporary assistant is granted to the affected children instead of a permanent one. In addition, the competent minister did not determine the criteria as required from him by the law, but only issued a consent to the criteria applied by the National Institute of Education (criteria for determining the type and degree of disadvantages, impairments and disabilities of children with special needs), which are published only on his

website. The criteria enabling the exercise of a right are a regulation that must be issued by the competent authority and published in the official gazette. These criteria do not meet these requirements.

Our attention was brought to this issue by the parents of children with autism spectrum disorder. Most of these children need an assistant in kindergarten and school, which is not provided under the present law. These children are only entitled to a temporary assistant on the basis of a placement decision issued by the National Institute of Education. The assistant's job is not systematised, which in practice means that the child is not always accompanied by the same person and is often unaccompanied. Since the children with autism spectrum disorder do not have a permanent assistant, some schools exclude them and the parents are forced to home school the child and leave their jobs. The pressure is too much to handle for all of them – the children, the parents and the teachers. At the time of writing of this report, a proposal for the Act Amending the Placement of Children with Special Needs Act was submitted to the legislative procedure. This Act should eliminate the aforementioned inconsistencies in the statutory regulation and regulate the right to a permanent assistant.

The Ombudsman received several letters opposing the amendment to the Act, but the Slovenian NGO Autism Association assessed the proposal as important progress in this area. Their letter of support states the following: Children with autism need an assistant with additional knowledge from the field of autism and knowledge of strategies for working with children (strategies for dealing with inappropriate behaviour, strategies for structuring the environment and tasks, strategies for promoting communication and interaction, and so on). Children need a person who understands them (who finds the cause of their behaviour in stressful situations, protects them from additional stress, etc.). The assistant is required to help teachers and other professionals understand the special features of children with autism and adapt the ways of working with these children. The assistant is required because children with autism spectrum disorder need direct learning of social and communication skills in real life situations with their peers and others at school (how to ask someone to play, how to ask a librarian to help find a particular book, etc.). They need an assistant because the reason for their failure often lies in external factors rather than their cognitive abilities (they need someone who will adjust, notice, explain, and encourage them when they fail and provide them with successful strategies). They need an assistant because they need a specialised way to teach them skills in areas not written into the curriculum. An assistant thus gives the child the same learning opportunities. An assistant plays an important role in the planning and organisation of the educational and social integration activities of a child with autism, the objective of which is to improve their inclusion and coexistence in the wider community and to achieve the highest degree of autonomy, independence and social integration.

The role of an assistant is not solely related to physical assistance, but to help in social interaction and communication, and engaging in guided activities, to help the child solve problems within the group, and to accompany the child in school activities in and out of school. We suggest that these people should have completed at least a level 5 of education and have completed additional training in the field of autism, which should be organised by competent state institutions and carried out by experts with references and knowledge of autism. The training should teach the assistants about the characteristics of children with autism and about the strategies to help them in learning and social inclusion.

The Ombudsman supports all changes to the existing regime that will help to improve the protection of children with special needs, in particular with clear regulation of their rights. Therefore, we will not oppose the proposed Act despite the persuasions of its opponents. After completing the legislative procedure, we will decide whether it is still reasonable to file an initiative for the review of its constitutionality before the Constitutional Court of the Republic of Slovenia.

Example:

Irregularities in the implementation of an individualised programme

The Ombudsman processed a petition filed by the parents of a secondary school pupil whose rights were allegedly violated at school. The boy is a child with special needs with a valid placement decision. The parents claimed that the school did not take into account the adjustments that the pupil needed for successful schoolwork. Adjustments to the lessons were determined in the placement decision and are an integral part of the individualised programme prepared for the pupil. The mathematics teacher disregarded these special adjustments the most, and the pupil's problems with this subject were also the most pronounced. The pupil's parents turned to the form teacher, the counselling service, and several times also to the headteacher of the school. Prior to that, they tried to resolve the issue directly in a private discussion with the teacher, but to no avail. According to the petitioners, the issue was not being resolved properly. The petitioners also turned to the Inspectorate of the Republic of Slovenia for Education and Sport with a petition for extraordinary monitoring of the school.

We asked the headteacher of the school for explanations with regard to the parent's statements. We also asked the Inspectorate to implement certain activities. We demanded that the headteacher assess the implementation of the individualised programme for students. We wanted to know what kind of help was being offered to the pupil and to what extent. We expected an assessment of the student's fulfilment of the minimum standards of knowledge, taking into account the student's limitations with proper implementation of educational work with the adjustments laid down in the placement decision. We were also interested in how he planned to deal with the pupil and this issue in the future. He did not deny the pupil's difficulties in the mathematics class, but he insisted that the class was conducted in accordance with the pupil's placement decision and his individualised program.

The parents expressed great dissatisfaction with the headteacher's response and tried to tell the headteacher themselves in private conversations that the mathematics class was not appropriate, and that also his classmates had noticed the unjust behaviour towards their son, so we addressed another query to the headteacher. In his response, he again insisted that the rights of the pupil were not being violated. Nevertheless, the headteacher convinced the teacher to give the pupil another chance to pass the mathematics test, since the initial grade that the pupil obtained in his written test was doubtful. The teacher had first assessed his answers with a positive grade and then subsequently lowered the amount of awarded points for one task, so that the test was eventually assessed with a negative grade. On taking the test again, the pupil was successful and received the grade 'good' (3, on a scale of 1 to 5, where 5 is the highest grade).

We received a report on the findings of the implemented activities and measures from the Inspectorate of the Republic of Slovenia for Education and Sport in good time, given the complexity of the inspection procedure. The Inspectorate also informed the parents about the findings of the extraordinary monitoring. In addition to other findings on certain irregularities in the implementation of the individualised program, the Inspectorate issued a recommendation to the headteacher to replace the mathematics teacher in the class that the pupil will attend in the next school year. We deemed the recommendation adequate and appropriate and the headteacher assured the school inspector that he would take it into account. Upon completion of processing, this petition was assessed as well-founded. 11.4- 4/2017

The right of a child with special needs of Italian nationality to education in her mother tongue

The Ombudsman addressed a petition regarding the right to education of a girl with special needs of Italian nationality, who is attending a primary school in Italian as a minority member. The girl has a placement decision and is included in the educational programme with tailored implementation and additional professional aid. The school considered that this programme was not appropriate for her and initiated the process of redirection to a tailored programme. The child's mother disagreed, since the school does not implement the tailored programme in Italian. She wanted an additional teacher with knowledge of Italian to be appointed to her daughter. She contacted the Ministry of Education, Science and Sport with this issue. They answered that there is no personalised programme with a lower educational standard with Italian learning in Slovenia, since there are not enough children to form such a department. They also explained that they are discussing the issue with the National Institute of Education of the Republic of Slovenia, which is supposed to prepare an attempt to include additional teachers in classes for minority children.

The initiative was well-founded. Article 62 of the Constitution of the Republic of Slovenia ensures that the members of the Italian national community have the right to use their language and script, and Article 64 ensures that they have the right to education in their own language. We therefore believed that the petitioner's daughter should also have this possibility and that the Ministry of Education, Science and Sport must find the appropriate means to make it possible. We advised the petitioner to object to the issued documents (expert opinion, placement decision) in the process of redirection within the prescribed deadlines if she disagreed with the provisions of an individual document. We proposed that she inform us about the solution of the Ministry. We did not receive her feedback, but we assume that the case was resolved in the best interests of the child. 11.4-12/2017

Example:

Reimbursement of the cost of transporting a child with special needs to school is an example of good practice

The Ombudsman processed a petition about the reimbursement of the cost of transporting a child with special needs between school and home. The petitioner asked for the Ombudsman's assistance in ensuring that the municipality will continue to reimburse him for the actual transport costs of four daily trips. He received a decision only for the period from 01/09/2017 to 31/12/2017. The municipality informed the petitioner that they were preparing new Rules on the Reimbursement of Transport Costs for Children with Special Needs (Rules), which were supposed to apply from 1 January 2018 onwards. Under the new Rules, he would only be reimbursed for two daily trips. The petitioner considered that in this case, he would be in a much worse position than the parents of other children with special needs, for whom the municipalities organised the transport.

We asked the municipality for clarification. We asked the competent authorities whether there are other possibilities for organising and carrying out transport of the child to school. We were particularly interested in whether the municipality intends to change the Rules in such a way that the parents of children with special needs would have to cover half of the costs of transporting their children to school. The municipality sent us their reply within the set deadline. They explained that due to the audit process that took place in the municipality, some of the deficiencies contained in the previous Rules had had to be corrected. Specifically, the auditor recommended that the municipality makes a change while pointing to the ruling of the Administrative Court from 2012, stating that the first paragraph of Article 56 of the Elementary School Act provides no basis for the interpretation that the pupil or the applicant is entitled to double transport costs, and does not allow for the reimbursement of two return trips on the same day (getting the child to school, returning home, picking up the child and returning home again). In accordance with this, the child is entitled to the reimbursement of the costs of one return trip. However, the municipality considered the hardships of parents and their children in the amendments to the Rules, and defined the exceptional possibility of reimbursing the total transport costs (four trips a day) to a parent who has exercised the right to partial payment for lost income due to child care.

We were very pleased with the municipality's response. They convinced us that where there's a will, there's a way. We thanked the municipality for understanding the hardships of its residents, because the latter are often not to blame and also would not be able to do anything to make their everyday lives easier without the support and help of others. This is another example of good practice. 11.4-17/2017

2.15.8 SCHOLARSHIPS

In 2017, there was only one petition less in this area than in 2016. The content of the petitions was similar to that of 2016. The most common petitions with regard to scholarships applied to delays in the decisions of the Ministry of Labour, Family and Social Affairs. Delays of longer than two years frustrate the petitioners and are also criticised by the Ombudsman, as there are no improvements in this area despite several years of warnings addressed to the competent bodies (including the minister). One third of the petitions applied to petitioners having problems and not obtaining sufficient information about the legal options for various forms of scholarship repayment; while some petitions criticised negative decisions regarding various supplements such as the accommodation supplement, performance supplement, and supplement for scholarship recipients with special needs. In all the cases the petitioners appealed against the decisions.

Disputed evidence on the place of residence

The student exercised her right to a Zois scholarship but was denied the right to the accommodation supplement, despite the fact that she was studying in Milan, Italy. She was issued a decision with an inaccurate legal instruction stating that administrative proceedings against the decision were not possible. Therefore she did not initiate the administrative proceedings nor appeal against the decision.

The right to an accommodation supplement for living outside the place of permanent residence was not recognised because she did not submit the evidence (registration certificate) of temporary residence. The petitioner claimed that she was not able to provide evidence because such certificates do not exist in Italy. We considered that the Scholarship Act (ZŠtip) does not necessarily require a registration certificate in order

to obtain the accommodation supplement. The certificate is one form of evidence for determining the place of residence, but not the only possible one. The present case also does not apply to a change or a circumstance that would subsequently affect the right to a scholarship or the amount of this scholarship, since the ZŠtip only stipulates that a scholarship recipient who is studying outside the place of permanent residence is entitled to an accommodation supplement. With regard to the accommodation supplement, we believe it is crucial to indicate in the application for continuous Zois scholarship eligibility that a scholarship receiver will attend a programme outside their place of permanent residence.

We proposed to the competent bodies to grant the accommodation supplement to the student in this case, and to examine the possibility to change the ZŠtip in such a way that it is clearly defined how to prove temporary residence abroad during the period of study.

The explanation we received indicated that the legal instructions were indeed inaccurate, as the body should have referred the petitioner to the possibility of bringing an action before the Labour and Social Court to exercise her right to an accommodation supplement. The competent bodies admitted the error. They also explained that a candidate for scholarship must attach a certificate of temporary residence in the place of education on the basis of ZŠtip-1. The student in this case did not attach such evidence, but only stated in her application that she was living in Italy at the time of her studies. The opinion of the Ministry of Labour, Family and Social Affairs was that the administrative body must decide on the accommodation supplement exclusively on the basis of appropriate evidence.

Reinstatement of the right to a state scholarship

The Ombudsman examined a petition from a student who exercised his right to a state scholarship in the academic year 2016/2017 for the educational programme he was enrolled in, while also applying for a Zois scholarship. Upon receipt of the notice from the Public Guarantee, Maintenance and Disability Fund of the Republic of Slovenia (the Fund) that he met the conditions for a Zois scholarship, he decided on the latter and informed the Fund thereof.

Since he did not meet the conditions to remain eligible for the Zois scholarship for the academic year 2017/2018, he wanted to reinstate his right to a state scholarship in the autumn of 2017. The social work centre dismissed his application with a decision and relied on Article 42c of the Exercise of Rights to Public Funds Act.

The petitioner claimed that the expert associate at the social work centre, whom he visited a couple of days later, had not explained to him that by choosing the Zois scholarship he would permanently lose the right to a state scholarship (until the completion of his education programme).

We wanted to check the course of the procedure after the decision of the petitioner to renounce the state scholarship at the social work centre. We believed that the competent bodies should initially explain the consequences of the student's decision to him and not only inform him about it with the decision repealing the decision on eligibility to the state scholarship. In its reply, the social work centre explained the course of contact with the student and established some confusion and errors, but they could not confirm them with certainty. The Ombudsman also cannot do that now after more than a year has passed. It was above all impossible to prove that the expert associate of the social work centre did not explain to the student in a private conversation what the consequences of his decision to renounce the state scholarship granted for the entire duration of the education programme were. It is also impossible to prove that she did not explain the significance of his signed waiver to the right to appeal against the decision of the social work centre.

The social work centre assured us that after receiving our letter they re-examined the practical cases of an individual waiving the right to a state scholarship in order to receive a Zois scholarship instead. They decided that the social work centre will issue a decision on the termination of the right to the state scholarship after receiving a notice from the Fund concerning an individual's decision to waive this right. Upon issuing the decision, an individual will also receive a written explanation on what they are giving up and what the consequences and the time period of such termination are. The social work centre has already sent us an example of such an explanation and statement. The social work centre pointed out to the Ombudsman that the Fund also needs to improve their ways in the future, because they are the first ones to contact an individual who decides to accept a Zois scholarship after meeting the criteria. We notified the Fund about this. We believe that the intended improvement is appropriate and that the future scholarship receivers will no longer experience these problems when changing a scholarship.

State scholarship repayment

We examined the case of a petitioner who was a part-time pupil and received a state scholarship for the second and third year of secondary education. He did not finish his education by the planned time, so the social work centre issued a decision on the termination of the right to state scholarship and on repayment of the entire scholarship received.

According to paragraph 1 of Article 50 of Zštip, which still applied in the petitioner's case, the scholarship recipients were obliged to repay the proportionate share of the scholarship for the part of the study visit that they failed to complete. The petitioner successfully completed the second year of the programme, but not the third year, so he was only obliged to repay the scholarship for the third year.

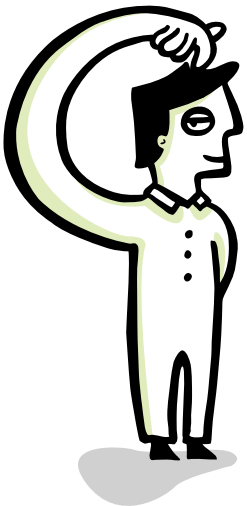
The petitioner filed a complaint which was rejected by the Ministry of Labour, Family and Social Affairs more than two years later, while they agreed with the petitioner on the grounds of the decision. As he was not familiar with legal issues, the petitioner understood from the decision of the Ministry that he would only have to return the scholarship for the third year (which he never contested), but that he would not have to return the scholarship for the second year, as the Ministry did not take a standpoint on it in any way. Even more so, they explicitly indicated that he was obliged to repay the scholarship for the failed year, i.e. the scholarship received for the third year. The decision of the Ministry did not indicate the amount of money that the petitioner had to repay. The latter only realised that the social work centre was still demanding the repayment of the total amount after having received a demand for payment. At that time, he had already missed the deadline to bring an action before the competent court and the decision of the Ministry became final.

The social work centre explained that they had followed the instructions of the Ministry issued on 21 January 2014 (at that date, the scholarship had already been paid to the petitioner) that part-time pupils and students are granted a scholarship for the duration of the education programme, which in turn led to the repayment of large sums in the event of a failed programme.

We pointed out to the Ministry that the decision of the social work centre was not based on substantive provisions and that the instructions of the Ministry could not change the law. In view of the content of the Ministry's decision and the fact that the petitioner was not familiar with legal issues, it is completely understandable that he did not bring an action against the Decision of the Ministry. With this, the proceedings have been finally closed and the conditions for the use of extraordinary remedies under the General Administrative Procedure Act have not been met. In view of fairness and justice, it is not right for such a decision to apply and for the petitioner to repay an amount that he is not obliged to return. We therefore proposed that the Ministry find a fair solution for the petitioner and settle with him.

The Ministry explained the particularities of part-time education programmes in their reply. However, they agreed that the right decision in the petitioner's case would be to only repay the scholarship for the year that he had failed to finish. But all deadlines for any legal remedies had expired, which made the decision final. The Ministry also informed us that the petitioner applied for a write-off of the debt, so they will examine whether the conditions for write-off are fulfilled and decide in accordance with the findings.

The petition was well-founded, as it pointed out the violation of the principle of fairness in the work of the Ministry of Labour, Family and Social Affairs. We are still awaiting their decision about writing off the debt.



3 SELECTION OF THE OMBUDSMAN'S RECOMMENDATIONS

GENERAL RECOMMENDATIONS

1 (2017)
The Ombudsman recommends that state and local authorities answer letters, requests or petitions of individuals or groups of residents, in accordance with the principle of good administration and the rule of law.

2 (2017)
The Ombudsman recommends that all state and local authorities adopt measures to ensure the elimination of any unjustified delays in proceedings and unreasonably long decision-making.

3 (2017)
The Ombudsman recommends that all authorities and supervisory institutions adopt measures to more effectively perform their duties so as to contribute even more to uncovering wrong and illegal actions, sanctioning such actions, and reducing their extent. These measures include the elimination of staff shortages, setting up effective mutual cooperation, and a clearer determination of jurisdictions and authorisations.

4 (2017)
The National Assembly, the Government of the Republic of Slovenia, and the ministries should adopt measures aimed at enforcing the fundamental principle of the Constitution of the Republic of Slovenia, i.e. that Slovenia is a state governed by the rule of law and a social state, in order to eliminate poverty and provide individuals and their families with the conditions for meeting fundamental human needs, free of discrimination on the basis of any personal circumstance.

5 (2017)
The Ombudsman recommends that the Government of the Republic of Slovenia ensures effective inter-ministerial cooperation and coordination in the drafting and enforcement of legislation and the implementation of regulations and other systemic measures aimed at eliminating violations of human rights and fundamental freedoms.

CONSTITUTIONAL RIGHTS

6 (2017)
The Ombudsman recommends that the Organisation and Financing of Education Act either stipulates a sanction for the violation of the prohibition on religious activity in public kindergartens or schools, or allows such activity.

7 (2017)
The Ombudsman recommends that measures be adopted to amend the legislation which does not provide for voting by post for people who have not expressed their intention to do so at least ten days prior to election day, as it does not regulate the position of people who have been deprived of their liberty after that time, or who have been admitted for treatment to a hospital or care in a social care institution and are therefore unable to vote either at the polling station or by post.

DISCRIMINATION AND INTOLERANCE

8 (2017)
The Government of the Republic of Slovenia should promptly see to the preparation of appropriate legal groundwork enabling members of the Roma community who live in illegal settlements to actually and effectively enforce their human rights, i.e. access to drinking water, toilet facilities, and electricity.

9 (2017)
The Ombudsman recommends the adoption of legislation which will systemically govern the rights of students with disabilities with regard to their studies.

10 (2017)
The Ombudsman recommends that the Government of the Republic of Slovenia ensures all the required conditions are met for the Council for People with Disabilities of the Republic of Slovenia to be able to effectively implement its tasks.

RESTRICTION OF PERSONAL FREEDOM

11 (2017)
The Ombudsman recommends the adoption of all measures required for consistent adherence to the rules and standards which the state undertook, both through the Constitution of the Republic of Slovenia and international conventions, in order to safeguard human rights during deprivation of liberty, especially human personality and dignity.

12 (2017)
The Ombudsman recommends that prisons and the Prison Administration observe the comments and recommendations provided by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) during its visit, and eliminate all the identified deficiencies.

13 (2017)
The Ombudsman calls for a prompt implementation of recommendations from the special thematic report concerning the necessary improvement in the conditions of accommodation and treatment of vulnerable people in custody (the elderly, patients, people with disabilities, etc.)

14 (2017)
In order to ensure safe imprisonment and respect for human personality and dignity, prison staff must make sure that all out of the ordinary events are consistently recorded, that the competent authorities are informed of them, and that the minutes and other documents are correctly completed.

15 (2017)
Concerning the appropriate number of staff in prisons, the Ombudsman recommends the adoption of the required measures for a better organisation of work, which would reduce the number of prisoner escort services.

16 (2017)
The Ombudsman again recommends to the Ministry of Health that it maximise its endeavours for preparing and publishing the list of health institutions which meet the conditions for the implementation of security measures as soon as possible.

17 (2017)
The Ombudsman calls upon all the responsible parties to promptly implement the recommendations which were issued by the National Assembly of the Republic of Slovenia after discussing the Ombudsman's Special report on the violation of human rights of people with mental disorders with regard to involuntary placement and involuntary treatment in secure departments of social care institutions.

18 (2017)
The Ombudsman recommends that the Ministry of Health promptly prepares the required amendments and additions to the Mental Health Act to ensure a high level of safeguard of the fundamental rights of people being treated in departments of psychiatric hospitals under special supervision and in secure departments of social care institutions.

19 (2017)
The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities arranges the regular publication of information on the number of vacancies in all (verified and non-verified) secure departments of social care institutions.

20 (2017)
The Ombudsman recommends that after evaluating the study 'The Comprehensive Treatment of Children with Emotional and Behavioural Disorders in Residential Treatment Institutions', the Ministry of Education, Science and Sport prepares an updated programme as soon as possible, together with the required systemic changes.

21 (2017)
The Ombudsman recommends that the Ministry of Education, Science and Sport finds a comprehensive solution to the problems concerning the return of juvenile runaways to residential treatment institutions.

JUSTICE

22 (2017)
The Ombudsman encourages the Ministry of Justice or the project team organising and harmonising the preparation of action plans and recommendations for the implementation of ECHR judgements to continue its work, as (together with specific measures) the preparation of systemic measures is important in preventing future violations established by the ECHR and reducing the number of judgements against the state due to violations of the European Convention on Human Rights.

23 (2017)
In line with the care that the Supreme Court of the Republic of Slovenia devotes to uniform judicial practice, we encourage all courts to pay the necessary attention to improving their activity and the quality of trials, while the Ministry of Justice should continue to work on strengthening the judiciary for an effective and high-quality administration of justice.

24 (2017)
The Ombudsman recommends that the courts react to serious complaints concerning the legality of their work and make sure that there is an appropriate level of communication with the public, including, if necessary, by providing the reasoning behind their decisions.

25 (2017)
The Ombudsman recommends that the Ministry of Justice, the Ministry of the Interior, and other competent bodies look into the training being provided to minor offence authorities and courts so as to ensure the consistent observance of fundamental guarantees of a fair procedure, including in minor offence proceedings.

26 (2017)
The Ombudsman recommends that the State Prosecutor's Office works on the fast and effective implementation of the criminal prosecution of offenders, and in the event that charges are dismissed, it consistently informs the aggrieved parties of its decisions, which should be substantiated with clearly explained reasons, including legal instructions.

27 (2017)
The Ombudsman recommends that the Bar Association of Slovenia continues to effectively react to irregularities which have been established among its members by the effective work of its disciplinary bodies and by ensuring fast and objective decision-making on reports filed against the work of lawyers.

28 (2017)
The Ombudsman recommends that the Ministry of Justice and the Ministry of Finance find a comprehensive solution to the problems with tax arrangements concerning free legal aid provided by lawyers, both in terms of income and value added tax.

POLICE PROCEDURES

29 (2017)
Police officers must take all necessary steps in order to make the time from the end of detention of foreign nationals to placement in the Aliens Centre as short as possible. They must also ensure detainees' suitable treatment during this time.

30 (2017)
For every restriction of freedom which involves forced detention and consequently deprivation of liberty, police officers must inform individuals of their rights, as stipulated by the Constitution of the Republic of Slovenia and in more detail also by the ZKP.

31 (2017)
During the performance of police tasks, police officers must be especially considerate of children and minors who require additional attention, help and care.

32 (2017)
When establishing the responsibility of the perpetrators of minor and criminal offences, police officers must consider the relevant legal provisions and issued guidelines.

33 (2017)
We recommend that the Ministry of the Interior and the Detective Chamber of the Republic of Slovenia consider our observations when updating the rules and regulations governing the activity of detectives.

OTHER ADMINISTRATIVE MATTERS

34 (2017)
The Ombudsman recommends that the ministry soon finds a solution to eliminate problems concerning the preparation of expert opinions on age.

35 (2017)
The Government of the Republic of Slovenia should adopt measures to bring denationalisation procedures to an end.

36 (2017)
The Ombudsman recommends that the Government of the Republic of Slovenia immediately prepares, adopts, and ensures the implementation of measures and activities for regulating ownership of all categorised public roads running across private land.

37 (2017)
The Ombudsman recommends that the Government of the Republic of Slovenia prepares a regulation on the right to special tax relief for dependent family members (parents and adoptive parents), so that taxpayers can claim this tax relief when they actually support family members, regardless of whether they live with them in the same household or they have been placed in institutional care, and pay the costs of services for them.

38 (2017)
The Ombudsman recommends that the Government of the Republic of Slovenia prepares an amendment to the Personal Income Tax Act (ZDoh-2) so that the list of revenues from compulsory pension, disability and health insurance, which is exempt from income tax, be supplemented by adding a survivor's pension received by children under the age of 18 or under the age of 26 if involved in full-time education.

39 (2017)
The Government of the Republic of Slovenia should provide all inspection services with appropriate working conditions, i.e. material and financial assets which will also enable increasing the number of staff and effective work of inspection services.

40 (2017)
In order for administrative procedures to be effective, the Ombudsman recommends amending the first and third paragraphs of Article 251 of the General Administrative Procedures Act, so that bodies of second instance will be bound to make substantive decisions instead of having the option of deciding independently, which usually means that they merely rescind the decision of a body of first instance and send the case back for reconsideration.

41 (2017)
A legal basis for the implementation of measures preventing the bringing of dangerous and illicit objects and substances to schools must be provided by law. Furthermore, the procedure for inspecting students' bags and clothes, in consideration of their right to privacy and the requirements for the safety of the whole school community, must be stipulated in detail.)

42 (2017)
The Government of the Republic of Slovenia should promptly prepare, and the National Assembly should adopt, appropriate legislative amendments for ensuring the equal position of all education providers.

ENVIRONMENT AND SPATIAL PLANNING

43 (2017)
The Government of the Republic of Slovenia should protect buyers of real estate by adopting measures which will allow them to inspect linked (matched) records of land registry and the actual situation, as well as administrative documents for the intended construction prior to making the decision to buy.

44 (2017)
The Ministry of the Environment and Spatial Planning should prepare a regulation governing emissions of smells into the environment.

45 (2017)
The Government of the Republic of Slovenia should stipulate the criteria for determining priority tasks of inspection services in a publicly accessible regulation, as this will ensure the transparency and impartiality of inspection services.

46 (2017)
The Government of the Republic of Slovenia should provide the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning with all the conditions – material, staffing, and financial – required for the effective management of inspection procedures.

47 (2017)

The Ministry of the Environment and Spatial Planning should prepare a systemic solution for obtaining authorisations for the implementation of emission measurements and ensure the independent control and financing of these measurements.

PUBLIC UTILITY SERVICES

48 (2017)
The Ombudsman expects the Government and the National Assembly of the Republic of Slovenia to prepare and adopt all the required regulations to safeguard the right to drinking water, as stipulated by the Constitution of the Republic of Slovenia, by 25 May 2018, especially the Environmental Protection Act, the Public Utilities Act, and the Local Self-Government Act.

HOUSING MATTERS

49 (2017)
We repeat our recommendation: The Ministry of the Environment and Spatial Planning should promptly prepare amendments to the Housing Act which clearly define the obligations of municipalities to ensure a certain number of residential units (with regard to the number of residents) of a suitable standard of living, and at specific intervals (e.g. annually) publish a call for applications for non-profit rental housing.

50 (2017)
We repeat our recommendation: The Ombudsman expects the Ministry of the Environment and Spatial Planning to thoroughly analyse the management of multi-dwelling buildings and amend the legislation on this basis, and especially to constantly supervise the work of managers of multi-dwelling buildings.

51 (2017)
The Ombudsman recommends that the Ministry of the Environment and Spatial Planning increases human resources in housing inspection services and redefines their authorisations in the SZ-1, i.e. so that housing inspection services will have the leverage they need to take action concerning the management of multi-dwelling buildings and the implementation of regulations governing residential relationships, regardless of the ownership of multi-dwelling buildings.

LABOUR LAW ISSUES

52 (2017)
The Ombudsman repeats her recommendation: The Government of the Republic of Slovenia must ensure that procedures in all supervisory institutions are carried out within reasonable time limits. We propose strengthening the human resources of the Labour Inspectorate of the Republic of Slovenia wherever possible, including by reassigning public employees.

53 (2017)
The Ombudsman recommends that the Government of the Republic of Slovenia prepares amendments to the current regulation so that parents of children with special needs will not be limited by the legal maximum permissible number of days of annual leave. The circumstances surrounding the care of people with severe physical and moderate, severe or profound intellectual disability must be considered when recognising the right to annual leave of parents of children with special needs.

54 (2017)
The Ombudsman repeats her recommendation: The Government of the Republic of Slovenia must adopt and implement measures ensuring a transparent, efficient, and fast supervision system for the payment of salaries, i.e. for net amounts and withheld taxes related to salaries.

55 (2017)
The Ombudsman again recommends amending the Vocational Rehabilitation and Employment of Disabled Persons Act, so that people with disabilities will be awarded income proportionate to the number of conducted hours, i.e. whether they worked more or less than 100 hours. The Ombudsman also recommends that meal costs be reimbursed to people who are being trained for a specific job or vocation within vocational rehabilitation.

PENSION AND DISABILITY INSURANCE

56 (2017)
In cooperation with the Ministry of Labour, Family, Social Affairs and Equal Opportunities, the Ministry of Health should promptly define the types and rates of physical impairments which serve as a basis for the enforcement of rights from disability insurance.

57 (2017)
The ministry governing pension insurance should prepare expert groundwork for a regulation which will follow the principle of equity and allow people a refund of the assets invested in the purchase required to top-up the pension qualifying period, whose purpose is now moot due to legislative amendments.

58 (2017)
The Government of the Republic of Slovenia should instruct competent ministries and other state authorities to start preparing expert groundwork which will be used to prepare a unified regulation of medical expertise in proceedings for exercising rights to social insurance.

59 (2017)
The Government should instruct competent ministries to study the possibility of stipulating peaceful dispute resolution for administrative procedures or in procedures concerning the enforcement of social rights.

HEALTHCARE

60 (2017)
After all the planned Acts which will enforce the health reform and govern patients' rights have been adopted, the Ministry of Health should implement a wide-ranging campaign to inform all citizens of the new legislative solutions, especially their rights, and the procedures for enforcing these rights.

61 (2017)
The Ministry of Health must urgently prepare the criteria for determining a network of health services providers, which will allow the Government of the Republic of Slovenia to define this network as early as 2018 and consequently ensure equal opportunities for public and private health services providers, and provide users with equal accessibility to providers.

62 (2017)
After all the planned Acts which will enforce the health reform and govern patients' rights have been adopted, the Ministry of Health should implement a wide-ranging campaign to inform all citizens of the new legislative solutions, especially their rights, and the procedures for enforcing these rights.

63 (2017)
The Ministry of Health should study the valid protocols for pelvic examinations of sexual assault victims and establish whether these protocols include the possibility of choosing a gynaecologist who the victim trusts, so as to not invoke additional distress or discomfort.

64 (2017)
In cooperation with the Health Council and the National Institute of Public Health, the Ministry of Health should review and study all learning and training programmes for health professionals, in order to verify whether these provide sufficient knowledge of the prevention and treatment of hospital infections.

65 (2017)
The Government of the Republic of Slovenia should instruct all ministries and state bodies which are tasked with preparing expert groundwork for an individual Act or government regulation to publish the composition of the expert working bodies and the names of the experts participating in the preparation of legislative solutions.

66 (2017)
The Ministry of Health should promptly prepare expert groundwork for preparing the amendments and additions to the Mental Health Act.

SOCIAL AFFAIRS

67 (2017)
The Government of the Republic of Slovenia should prepare an analysis of the implementation of the Resolution on Legislative Regulation, as well as effective measures ensuring that all regulation drafters observe its stipulations. For this purpose, it should study the need to amend the authorisations of its Office of Legislation so that regulations which have not been harmonised with the Resolution cannot be published, and the procedure for their adoption cannot be started.

68 (2017)
The Ministry of Labour, Family, Social Affairs and Equal Opportunities should update the complaints counter on its website, which will inform the public of the framework deadlines for their resolution.

69 (2017)
The Ministry of Labour, Family, Social Affairs and Equal Opportunities should ensure decision-making at the second instance within legally stipulated deadlines, and promptly inform clients in writing on how to prevent the loss of rights due to lengthy decision-making which is beyond their power.

70 (2017)
The Ombudsman recommends that the reorganisation of social work centres should include the harmonisation of their information systems, so that the system alerts the user if a decision has been issued but not sent or served to the client.

71 (2017)
The Government of the Republic of Slovenia should prepare amendments to the Act Ratifying the Convention on the Rights of People with Disabilities and the Optional Protocol to the Convention on the Rights of People with Disabilities, which will consider the established Slovene legal terminology.

UNEMPLOYMENT

72 (2017)
The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities amends Article 63 of the Labour Market Regulation Act (ZUTD) so that an individual does not lose the right to unemployment benefit if they fail to file a lawsuit on wrongful termination within 30 days after being served the termination in cases where they learned of a violation or aspects of a wrongful termination at a later time.

73 (2017) The Ministry of Labour, Family, Social Affairs and Equal Opportunities should immediately prepare amendments to the ZUTD so that parental leave is not deemed a termination of the time which is required for inclusion in active employment policy programmes.

CHILDREN'S RIGHTS

74 (2017)
The Ministry of Justice should study the possibility that a failure to comply with the child's opinion (in the sense of no reasoning being provided why the court failed to observe it) which has been obtained during advocacy be deemed a violation of the procedure which it must supervise ex officio as the competent authority.

75 (2017)
The Government should promptly prepare a draft act governing the status, management, and operations of a house for children, and determine means of harmonised operation of various services and authorities in the treatment of children who are victims of a criminal offence.

76 (2017)
The Ministry of Labour, Family, Social Affairs and Equal Opportunities should prepare legal groundwork which will ensure the reimbursement of damages incurred due to an incorrect viewpoint

on the possibility of enforcing special childcare allowance and the assistance and attendance allowance. The Ministry should also provide the possibility of a settlement with wronged parties who are already enforcing their rights in judicial proceedings.

77 (2017)
The Ministry of Education, Science and Sport should prepare an analysis of financing primary education from the viewpoint of burdens carried by individual municipalities, and establish how smaller municipalities can be ensured funding which would provide children with an equal position and rights.

4

LIST OF ABBREVIATIONS AND ACRONYMS USED

ACTS AND OTHER LEGAL ACTS

KZ-1	Criminal Code
MOPPM	Act ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
OZ	Code of Obligations
SZ-1	Housing Act
SPZ	Law of Property Code
ZBPP	Legal Aid Act
ZDavP-2	Tax Procedure Act
ZDIJZ	Public Information Access Act
ZDimS	Chimney Sweeping Services Act
ZDoh-2	Personal Income Tax Act
ZDPVA91	Regulation on the Partial Refund for Damage caused by the Military Aggression on the Republic of Slovenia in 1991
ZDR-1	Employment Relationship Act
ZDRS	Citizenship of the Republic of Slovenia Act
ZDT-1	State Prosecutor Act
ZDU-1	State Administration Act
ZDZdr	Mental Health Act
ZEKom	Electronic Communications Act
ZEPT	Electronic Commerce Market Act
ZFPPIPP	Financial Operations, Insolvency Proceedings and Compulsory Winding-up Act
ZGD-1	Companies Act
ZGim	Gimnazije Act
ZGJS	Services of General Economic Interest Act
ZGZH	Act Regulating the Coat-of-Arms, Flag and Anthem of the Republic of Slovenia and the Flag of the Slovene Nation
ZIKS-1	Enforcement of Criminal Sanctions Act
ZIKS-1F	Act Amending the Enforcement of Criminal Sanctions Act
ZIMI	Equalisation of Opportunities for Persons with Disabilities Act
ZIN	Inspection Act
ZIntPK	Integrity and Prevention of Corruption Act
ZIntPK-C	Act Amending the Integrity and Prevention of Corruption Act
ZJRM-1	Protection of Public Order Act
ZJU	Civil Servants Act
ZJZ	Public Assembly Act
ZKGZ	Chamber of Agriculture and Forestry Act
ZKP	Criminal Procedure Act

ZKP-N	Act Amending the Criminal Procedure Act
Zmed	Media Act
ZMV	Motor Vehicles Act
ZMZ	International Protection Act
ZN	Notary Act
ZNDM-2	State Border Control Act
ZNP	Non-litigious Civil Procedure Act
ZNPPol	Police Tasks And Powers Act
ZObr	Defence Act
ZOdv	Attorneys Act
ZOsn	Elementary School Act
ZOFVI	Organisation and Financing of Education Act
ZORed	Act on Local Police
ZP-1	Minor Offences Act
ZPacP	Patient Rights Act
ZPIZ	Pension and Disability Insurance Act
ZPCP	Road Transport Act
ZPKri	Redressing of Injustices Act
ZPMZ KZ	Prison and juvenile prison
ZPP	Civil Procedure Act
ZPPDej	Funeral and Cemetery Services Act
ZPPDČT	Act Regulating the Obtaining and Transplantation of Human Body Parts for the Purposes of Medical Treatment
ZPPDUP	Cemetery and Burial Services and Landscape Planning Act
ZPPZV91	Act on the Special Rights of Victims of the 1991 War for Slovenia
ZPND	Domestic Violence Prevention Act
ZPNačtr-B	Act Amending Spatial Planning Act
ZPPreb	Residence Registration Act
ZPPZV91	Zakon o posebnih pravicah žrtev v vojni za Slovenijo 1991 (Act on the Special Rights of Victims of the 1991 War for Slovenia)
ZPVGPŽ	Concealed War Graves and Burial of Victims Act
ZRomS-1	Roma Community Act
ZS	Courts Act
ZS-L	Act Amending the Courts Act
ZSKZDČEU-1	Cooperation in Criminal Matters with the Member States of the European Union Act
ZSPOZ	Payment of Compensation to the Victims of War and Post-war Aggression Act
ZSPJS	Public Sector Salary System Act
ZSS-M	Act Amending the Judicial Service Act
ZSSloV	Service in the Slovenian Armed Forces Act
ZST	Court Fees Act
ZSV	Social Assistance Act
ZSVarPre	Social Assistance Benefits Act
ZSVDP-1	Parental Protection and Family Benefits Act
ZTuj-2	Foreigners Act
ZUJF	Fiscal Balance Act
ZUNEO	Implementation of the Principle of Equal Treatment Act
ZUOPP	Placement of Children with Special Needs Act
ZUP	General Administrative Procedure Act
ZUPJS	Exercise of Rights from Public Funds Act
ZUS-1	Administrative Dispute Act
ZUSDDD	Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia
ZUSJ	Act on the Use of Slovene Sign Language

ZUstS	Constitutional Court Act
ZUTD	Labour Market Regulation Act
ZVarCP	Human Rights Ombudsman Act
ZVDZ	National Assembly Election Act
ZVDAGA	Protection of Documents and Archives and Archival Institutions Act
ZVO-1	Environmental Protection Act
ZVOP-1	Personal Data Protection Act
ZVPot	Consumer Protection Act
ZVPSBNO	Protection of Right to Trial without Undue Delay Act
ZVS	Freedom of Religion Act
ZVV	War Veterans Act
ZZasV-1	Private Security Act
ZZRZI	Vocational Rehabilitation and Employment of Disabled Persons Act
ZZUUP	Health Measures in Exercising Freedom of Choice in Childbearing Act
ZZVZZ	Health Care and Health Insurance Act
ZZZDR	Marriage and Family Relations Act

OTHER ABBREVIATIONS AND ACRONYMS

ADHD	Attention deficit hyperactivity disorder
AEP	Active employment policy
AR	Annual Report
ARSO	Slovenian Environment Agency
CFREU	Charter of Fundamental Rights of the European Union
CIRIUS	Centre for Education and Rehabilitation of Physically Handicapped Children and Adolescents
CJEU	Court of Justice of the European Union
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
CRONSEE	Children's Rights Ombudspersons' Network in South and Eastern Europe
CSG	Centre for Hearing and Speech
CUDV	Centre for Training, Work and Care
DK SM	National Commission for General Matura
DRSV	Slovenian Water Agency
E-121	Form for enforcing rights arising from the social security system when moving within the EU
ECECR	European Convention on the Exercise of Children's Rights
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECRI	European Commission against Racism and Intolerance
ECtHR	European Court of Human Rights
ENNHRI	European Network of National Human Rights Institutions
ENOC	European Network of Ombudspersons for Children
Equinet	European Network of Equality Bodies
ESC	European Social Charter
EU	European Union
EUR	Euro, single currency of the European Union
FLA	Free legal aid
FRA	Fundamental Rights Agency
FURS	Financial Administration of the Republic of Slovenia
GH	General hospital
IC	Information Commissioner

IJS	Public Sector Inspectorate
INSPIS	Information system for inspection bodies
IOI	International Ombudsman Institute
IRSD	Labour Inspectorate of the Republic of Slovenia
IRSOP	Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning
IRSPEP	Transport, Energy and Spatial Planning Inspectorate of the Republic of Slovenia
IŠŠ	Inspectorate of the Republic of Slovenia for Education and Sport
JARSVP	Slovenian Traffic Safety Agency
JSRKŠ	Public Scholarship, Development, Disability and Maintenance Fund of the Republic of Slovenia
MDDSZ	Ministry of Labour, Family and Social Affairs
MDDSZEM	Ministry of Labour, Family, Social Affairs and Equal Opportunities
MGRT	Ministry of Economic Development and Technology
MI	Ministry of Infrastructure
MIZŠ	Ministry of Education, Science and Sport
MJU	Ministry of Public Administration
MK	Ministry of Culture
MKO	Ministry of Agriculture and the Environment
MNZ	Ministry of the Interior
MO	Ministry of Defence
MO	City municipality
MOL	Municipality of Ljubljana
MOP	Ministry of the Environment and Spatial Planning
MORS	Ministry of Defence of the Republic of Slovenia
MP	Ministry of Justice
MZ	Ministry of Health
MzI	Ministry of Infrastructure
MzP	Ministry of Transport
MZZ	Ministry of Foreign Affairs
NA RS	National Assembly of the Republic of Slovenia
NGO	Non-governmental organisation
NI	National Institution for the Protection and Promotion of Human Rights
NPM	National Preventive Mechanism
NZPO	Flood Risk Reduction Plan
ODT	District State Prosecutor's Office
OECD	Organisation for Economic Co-operation and Development
OG	Official Gazette
Ombudsman	Human Rights Ombudsman of the Republic of Slovenia
OPCAT	Optional Protocol to the UN Convention against Torture
OPN	Special supervision ward
OŠ	Primary school
OSCE	Organisation for Security and Co-operation in Europe
OZS	Bar Association of Slovenia
PIC	Legal Information Centre for NGOs
PIKZ	Rules on the implementation of prison sentences
PKL	Ljubljana University Psychiatric Hospital
PM	solid or liquid particles suspended in the air in a certain period (particulate matter)
PS	Police station
PSVZ	Special social care institution

PU	Police directorate
RS	Republic of Slovenia
RTV	Slovenia Radiotelevizija Slovenija
SEE NPM	South-East Europe NPM Network
SFRJ	Socialist Federal Republic of Yugoslavia
SKP PU	Criminal police division - police directorate
SPM	Special protection measures
SV	Slovenian Armed Forces
SVS	Soldiers' Trade Union of Slovenia
SVZ	Social care institution
SWC	Social Work Centre
THC test	Test for detecting the most widely used illicit drugs
UIKS	Prison Administration of the Republic of Slovenia
UKC	University Medical Centre
UN	United Nations
UN	United Nations
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
UNHCR	United Nations High Commission for Refugees
Unit	Unit for Forensic Psychiatry of the Department of Psychiatry at Maribor University Medical Centre
UPP	Decree on administrative operations
URS	Constitution of the Republic of Slovenia
URSZR	Administration of the Republic of Slovenia for Civil Protection and Disaster Relief
UUP	Decree on administrative operations
VČP	Human Rights Ombudsman
VDC	Occupational activity centre
VO	Secure ward
VS	Supreme Court
VS RS	Supreme Court of the Republic of Slovenia
VVU	Senior military specialist
ZIPOM	Centre for Advocacy and Information on the Rights of Children and Youth within the Slovenian Association of Friends of Youth (ZPMS)
ZIRS	Health Inspectorate of the Republic of Slovenia
ZPIZ	Pension and Disability Insurance Institute of the Republic of Slovenia
ZPKZ	Prison
ZPMS	Slovenian Association of Friends of Youth
ZRC SAZU	Research Centre of the Slovenian Academy of Sciences and Arts
ZRSŠ	National Education Institute of the Republic of Slovenia
ZRSZ	Employment Service of Slovenia
ZSKSS	Slovenian Catholic Girl Guides and Boy Scouts Association
ZZZS	Health Insurance Institute of the Republic of Slovenia

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