



REPUBLIC OF
SLOVENIA



HUMAN
RIGHTS
OMBUDSMAN

14th Regular Annual Report
of the Human Rights Ombudsman
of the Republic of Slovenia for the
Year 2008

Abbreviated version



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Ljubljana, August 2009

NATIONAL ASSEMBLY OF THE REPUBLIC OF SLOVENIA
Dr. Pavel Gantar, President
Šubičeva 4
1102 Ljubljana

Dear Dr. Gantar,

In accordance with Article 43 of the Human Rights Ombudsman Act of the Republic of Slovenia, I am sending you the 14th annual report concerning the work of the Slovenian Human Rights Ombudsman in 2008.

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

Yours sincerely,
Dr. Zdenka Čebašek Travnik, MD
Human Rights Ombudsman



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Ombudsman's findings,
opinions and proposals



1. OMBUDSMAN'S FINDINGS, OPINIONS AND PROPOSALS



DR Zdenka Čebašek – Travnik, MD
Human Rights Ombudsman

To prepare a review and analysis on the state of human rights in the Republic of Slovenia is a very demanding and responsible task, and one that can only be subjectively carried out by the Human Rights Ombudsman. Despite all of the carefully prepared professional proposals, opinions, critics and recommendations at the level of the Ombudsman's institution, the introduction and the report as a whole do reflect my own personal views on particular issues.

The Ombudsman's Report for the year 2008 is comprehensive and the result of a yearlong effort by all the employees of the Ombudsman's office. Since the report has no prescribed form or pre-defined content, it reflects changes in the field of human rights protection both in the Republic of Slovenia and the European Union, as well as in the countries of the

Council of Europe and beyond. The intertwining of past and present has been a consistent problem in writing reports for the previous year.

Each annual report is marked by certain highlights that are selected on the basis of the initiatives received. Therefore, the Ombudsman's opinion and the report as a whole are texts that have not been prepared in advance but reflect the most topical issues or human rights violations.

Some matters that were described as unsettled last year have changed with the release of this report. We are aware of this, but since this report is a document, the situation is described as it existed in 2008.

We tried to make this report interesting and useful to read, both for the representatives of all three branches of power, whose potential violations of human rights are monitored by the Ombudsman, and to initiators looking for possible solutions of their problems in the Ombudsman's reports. Some chapters have therefore been drafted to introduce the topics of a certain subject, followed by selected cases that were dealt with by the Ombudsman's office. Experience has shown that individual cases best reflect a certain problem area and ways of resolving individual infringements, postponing or avoiding the responsibilities of national bodies, local government bodies and holders of public authorisations.

Each chapter was followed by the Ombudsman's recommendations and proposals. The number of these recommendations does not reveal an analysis of individual areas, since some proposals are aimed only at minor corrections in the operation of a certain body, while others, perhaps fewer in number, require systemic changes. We are aware of the risk that readers will start and finish reading the annual report at the proposals and recommendations without going deeper into the elaboration of the introductory part or cases. At the same time, we hope that this very piece of text will incite the readers' curiosity and inspire them to continue to read and act.

Critics of the Ombudsman's work will mention that the themes, recommendations and initiatives are regularly repeated in the annual reports. This is, however, true only in cases where the government fails to take sufficient actions to make the violations stop or the circumstances improve. The careful reader will find quite a few such instances. Those who have been following the Ombudsman's work for a longer period of time will recognise the changes and improvements resulting among other things from the Ombudsman's opinions, findings, recommendations and proposals. Some have been repeated in this report in order to prevent non-compliance from becoming a regular practice in some bodies, and in order to stimulate the government to prepare new measures and implement those that have already been adopted.

During my mandate, I have often faced public calls from the media, and even from politicians, asking the Ombudsman (as an institution) or the Ombudsman (as a person), to take a position in public regarding certain, often politically motivated, questions. I do not think it is the Ombudsman's mission to judge individual actual events, historical facts and periods or previous political systems, especially with regard to political issues that are not related to the tasks for which the Ombudsman was established. Human rights, personal freedom,

democracy, the principle of the rule of law, justice and good governance remain now and in the future the essential pillars necessary for the Ombudsman to make assessments operate and act. Insisting on a value-based Ombudsman's view on obviously politically motivated questions could be understood as a particular form of pressure on the institution.

I am surprised that politicians put questions in public without previously addressing them to the Ombudsman directly. I accept the caution of politicians on the violation of human rights, but it cannot be ignored that, as a rule, they do not respond to our invitations (by personal mail) to clarify the circumstances, the facts and proof of individual cases in personal discussions.

The question of how to regulate the protection of human rights in various fields becomes topical especially in the pre-election period, although this is an eternal dilemma. Most frequent are the requests for the children's rights and patients' rights ombudsman, but there are also those who expect ombudsmen for the environment, soldiers, consumers, students, healthcare workers, and others. Perhaps this kind of understanding comes from the slightly awkward Slovenian term meaning the 'guardian of human rights' (as compared to the guardian of competition, for example, who boasts a completely different type of mandate). In other languages, we see terms like advocates, mediators, state defenders, and people's advocates, all of which are virtually synonymous with our 'guardian'/ombudsman. In the English-speaking world, they are mostly called ombudsmen – regardless of their mandate or their area of work. The eventual appointment (election) of special ombudsmen in the Republic of Slovenia should be carefully examined, especially from the point of view of the efficient protection of human rights.

In thinking about additional ombudsmen, we should not ignore the fact that many people are not well acquainted with existing ways to enforce their rights, and they are not familiar enough with the competencies of the Ombudsman. Based on an analysis of closed cases, we find that this is improving year by year, since the share of justified initiatives has increased and is among the highest in Europe.

The Human Rights Ombudsman is also involved with international associations, of which some are more, others less, formal. They are a precious source of knowledge, experience and ideas, but at the same time an additional workload for employees. In this context, I would like to mention the repeated calls for the Ombudsman to ask for the 'Status A' of a national human rights institution and to participate proactively in the operation of the Human Rights Committee at the United Nations, or similar associations at the level of the EU or the Council of Europe. In any case, I believe that Slovenia needs a national institution that is responsible for research and analysis, and to carry out a proactive engagement in the protection of human rights. In the past, the Ombudsman conveyed a similar opinion to the National Assembly. It is necessary to think about whether such an independent institution would be an organization of its own, part of the Ombudsman's office, or some other (non-governmental) organization. Each of these possibilities has its advantages and weak points, and each case will require (additional) staff and operating means. Perhaps such an institution could also take over tasks related to the fight against discrimination (including in the field of employment).

Since the seat of the International Ombudsman Association was transferred this year to Europe, in Vienna, we expect a more accessible and fruitful co-operation with similar institutions abroad.

Highlights selected by the Ombudsman

The year 2008 brought a series of **new laws** and amendments in the legislative field whose (positive and negative) effects we will all feel in the future. Some laws had to be adopted

urgently, because among other reasons, they had been requested by the Constitutional Court (the Mental Health Act, for instance). Unfortunately, the Ombudsman found that some of them were adopted (too) quickly, without enough consideration for the opinions of professionals and the interested public. The Ombudsman therefore *again* recommends that public participation in adopting regulations be governed by a special law defining the stakeholders, the time of discussion, a way of commenting, and the obligation of the holders of these discussions to take a position regarding the comments and proposals received.

It is alarming that the **State Electoral Commission** (DVK) refused to listen to the Ombudsman's proposals. The Ombudsman's initiative for better preliminary information on electoral and referendum procedures cautioned that some missing data was published less than two weeks before the expiry of the statutory time limits, and was understood by the DVK as a question of "how far DVK activism should reach". Perhaps the DVK would need additional powers to perform these tasks, but a more correct co-operation with the Ombudsman would most certainly be welcome.

The topic concerning **religious communities** is still very common, ranging from opposition to the construction of a mosque, to hateful inscriptions on the premises and memorial landmarks of some religious communities. Inciting hatred on a religious basis gets very little criticism, and as a rule, the perpetrators are not condemned. It was not surprising therefore that there were many responses to the adoption the rules on the implementation of religious activities in healthcare institutions and prisons. Although in the Ombudsman's opinion these rules have primarily affected minor religious communities, many related verbal attacks were directed at the largest one: the Roman Catholic Church. However, one of the more promising events was the conference organised by the Office for Religious Communities, and their reports to the prosecutor on the suspicion of inciting religious intolerance. Unfortunately, we still cannot report any more successful work by the prosecutor in the related field.

How can we efficiently prosecute and punish **hate speech** whose varying contents we often find in media and in everyday life in general? Since the notion of hate speech is not well known, people do not recognise it as such and fail to act as provided for by the legislation. In curbing these things, the practices of law enforcement authorities, and especially the prosecutor, are crucial. The rule of law is based on the fiction that in these cases there is no (directly) injured person. Therefore, the Ombudsman underlines the crucial role of state bodies in providing efficient sanctions for criminal acts committed out of hatred. In the past, we often underlined the unserious response to individual complaints or reports, even in cases forwarded by the Ombudsman, in which the competent law enforcement authorities did not react to individual acts at all. I think that first of all the prosecutor should do more to this end; with well prepared indictments it could basically contribute to revealing and punishing hate speech, thus raising public awareness accordingly.

Raising public awareness and information on human rights violations could be significantly promoted by the **media** via the correct reporting of violations and the ways they should (or could) be eliminated. In 2008, many articles were published that revealed irregularities, and to which the Ombudsman could express her view. Of particular importance is the co-operation with local media on occasions where the Ombudsman carries out external operations in various Slovenian places. Each such operation is concluded by a press conference where reporters can also put forward questions that are not directly linked to this particular working visit.

With regard to the media, I have to say a few critical words, since they interfered excessively in the privacy of both adults (alleged perpetrators), and children (involved in family disputes or tragedies). The interest of the public cannot justify interventions into privacy, which can

induce serious trauma to individuals. Although the Journalists' Honorary Tribunal confirmed statements from most of the Ombudsmen's notifications, it is clear that the media's voluntary restraint does not work, and more efficient mechanisms need to be considered.

We welcome the solutions in the new Penal Code (KZ-1) which have taken into account the Ombudsman's recommendations and offer the possibility for penalising the unnecessary and harmful exposure of children in media.

We also expect that the media will not actively participate in spreading hate speech and prejudice, and that they will not present violence as a kind of consumer good. The latter includes the presentation of degrading treatments in some media stories, which is particularly inappropriate for children and young people. They take from these stories their own model for conduct and values.

With regard to **journalists**, their often uncertain position in terms of labour laws has to be highlighted (again). I am convinced that this uncertainty also affects the quality and impartiality of their work. The Ombudsman's proposals for a better regulation of journalists' status by the Media Act have not yet been realised.

An interesting theme is also the question of whether the Ombudsman can help members of societies or other groups in realising their **right to free association** (in professional associations and societies, employees' and employers' organizations and other private or interest associations). This concerns a variety of initiatives with the common issue of alleged discrimination in respect to joining or leaving these associations whose (expelled) members could not benefit from the advantages of membership. Complaints came from the members of hunting families, alpine societies, professional associations, organizations for the disabled, and others. Some were advised to resolve disputes with agreements or mediation, others were seeking judicial protection. After having treated the received initiatives, the Ombudsman recommends the adoption of additional guarantees for safeguarding the rights of free association, especially in cases involving public authorities or the use of public resources.

With regard to the operation of associations and other groups, we would like to point again to the fact that no inspection (supervision) is envisaged for their operation in all fields. This would be necessary, at least for those who are involved in procedures where sensitive personal data are revealed.

Slovenia ratified **the Convention on the Rights of Persons with Disabilities** (by the Act ratifying the UN Convention on the Rights of Persons with Disabilities), which in the Ombudsman's opinion only marks the beginning of a different attitude of the state towards persons with various forms of disability or handicaps. The Convention is binding on Slovenia to apply the principle of equal opportunities and equal treatment, and prevent discrimination experienced by the disabled in various spheres of their life. Unfortunately, the state is not committed and efficient enough, and invalids often fail to receive appropriate assistance. Numerous areas have not yet been regulated. The Ombudsman suggests, among other things, a regulatory framework (in the legislation and statutes of faculties) aimed at providing additional financial resources for reasonable adjustments of the study process to students with special needs. It is also urgent to redefine the level of disability necessary for a parking card, and to improve the control over the use of these handicapped parking spaces.

On several occasions last year I met with **representatives of minorities**, who presented some of the problems they are facing. Since not all minorities have the same status in the Republic of Slovenia, their problems are also very different. While the Hungarian, the Italian and the Roma communities expect amendments and the application of applicable legislation, other minorities are fighting for other goals, especially in the fields of culture and education. However, they often remain inaccessible. Therefore, I would like to again

encourage the government and the National Assembly to take a position on the initiatives for adopting further measures to protect minorities that are not explicitly defined in the Constitution, and to adopt additional measures to promote, develop and preserve their ethnic and national identity. This would also send the international public a clear message on how the Republic of Slovenia regulates the issue of national minorities.

With regard to the restriction of personal liberty, the Ombudsman has started to perform regular activities in 2008 pursuant to the Act ratifying the **Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (MOPPM), which is the subject of a special report (see chapter 2.16). The method of co-operation between the Ombudsman and the non-governmental organizations in controlling the institutions where freedom of movement is limited has become a model for a number of other countries wishing to follow Slovenia's example. This is a huge acknowledgement to my colleagues who prepared this model and applied it successfully. Within the scope of her work, the Ombudsman visited the institutions for serving prison sentences, the re-education centre, police stations, specially protected departments of mental hospitals and social care institutions; reporting promptly on the established irregularities and violations of human rights. The situation is obviously the worst in prisons, where we often witness unacceptable accommodations and a severe lack of personnel and means indispensable for the work of guards. We also detected violations of the labour law legislation in respect to employees, especially an excessive workload for prison guards.

I have to caution again against the intolerable conditions of detained persons suffering from mental disturbance or illness. Discussions between the ministers of health and justice about opening a forensic psychiatric hospital start over and over again every year, and in the end without any result. Psychiatric hospitals have begun to reject patients who not only need to be treated but guarded as well (against escape and dangerous behaviour). This is understandable, since the hospitals do not have suitable space and staff resources. And there is also the issue of protecting the human rights of other people being treated. Those who suffer most are sentenced prisoners and detainees because they have a very limited access to psychiatric treatment.

Justice remains the area with the largest number of initiatives and the area where some of the Ombudsman's findings are repeated year after year. The **court backlog** has indeed been statistically reduced, but the initiators continue to report on nine or more years of procedures. This time, the Ombudsman particularly recommends the adoption of measures to ensure faster decision-making on interlocutory injunctions, since some courts need several years to issue a decision on the proposal for issuing an interlocutory injunction. The situation is similar in the case of enforcement procedures.

The Ombudsman also insists that competent authorities have to provide suitable conditions so that **expert witnesses and values** can prepare expert opinions or evaluations using professional and moral responsibility to accurate, responsible and impartial, and to do so within the agreed upon time limit. The Ombudsman therefore suggests reconsidering the present expert witness regulations and the adoption of necessary measures to supervise their professionalism, including amendments to the Courts Act, which governs this area at the normative level.

Following a number of initiatives, I think that **access to legal protection** is very difficult for individuals who are weaker in social or economic terms. The system of free legal aid is not enough, both due to the restrictions in enforcing this type of aid, and due to the conduct of some lawyers who implement it. It is especially alarming that legal aid is also very difficult in lawsuits concerning child support, where the plaintiff-parent has to cover the costs of the procedure in order to obtain child support. Thus, the resources, which the plaintiff-parent could spend for the child's needs are instead spent on litigation.

Each year, the Ombudsman also finds **irregularities in the police's** handling of individuals. It should be added, however, that the police carefully study most of the Ombudsman's recommendations, and implement them. This year we would like to underline two of them: the strict enforcement of the Offences Act, stipulating that a payment order may only be issued if the misdemeanour authority's authorised public officer detects a misdemeanour in person, or establishes a misdemeanour using appropriate technical equipment and devices; while the second is aimed at improving the efficiency (also through reinforcement of staffing) of the Internal Affairs Inspectorate in supervising the application of the Private Protection and Security Services Act, and in controlling the legality and professionalism of the private protection agencies.

The issue of migration and, consequently, of **aliens and asylum seekers** has become a very critical issue in most European countries. The number of requests for asylum in Slovenia continues to decrease. Slovenia acceded to the Geneva Convention on Refugees and the Protocol relating to the Status of Refugees, therefore it has to provide adequate asylum standards in line with the convention's requirements, but some provisions of the International Protection Act are not in compliance. Before the act was adopted, we raised this issue before the initiator; the UN High Commissioner for Refugees asked us to intervene.

The Ombudsman again (how many times still?) recommends prompt legal regulation in the **compensation for war damages** incurred by exiles, material victims, prisoners of war, and persons mobilised by the German army against their will during the Second World War. I hope that I will not need to write again in the next report that the procedures for acknowledging the status and rights under the so-called war laws are often too slow and that many beneficiaries may die before the procedures are completed.

Human rights also include the right to a **healthy and clean (unpolluted) environment**. It is one of the most recent rights that are given special attention by some states, who even appoint ombudsmen for this express purpose. We are increasingly aware of the importance of protecting the environment, which meant an increase in the number of initiatives to the Ombudsman. However, there remains a lot of uncertainty and inconsistency in this field. One of them is the unregulated area of the rules on the authorisation of monitoring: including follow-ups and inspection of the environment with systematic measurements. The Ombudsman suggests the following: the prompt establishment of a system to obtain authorisation for carrying out permanent measurements (accreditations); a system for monitoring the measurements; and granting authorisation for carrying out and controlling the quality of these measurements. Without such legally supported changes, the protection of the environment will remain inefficient, and individual polluters will continue their actions undisturbed.

With regard to commercial public services, some of the Ombudsman's calls have become a regular feature in these annual reports. This is especially true for the poorly regulated area of **chimney sweeping and funeral services**. It is totally unacceptable that two years ago the government appointed the Ministry of the Economy with preparing urgent changes in co-operation with the Ministry of the Environment and Spatial Planning, and that at the time of the writing of this report, they still don't exist. People losing their loved ones and then additionally having to deal with complications surrounding the funeral certainly deserve the timely and efficient work of both ministries, or a clear government decision regarding the final deadlines for amending such legislation.

Many initiators warned us about the unfair new system of charging **electric energy** subject to the principle of increasing prices: the more one spends, the higher the price per energy unit. In the Ombudsman's opinion, such an arrangement is unfair and discriminatory particularly against large families. The Ombudsman thinks that the state should intervene, even though this is a market-regulated activity that is governed by the free market.

Social distress highlighted a vague and **inadequate housing policy** and raised doubts about the state's commitment to creating opportunities for citizens to obtain proper housing (Article 78 of the Constitution of the Republic of Slovenia). The initiators often understand this article in a way that the State or the municipalities should provide for more affordable apartments or at least residential units for those individuals and families who have lost their homes due to financial crisis. Since they mostly do not get any such aid, they expect a solution from the Ombudsman.

The initiators have equally turned to the Ombudsman when vainly seeking regular **employment or fair payment for the work they have done**. The Ombudsman recommends the respect of the ratified European Social Charter and the provision of conditions for exercising the charter's rights, especially the right to fair working conditions, safe and healthy working conditions with fair remuneration that can guarantee fair remuneration sufficient for a decent standard of living. As for labour relationships, I have to underline the need to strengthen labour Inspection and the inspection of the civil service system, and to adopt more specific measures to prevent mobbing. We find that the provisions in the Labour Relationships Acts are quite loose and leave open questions both in terms of detecting (proving) mobbing, as in terms of procedures for their actual reduction.

Every year we detect new systemic shortcomings in **the pension and disability insurance** and find that even those that have been the subject of our complaints for several successive years are still there. For eight years, the National Assembly has vainly been requesting an update for the list of physical defects, which the Ombudsman had already recommended in 2001. The National Assembly instructed the government to prepare a new, updated list of physical defects, since the old list does not enable fair and equal treatment (Official Gazette of the Republic of Slovenia No. 2/2003). However, this inadequate list from 1983 is still in use. The Ombudsman has often raised the issue with relevant ministries, who have justified the delay "due to the complexity of tasks, which can only be performed by professionals in individual areas of medicine, as they have to study in detail all parts of the human body with all defects related to individual organs, and update the existing list accordingly". I consider such an answer to be completely inappropriate, as it leads the reader to believe that the ministry is either unable to perform such tasks, or does not perform them for political reasons. Both call for further action.

"The complexity of the task" - these words have been used by some ministries, or other bodies, to explain the delay in fulfilling the individual requests forwarded to them. Ministers and other competent persons should pay particular attention to such explanations, as they are sending a clear message that some departments are unable to address a certain problem.

The superficial assessment of the interaction between individual provisions for a certain new right has led to many uncertainties and inconsistencies, which directly or indirectly reduce the rights of individuals. Thus, we are presented with the problem of sharing the widows' pension and the possibility that both the divorced widow and the married-until-death widow would receive the entire widow's pension, and not share a much lower one, as they are entitled to now.

Uncertainties are also present within the framework of one and the same law. For example, in the Mental Health Act, Articles 36 and 39 are in contradiction with each other. Article 36 explains that admission to treatment requires an individual's free will, and compliance with the conditions in Article 39. But one of the conditions is that a person has a severely disturbed judgement of reality. The legislation does not explain how a person can express free will, if they suffer from a severely disturbed judgement of reality? Does it mean that, from now on, people without a severely disturbed judgement of reality cannot be admitted for treatment (in a special surveillance department) with their consent?

In the field of **health care and insurance**, the Ombudsman is facing problems both at the systemic level, and in relation to individuals and holders of health services. We still cannot confirm the expectation that the enforcement of the Patient's Rights Act would reduce problems. In order to avoid the above-indicated issues after the enforcement of the Mental Health Act, the Ombudsman recommends that the government of the Republic of Slovenia promptly prepare all implementing regulations. It also recommends promptly drafting and adopting the amendments of the Health Services Act to better regulate the issue of granting concessions, and – until the adoption of the Act – making decisions on granting the concessions under the General Administrative Procedure Act following a public tender.

A list of the Ombudsman's proposals and recommendations in the field of **social care** show that this area needs a thorough review of the work done so far (perhaps even including the reorganization of ministries). We are obliged to make such considerations not only due to unfavourable economic changes, but the lengthy postponing of urgent measures. These measures include, primarily, the rationalisation of the activities of social work centres, the provision for sufficient financial resources, and the immediate tackling of the issue of understaffing. For several years, social work centres were charged with an increasing workload with no increase in staff or material. The postponement of suitable solutions and the (uncertain) future has made itself felt in the case of retirement homes and with social-care institutions where the Constitutional Court's decisions still have not been enforced. In addition to this, the government's commitment to the adoption of the Family Code also calls for enforcement.

Slovenia is still a country without a ban on physical punishment for children; this should create serious concern for our government, which has to explain this embarrassing fact on the world stage. Equally worrying is the unacceptable practice of long procedures at courts for the custody of children. As Ombudsman, I sincerely wish that specialised family courts would be established as soon as possible and a Child Advocate introduced. This would allow many children to have their voices heard, at the same time enforcing and respecting the Convention principle that a child's benefits have to be the guiding principle in all children-related activities. **Children's rights** have to remain in focus with the regulation of all issues regarding children with special needs and the establishment of a more efficient education system for Roma children.

A look into the future

Although the work of the Ombudsman is closely connected with the content of initiatives received, it may also deal with more general issues relevant to the protection of human rights and fundamental freedoms and legal security of the citizens of the Republic of Slovenia (Article 9 of the Human Rights Ombudsman Act).

These general issues include the protection of the rights of children, the elderly, the disabled and handicapped, minorities and others from the edges of society. Therefore, we will continue to be active in these fields and cooperate with relevant national and foreign institutions.

We expect a great deal from the outcome of research that will analyse the various forms of violence in the school system and the working environment. We will critically follow up the implementation of the Family Violence Act and the new Penal Code, warning of vague definitions or eventual inefficiency in individual procedures.

We are concerned about the effects of the laws that are meant to protect patients' rights, namely the Patients Rights Act and the Mental Health Act. The latter, especially, has the potential of violating human rights. Therefore, its implementation will be monitored with great attention.

The Ombudsman does not have executive power, but can express observations. We wish the government listened to them and started addressing certain problems. Our findings and project initiatives (Let us Face Discrimination, Environment and Human Rights, Poverty and Human Rights, Advocate – a child's voice) announced some well-defined problems, even before the state administration had noticed them. Now we can only establish that the state reacted too late, or not at all. But it could be different ...

We are planning new projects in line with the contents of initiatives, while considering available staff and resources. In the future, we will focus on: the rights of the terminally ill and their loved ones; on violence in the school system and working environments (mobbing), and the effects of the economic crisis on the social and health situation of the population. Our professionals have joined research teams, have provided initiatives for certain kinds of research, actively cooperated at professional meetings, and have authored professional papers. Such additional activities are more than we could expect from an average public servant, but unfortunately, since 2008 their possibilities for promotion (or change of payment system) have become much worse. I am concerned that those who are best qualified will gradually find work in environments where they can be promoted faster and better.

Officially, the Human Rights Ombudsman began working on 1 January 1995. Since then, annual reports have been produced, allowing us to monitor the operation of this institution. By the 15th anniversary of its work, we would like to present an analysis of the work done by fields, comparing it with the findings of other ombudsmen.

At the end I would like to highlight two questions which the Human Rights Ombudsman will be trying to answer in the next few years: is Slovenia (still) a welfare state, and is Slovenia governed by the rule of law? These are questions that are being increasingly put to us by initiators who have suffered from bad experiences and extremely unfavourable living conditions, made worse by the global economic crisis and its negative impact on their social security. I will insist in my demands that the state bodies, local government bodies and the holders of public authorisations do not reduce, with their decisions and measures, the already achieved level of fundamental human rights and freedoms secured by the Constitution and international conventions.





The contents of the work and
the review of problems



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

2.1 CONSTITUTIONAL RIGHTS

GENERAL

In 2008, the number of received cases (Index 163) increased in all fields with the exception of security services. The most remarkable increase was noted in the number of initiatives concerning public information, the right to vote and the ethics of public expression.

Based on the received and the handled initiatives, we find that in spite of the new Religious Freedom Act, adopted in 2007, the Slovenian society is still coping with fundamental dilemmas on the situation and the meaning of the **freedom of conscience**, religious freedom, and the state's role in this context.

Among the most important positive developments, the Ombudsman welcomes the final decision of the Municipality of Ljubljana on the adoption of spatial planning acts and the signing of legal acts making possible the construction of the first mosque in Slovenia. The Muslim believers have been waiting for this a long time, and some initiatives, where we explained the situation to them, confirm that. We have noticed an increase of worrying xenophobic responses in part of the public. The conduct of some politicians who sought public support again to prevent the construction of a mosque in Ljubljana, unfortunately also by spreading islamophobic prejudice and inflaming religious intolerance against Muslims, stands out here. In the Ombudsman's opinion, this is manifested also in the referendum initiative by a city councillor against certain minaret dimensions. The substantiation of this initiative was not related with the subject of complaint (allegedly too high minaret), but was a typical illustration of the concept of islamophobia – irrational fear and the feeling of being threatened by Islam.

In the same period, deliberately causing damage on the premise of the Islamic community in Slovenia was recorded, and the Mufti received extremely offensive and threatening letters. Simultaneous profanation of graves in the Muslims graveyard from World War I at Log pod Mangartom could not be ignored. At the same time we could read, notably on the World Wide Web, numerous outbursts of religious hatred whose authors were hiding behind anonymity. Considering all these circumstances there were reasonable grounds to suspect that the purpose of the referendum initiative was primarily to inflame intolerance against the Muslims and prevent the construction of the facility, which is protected by Article 41 of the Constitution. We believe that such referenda and gathering support for them could be directly prohibited based on Article 63 of the Constitution of the Republic of Slovenia.

Without any broader public debate, two implementing regulations were published allowing the employment of ministers from larger religious communities in hospitals and detention institutions in line with the Religious Freedom Act. The regulations raised indignation in part

of the public, partly because of a suspected discrimination of minor religious communities, and partly because they incited a general outburst of anti-religious feelings, for example the calls to prohibit the operation of the Roman Catholic Church. All this led the Ombudsman to make a reception for the representatives of religious communities and her statement prior to the Human Rights Day. This statement was aimed at balancing the opinions by calling for the respect of the freedom of conscience and religious beliefs. At the same time, we cautioned law enforcement authorities of the need for a thorough investigation of all the suspected violations of the prohibition to incite and inflame religious intolerance.

We noted again a great increase in the number of matters regarding the **ethics of public expression** (Index 255). This particularly applies to the interference of media in the privacy of people (some cases still included children), the occurrence of intolerant and offensive statements in public, particularly on the website, active participation of media in spreading prejudice by exposing the nationality of alleged suspects in their articles, and the like. We were quite frequently informed of requests for corrections and answers in the media, complaints for allegedly disputable advertisements, etc.

In 2008, we were concerned about the extreme increase in the gravity and intensity of **hate speech occurrences** on the World Wide Web, particularly web forums. These cases were most frequent and even predictable around various, politically and emotionally sensitive, topics. This implies that some media should take responsibility for inflaming hatred towards certain marginal and vulnerable groups. Therefore the Ombudsman calls again for a greater responsibility and a more professional conduct of journalists and editors.

There was some progress in 2008 in the state's response to hate speech, at least from the regulatory point of view. In the annual report for 2005, we cautioned that the provisions in Article 300 of the Penal Code criminalising hate speech are too narrow, since they only refer to inciting and inflaming hatred, discord or intolerance based on the racial, religious or national origin. In Article 297 of the new Penal Code (KZ-1), the legislator has extended the basis for prosecution to include 'encouraging other discrimination based on physical or mental deficiencies or sexual orientation'. The legislator also took into account the gravity of consequences resulting from hate speech in the media. Punishment for offence through a publication in the media may now be imposed not only to the direct perpetrators, but also to editors or persons replacing them, save in the case of live broadcast when the contentious acts could not be prevented.

In curbing these occurrences, the practice of law enforcement authorities is of crucial importance. Since hate speech implies violation of public order, it may only be prosecuted by a prosecutor. The rule of law is based on the theoretical assumption that these cases do not (directly) involve any injured person. This standpoint of the theory and case-law was ultimately confirmed by the Constitutional Court in 2008. The Ombudsman therefore underlines the crucial role of state bodies in providing efficient sanctions for criminal acts committed by hatred. Unfortunately, the conduct of the state in this sphere cannot be estimated as positive so far. As follows from our annual reports, we have frequently noted that criminal offences which involved inciting, inflaming and spreading religious, national or racial intolerance, and the criminal offences motivated with discrimination, were underestimated. In the past, we often underlined insufficient response to individual complaints or reports, even in cases forwarded by the Ombudsman, where the law enforcement authorities failed to react to certain events.

In 2008, there was no major progress in the functioning of the **means of complaint for viewers and listeners** of the public broadcasting company Radiotelevizija Slovenija. The Human Rights Ombudsman of the Republic of Slovenia also believes that the ombudsman of viewers' and listeners' rights has not fulfilled their expectations. The viewers and listeners

of the public institute definitely deserve an autonomous ombudsman with adequate powers provided by the law, and not a mediator who only receives and records the responses of the public.

Unfortunately, we observed an increase in the cases of sensational news in 2008 with the focus on tragic destinies of children. We sent some particularly grave cases of **unjustified exposure of the identity of children** to be considered by the Journalists' Honorary Tribunal. The Journalists' Honorary Tribunal has stated several times, on the basis of our proposals, that the conduct of journalists and editors was unethical and involved violations of the Code of Ethics of the Slovene Journalists. However, this was obviously not enough to eliminate inappropriate practice, therefore more efficient mechanisms need to be considered for the protection of children's rights in this area. By increasing public pressure, we finally received appropriate response from the legislator. In Article 287 of the new Penal Code, the legislator defined that violations of the secrecy of proceedings constitute a special criminal offence, and penalties will be imposed to those who publish personal data of a child involved in official proceedings.

In the field of the **freedom of association** we have observed an increase of cases (Index 160). In terms of contents, problems related to joining or expulsion from professional associations, hunters' associations, disabled persons' organisations, and similar, stand out. Some organisations have public powers (for example hunting clubs, some disabled persons' organisations). Membership in these organisations may have a great meaning for individuals because it considerably facilitates the exercise of some key (for example trade union) interests and enables access to some services, including the social care.

As regards the **right to vote**, initiatives concerning the parliamentary elections stand out, both in terms of contents and number. We also received some initiatives regarding referendums at the state and the local level. It is encouraging that, at this year's elections, ballot papers for the blind were in Braille, and that as an experiment, special voting equipment for persons with disabilities was used to a limited extent and in a limited number.

Due to several amendments of the legislation in 2008, we wanted to examine the exercise of the right to vote of persons who, during the elections, stay in the institutions where they are not permanently residing (homes for the elderly, hospitals, prisons). In the past, the Ombudsman tried to increase accessibility of polling stations for the disabled. Based on the ratified International Convention on the Rights of Persons with Disabilities, she wanted to investigate the issue of reasonable adjustments for the exercise of the right to vote of persons with different types of disabilities. In the period after the call for elections, the web site of the National Electoral Commission and the e-administration portal were extremely limited and deficient, and relevant information was found only after thorough searching. As regards the right to be informed, we cautioned the National Electoral Commission and the Ministry of Public Administration that citizens had no information available on dates or time limits for submitting requests to vote at home or by mail, neither the lists or the addresses of the electoral district commissions or the local electoral commissions to whom the requests should be addressed. In spite of our urging, the National Electoral Commission did not send written explanations to our inquiries, therefore we had to caution it. The Ombudsman insists that the request for accessibility of this information on the web page is a fundamental standard of informing of the public which is governed by a uniform regime of the right of access to public information. This request also results from the principle of good administration.

Article 47(4) of the National Assembly Elections Act provides that persons who stay in hospitals, homes for the elderly, institutes for the disabled and similar institutes, and the persons serving prison sentence in the period defined for the submission of the candidates'

lists, can express their will so that their signature on a prescribed form is confirmed by an authorised body of the legal entity. We found that, in practice, the persons who confirm the voter's will to support a particular candidate list are not appointed by the Ministry of the Interior, but the institution itself entrusts this task to one of its employees. So in practice this task is executed without public authority. In the Ombudsman's opinion, these institutions do not guarantee the prevention of possible abuse, or any legal security of the candidates or holders of candidates' lists. The Ombudsman therefore calls on competent authorities to provide suitable legal security in confirming the voters' will.

In the **personal data protection**, the number of handled initiatives has increased again (by 20%). This is hard to explain, since after the office of the Information Commissioner was opened, the Ombudsman no longer performs the tasks of independent supervisor in this field. We believe that the increase in the number of initiatives results from a higher awareness of the rights of individuals regarding the protection of personal data, encouraged by some high-profile cases. In terms of contents, we found again a greater share of cases related to the (in) admissibility of personal data processing by various employers, including in the spheres of health care and education. In most of the handled cases we provided the initiators with clarifications on their rights and the instructions on how to use legal channels in order to protect their rights.

OMBUDSMAN'S PROPOSALS AND RECOMMENDATIONS - SUMMARY

- ✚ The Ombudsman recommends that public office holders at the national or local level do not permit, incite or inflame national, racial, religious or other hatred or intolerance and always respond to such acts by condemning them. The Ombudsman recommends law enforcement authorities consider these acts seriously and prosecute them consistently.
- ✚ The Ombudsman once more recommends that public participation in adopting the regulations be regulated by a special law defining the range of participants, the time of the debate, the ways of submitting comments, and the obligation of the debate's holders to take a position on the comments and proposals received.
- ✚ The Ombudsman recommends that journalists and editors respect the constitutional principles on the presumption of innocence, privacy protection and the personal rights of individuals, and be particularly careful when reporting on children.
- ✚ The Ombudsman recommends that the Ministry of Culture and journalist associations prepare more representative and efficient mechanisms for self regulation in the field of media.
- ✚ The Ombudsman proposes that the public institute RTV Slovenia support the legal basis and conditions for a truly autonomous and more efficient ombudsman for viewers and listeners.
- ✚ The Ombudsman proposes that the National Electoral Commission, the Ministry of Public Administration, and the Ministry of Internal Affairs enable transparent and efficient access to information that is relevant to the right to vote, particularly for persons with special needs. In these procedures, proper legal security should be provided by adopting provisions governing the appointment of persons authorised for electoral activities in retirement homes, mental hospitals, and prisons.
- ✚ The Ombudsman proposes that the Referendum and Public Initiative Act state more precisely the types and forms of referenda that restrict the possibility of voting abroad.
- ✚ The Ombudsman recommends the adoption of further guarantees regarding the right to freedom of association (among professional associations and societies, workers' organisations, employers' organisations, and other private/interest groups), and the protection against discrimination related to inclusion or exclusion, especially in organisations whose members pursue certain professional activities and/or enjoy benefits from their membership in such organisations.
- ✚ The Ombudsman proposes an amendment on the applicable rules of organisations and the method for religious/spiritual care in prisons, juvenile institutions, rehabilitation centres and training institutions, hospitals and other healthcare service providers, and in social care institutions to appropriately assure that the conditions behind the right to religious spiritual care also apply to members of smaller religious communities. The Ombudsman also proposes the prompt adoption of missing regulations to assure comparable religious spiritual care to people in social care institutions providing institutional care.

CASES

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1. Inadequate regulation of the conditions for the spiritual religious care of detainees and occupants

In line with Articles 24 and 25 of the Religious Freedom Act, persons in detention facilities and similar institutions, in hospitals and social care institutions performing institutional care, have the right to regular individual and collective religious spiritual care. For this purpose, the Religious Freedom Act envisages the employment of priests. The latter was made possible only by the Rules on the organization and performance of religious spiritual care in detention facilities, educational institutions, juvenile detention centres and training institutions (Rules of the Ministry of Justice), issued by the Minister for Justice, and the Rules on the organization and performance of religious spiritual care in hospitals and other providers of medical services (Rules of the Ministry of Health), issued by the Minister for Health. Both regulations regulate more precisely only the situation of the beneficiaries, whose religious communities are “larger in number” and, depending on criteria, are entitled to a part-time or full-time employed priest. As neither of those rules regulated some of the key issues, and based on a suspicion that they had indirect discriminatory effect on the basis of religious belief, the Ombudsman initiated the case on her own initiative.

After the publication of the rules we immediately cautioned both Ministers that in providing the conditions for the exercise of the right to spiritual religious care, it is essential that full equality of detainees and occupants, as well as religious communities, is regulated by law (Articles 14 and 7 of the Constitution). We cautioned the Ministers that the Religious Freedom Act binds them to provide material conditions for the religious care of detainees and occupants. The Ministries should therefore in their rules transparently ensure proper organizational solutions and the payment for the religious spiritual care of the members of smaller religious communities. The possible explanations, e.g. that priests who provide these services without being employed in those institutions, are not entitled to reimbursement of the costs and the remuneration for their work, would have (indirect) discriminatory effects. It is not necessary that the rules are actually applied (in a discriminatory manner) to have discrimination. The mere possibility of discrimination is enough. We cautioned that, equally, the rules do not regulate some other key organisational issues (e.g. what is the sufficiently large number of detained persons of the same religious belief which enables the employment of a priest in line with criteria; how to consistently take into account negative religious freedom of persons in these institutions, etc). We expressed our view that this legal void creates the conditions for arbitrary explanation of individual articles of the Religious Freedom Act, putting at risk the right to equal treatment in the exercise of the right to religious spiritual care.

The Ministries tried to dismiss our concerns with additional explanations, and insisted that the legal regulation is appropriate, as it “applies to all”. The Ministry of Justice stated that the Rules on the organization and performance of spiritual care in prisons, educational institutions, juvenile detention centres and training institutions enables contractual regulation of religious care for the members of minor religious communities. They also pointed out that a coordinator for spiritual care is responsible for arranging contacts with other religious communities in prisons. The Ministry of Justice assured us that the need for religious spiritual care will be established only following explicit wish of detainees who shall receive information on the possibility to exercise this right upon entering the institution. As regards the issue of the burden of expenses, the Ministry of Health cautioned that according to the Religious Freedom Act, the financial burden of religious care is on the health care institutions and not on the Ministry of Health. The Ministries affirmed that there were no problems related to religious care in the past and that they are not expected in the future either. In response to the Ombudsman’s question, how the interested public cooperated in the preparation of these rules, we received only an explanation of the Ministry of Health that the content of the draft rules was published on the Ministry’s web site, and the Ministries were satisfied with the mutual consultation and the cooperation of the Government Office for Religious Communities.

The Ombudsman insists that the manner of exercising the right to religious spiritual care for the members of minor religious communities is not defined clearly enough and that material conditions for spiritual religious care of detainees, hospital patients and occupants should not be ruled by practice or internal instructions. Public law rules must be prescribed in detail and defined specifically enough. The stated rules therefore cast reasonable doubt on the impartiality of the state, and provide realistic grounds for complaints about favourising large religious communities, as reflected in rather impetuous responses of one part of the public. **1.1-9/2008.**

2. What kind of procedures can the Human Rights Ombudsman comment?

In July, the Human Rights Ombudsman specifically responded to the statements of a commentator who denied the Ombudsman the right to comment on the procedures of state bodies which are not final yet. Namely, at the press conference on 8 July, the Ombudsman expressed concern about the disproportionate use of police powers in the deprivation of personal liberty (*involving the use of tying and handcuffing device*). In the programme *Odmevi* on the national TV, they commented the Ombudsman's statement given at the press conference, without even reporting on it the same day. We assessed that as a professional slip of the public television editors. The basic thesis of the commentator was that the Ombudsman should not deal with or comment on matters which are, or could be, the subject of a judicial proceeding.

We publicly responded to the comment because it involved a particularly dangerous and unacceptable thesis whose purpose was to limit and deny the Ombudsman's constitutional role. We informed them that we interpret the Human Rights Ombudsman Law in the spirit of the Constitution, and in favour of the protection of human rights, and not in favour of the repressive bodies of the executive branch of power. The law gives the Ombudsman various options for action in the exercise of his constitutional powers - the protection of human rights and fundamental freedoms in relation to state bodies, the local and the public authorities. Article 9(2) of the Human Rights Ombudsman Law provides that the Ombudsman "may also deal with more general issues relevant to the protection of human rights and fundamental freedoms and legal security of the citizens of the Republic of Slovenia". The Ombudsman has been responding in this manner for all fourteen years of his operation and so far no one has demanded that he should remain silent in similar cases until the end of all formal proceedings. We must be aware that almost any relation or contact between an individual and a public authority may be the subject of a judicial proceeding.

This commentator's approach was unacceptable and contrary to development trends of the ombudsmen worldwide who put more and more emphasis to the protection of human rights, and do not only focus on the operation of the state administration in the narrow sense (maladministration). Broader competence of the ombudsmen, including their preventive operation, are also supported by international institutions (the UN, the Council of Europe and the EU).

These events raised the question what was the purpose of coordinated media attacks at that time on the institution of the Human Rights Ombudsman and the Ombudsman personally. Maybe to keep us silent, so we will not react when we find that the repressive authorities of the executive branch of power, notably the police, have exceeded their competencies? We publicly announced that the Ombudsman will continue performing his constitutional and legal tasks regardless of the pressures from the media. **0105-3/2008**

2.2 DISCRIMINATION

GENERAL

In terms of the content, the number and the gravity of the problems handled, suspicions of the violations of racial and ethnic discrimination, particularly of the Roma, are standing out. In the Ombudsman's opinion, these problems intensify in spite of the regulatory progress in the last few years. The absence of a transparent strategy of the state in this field is therefore a reason of concern. The next largest number of initiatives concern complaints on discrimination based on disability (particularly regarding reasonable adjustments), sexual orientation, and age. We processed some initiatives on discrimination based on sex, social status, financial situation and religious belief. We also noted some cases of suspected discrimination based on political belief, permanent residence status, health condition (drug addicts), and other personal circumstances (e.g. persons suspected of a criminal offence).

The number of reports of discrimination in employment and work is particularly increasing. We estimate that there was no greater progress in reducing discrimination in 2008, neither regarding the legal protection of the persons affected, nor the strategic political orientations. The fact that the number and the gravity of cases of hate speech on the World Wide Web are intensifying, is worrying. These cases not only maintain, but even drive discriminatory social patterns, while no decisive responses of the prosecuting authorities have been noted.

2.2.1 Legal and other presumptions for the protection against discrimination

Legal protection against discrimination is rather weak according to Ombudsman, because it is not very likely that the offenders of serious violations will actually be penalised by public measures (e.g. inspection measures or criminal prosecution).

In September 2008, after two unsuccessful public tenders, a new Advocate for the principle of equality (Advocate) was appointed pursuant to the amended 'Implementation of the Principle of Equal Treatment Act'. In Ombudsman's annual reports, we persistently point to insufficient autonomy of the Advocate in performing the role of the specialized body for the protection against discrimination. Independence of the Advocate has been recommended for many years by the bodies of the Council of Europe (European Commission against Racism and Intolerance, ECRI), and in preventing the gender, racial, and ethnic discrimination it is also required by the *acquis communautaire*. Similar solutions are imposed also by the new UN Convention on the Rights of Persons with Disabilities.

We cautioned of the problem of the Advocate's independence also in the parliamentary discussion on her annual report for 2007. We expect some improvement after the decision of the National Assembly, requesting the government to examine the issue and draft proposals for better solutions. In the Ombudsman's opinion, this could only be done through a better institutional solution, separation of the Advocate from the Government (Government Office for Equal Opportunities), ensuring appropriate resources, staff and powers.

Slovenia has not adopted yet an overall national strategy to eliminate discrimination, and the Ombudsman has been cautioning of this problem for many years. We also noted

poor coordination of the government authorities in the prevention of discrimination. The state therefore does not have an overall review of the situation of the most endangered groups. This does not enable efficient planning and assessing the efficiency of the adopted measures and policies. Partial expectations, e.g. in the field of gender equality, therefore have asymmetrical effect. Leaving these tasks to NGOs only is obviously not enough, and certainly cannot replace an active role of the state.

In this context, many Constitutional Court decisions still have not been implemented. They were added a new court decision, which agrees with the Ombudsman's findings from the last year's annual report, that blind persons in civil procedures (including judicial and administrative) are indirectly discriminated on the basis of disability, because they do not have the possibility of adapted communication. Indirect discrimination can also be noted in the opposition to eliminate the injustices of the erased, where the obvious national or ethnic origin of these persons cannot be overlooked. It is becoming more and more evident that beside direct discrimination of the erased based on citizenship, this also involves political discrimination.

2.2.2 National and ethnic minorities

In 2008, we did not receive any initiative that would explicitly point to the violation of special rights guaranteed by the Constitution to the two self governing national communities (the Italian and the Hungarian one) and their participants. In the regulatory point of view, the situation is rather good, however it is still doubtful how the rights are ensured in practice.

The Ombudsman has cautioned many times in her annual reports that unresolved issues regarding the manner of protection of the Roma community have a very negative effect on the social atmosphere and create favourable conditions for the expression of opposition and intolerance towards the Roma. Notwithstanding the seemingly exemplary legislation, a transparent establishing of responsibilities for individual tasks in the field of state care for the Roma community is still missing. In spite of the Ombudsman's warnings of several years, we still miss a transparent state strategy regarding these issues.

According to Article 6(1) of 'The Roma Community Act', the government should adopt a programme of measures (a strategy) for a coordinated exercise of special rights of the Roma community members in cooperation with local government communities and the Roma Community Council of the Republic of Slovenia. The programme should provide, in line with the relevant legislation, the obligations and tasks (in the fields of education, schooling and training, employment, development of the Roma language and culture, improving the living conditions, etc.), which then need to be executed by competent ministries, other state bodies and local government bodies. The programme of measures should be adopted within one year after the enforcement of the Roma Community Act, and is outstanding ever since April 2008. It is encouraging that some similar programmes are being prepared at the local level (e.g. in the Municipality Novo mesto).

In the annual report for 2007, we already cautioned of the unacceptable content of the "Act Amending the Local Self-Government Act". In Article 15, the Act authorised the government of the Republic of Slovenia to issue a regulation determining the criteria which will serve as a basis for determining autochthonous status of the settled Roma community, which is a prerequisite for appointing a Roma delegate in the city council. Whether a municipality should ensure the representation of the Roma community in the city council, or if a certain local Roma community shall have the right to representation in the representative body of a municipality or not, would therefore directly depend on the text of the government regulation. In 2008, the Ombudsman submitted a request for the review of constitutionality of the Local Self-Government Act, because she believes that the competence of the

government for original regulation of this issue is in conflict with the Constitution of the Republic of Slovenia and its obligations to prevent racial discrimination pursuant to Article 26 of the United Nations International Covenant on Civil and Political Rights, and Article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination. The Ombudsman estimates that the condition of autochthonism has a discriminatory effect. Regarding the official population censuses, we believe that due to the consequences of the contested regulation, at least a third of the Roma community members, who presently live in Slovenia, are systematically excluded from special political representation in local authorities. We therefore, proposed the Constitutional Court to review the constitutionality of the regulation of special rights of the Roma community, where it also provides the condition of autochthonous population, as a criterion for granting special rights, e.g. the possibilities for the representation in the Roma Community Council of the Republic of Slovenia.

We have been observing for several years the Sinti community efforts to obtain a state recognition of their status as a specially protected ethnic community or national minority. Since they consider themselves a special ethnic community with a distinctive historical, cultural and language identity, they consistently reject to be equated with the Roma. In these circumstances, the Union of the Slovenian Sinti societies submitted an initiative for the review of the constitutionality of the Roma Community Act, and claimed that it is discriminatory towards the Sinti. We called on the initiators to complete their initiative for the review of the constitutionality accordingly, in order to be able to prove their legal interest, and promised that we will send our opinion to the Constitutional Court as *amicus curiae* (friend of the court). The Constitutional Court of the Republic of Slovenia rejected the initiative for the review of the constitutionality in the matter, before the Human Rights Ombudsman of the Republic of Slovenia submitted a detailed argumentation of standpoints. Nevertheless, we believe that the decision of the Constitutional Court is of a great significance in terms of content, because it actually complies with the claim of the Sinti community. Namely, the decision is based on the finding that the concept of the Roma community in Article 65 of the Constitution has to be interpreted very broadly, i.e. in the way that it also includes the Sinti community.

2.2.3 Equal opportunities – by gender

The Ombudsman cautions of the problem of unequal treatment on the basis of parenthood as a special personal circumstance or the grounds for discrimination. This is very frequently the reason for discriminatory treatment of women in employment (particularly of women in their fertility period and women with children), and in employment relationships, particularly in promotion, when the scope of absence from work is also considered among the criteria. In the European legislation and practice, discriminatory treatment due to parenthood is considered notably as the problem of gender discrimination of women, although this problem undoubtedly affects both sexes. We also noted that in practice men are often exposed to discriminatory treatment, e.g. harassment due to fatherhood. We have observed that even in the public sector, the employees are being pressed to waive their right to paternity leave. Therefore it is not surprising that international supervisory mechanisms need to warn the competent authorities about the serious obligation of the state to prevent gender discrimination.

2.2.4 Discrimination in employment

In the annual report for 2006, we already noted that the legislation actually makes it impossible for the victims of discrimination in employment to compare their situation with the situation of those who are treated favourably. With the exception of recruitment in state and local bodies, the rejected candidate does not have the right to access the tender documentation and the employer's files on the selected candidate. The documents are in

fact accessible only to the Labour Inspectorate of the Republic of Slovenia. The affected person may request access to the tender documentation only in court, certainly on the condition that he has (without suitable information) exercised judicial protection in time. Thus it has been made almost impossible for the rejected candidate to prove discrimination in employment. For this reason, we already suggested the Ministry of Labour, Family and Social Affairs to include the right to access the tender documentation and acts on the choice of the employer in the preparation of amendments to the Employment Relationships Act.

2.2.5 Elimination of discrimination based on disability

In 2008, a great progress was achieved at least in the legislative field, since the UN Convention on the Rights of Persons with Disabilities was ratified. The case of the Ombudsman's unsuccessful intervention because of provisions in the Civil Procedure Act which do not provide adjusted ways of communication (e.g. in Braille) for the blind and the partially sighted persons was particularly evident. The Constitutional Court agreed with the Ombudsman's standpoint that the claim for reasonable adjustments is actually an obligation to prevent (indirect) discrimination of persons with disabilities. In spite of our intervention, the ordinary court only partially satisfied the initiator's claim for the transcription of the judicial document into Braille. The Constitutional Court found that the Civil Procedure Act does not ensure the necessary and appropriate adjustments to the blind and partially sighted persons, which would enable them equal exercise of their right to fair treatment in any legal proceeding (Article 22 of the Constitution). This neglect of the legislator constitutes violations - indirect discrimination based on disability (under Article 14(1) of the Constitution). The Constitutional Court rejected the contrary argumentation of the government and the National Assembly that the initiator has an attorney, with the statement that the regulation would have a discriminatory effect even if the legislation provided obligatory free legal representation to the blind person in such conditions. The decision transparently underlines the obligation to eliminate indirect discriminatory obstacles for the blind and the duty to ensure reasonable adjustments.

OMBUDSMAN'S PROPOSALS AND RECOMMENDATIONS - SUMMARY

- ✚ In co-operation with local self-governing organisations and the Roma Community Council of the Republic of Slovenia, the government should adopt a programme of measures for the coordinated exercise of special rights in the Roma community, pursuant to Articles 4 – 6 of the Roma Community in the Republic of Slovenia Act (ZRomS-1).
- ✚ The Ombudsman recommends that the National Assembly and the government take a position on initiatives for the adoption of additional measures for the protection of minorities that are not explicitly defined in the Constitution, and adopt additional measures to encourage, develop and preserve their ethnic and national identity.
- ✚ The government should prepare a national programme of measures for reducing all forms of discrimination, and a strategy for its successful implementation, including means for raising awareness, and the promotion and education of the professional public and target groups.
- ✚ The Ombudsman recommends the adoption of legislative solutions to ensure, in compliance with the *acquis*, the greater independence and impartiality of a specialized body for the protection against discrimination – an advocate for the principle of equality.
- ✚ The Ombudsman recommends the revival of the work of the Government Council for the implementation of the principle of equal treatment as a governmental professional and consultative body, with the purpose of monitoring the position of individual social groups and submitted proposals, initiatives, and recommendations to the government for the adopting of regulations and measures in this area.
- ✚ The Ombudsman calls for the adoption of regulations and measures contributing to the implementation of the UN Convention on the Rights of Persons with Disabilities.

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3. The government body unable to eliminate the discriminatory obstacle (the stairs)

We handled an initiative of a disabled persons' organisation on the inaccessibility of a certain government body to persons on wheelchairs. In its answer, the body confirmed that due to architectural characteristics of the facility, it is impossible to organise a talk with a physically impaired person, unless the latter agreed to be carried up the stairs, together with the wheelchair. They noted other solutions, e.g. talk over the telephone, videoconference or talk in another facility, and expressed their conviction that this satisfies the claim for reasonable adjustments. They explained that they are solving the inaccessibility issue *ad hoc*, and that there have been no problems so far.

We estimated the standpoints of the body as incorrect, since they did not consider the provisions on reasonable adjustments of the Convention on the Rights of Persons with Disabilities. We therefore cautioned that the stairs are a "test case" and a symbol of (structural) discrimination of the physically impaired, because they often cause serious and even insuperable obstacles to efficient exercise of rights and legal interests. We proposed the body to change their present internal policy towards physically impaired persons, eliminate the built obstacles, and ensure appropriate accessibility of offices and other premises.

In its response to our opinion, the body agreed with the need for a more permanent solution. It marked our proposals as reasonable and worth of further examination. However, it insisted that the stairs as an obstacle legally do not constitute discrimination. The latter would occur only if they denied reasonable adjustments to the directly affected person. The body did not clarify why the suggested elimination of the obstacle means a disproportionate burden to them. Equally, the body did not disprove the reproaches of the discouraging effect of the stairs for persons with disabilities in the employment at the body, the use of its services, and the cooperation in the administration of public matters, nor did it give a timeframe in which it would try to eliminate the obstacle.

The assumption that all persons affected would be satisfied with the suggested solutions is, in the Ombudsman's opinion, incorrect. Finally, this was confirmed also by the content of the initiative to the Ombudsman. Therefore, we insist on the finding that, by omission, the government violates the prohibition of discrimination of the physically impaired in their access to public goods and services, cooperation in the administration of public matters, and employment at the authority. **10.0-7/2007**

4. The right to view pre-election debates on RTV Slovenija in sign language

In the report for 2007, we already presented the initiative of the deaf viewers who were unable to access the key information programmes on RTV Slovenija (RTVS). During the electoral campaign for the Election of the President of the Republic, those programmes did not ensure efficient access to live pre-election broadcasts, with translations into the Slovenian sign language. We believed that such a claim for the adjusted ways of viewing these key TV- programmes for the deaf viewers is justified, because it is a reasonable form of adjustment or measure for preventing discrimination of the deaf. Already in 2007, we estimated the persistence of the management of the RTVS that the services of teletext are a satisfactory solution, as an unconvincing and insufficient argument. For this reason, we established violations of the prohibition of discrimination based on disability. In 2008, we again received some similar initiatives from the representatives of the deaf at the forthcoming national assembly elections. The initiators turned also to the viewers and listeners rights ombudsman in RTVS programmes.

Our intervention in 2008 was only partially successful. The management of the RTVS and TV Slovenia did not respond to our opinion, but we received written explanations from the management of the Multimedia centre (MMC) of RTVS which is responsible for teletext services. The viewers and listeners rights ombudsman in RTVS programmes gave only an explanation over the telephone that the final solution was a compromise and adopted by agreement with the representatives of the deaf viewers. TV Slovenia assured this group of viewers the possibility of live watching with translations into the sign language for self-presentations of list of candidates (with the exception of the first pre-election confrontation). However, the adjusted watching of pre-election debates was possible only subsequently (in repeated programmes), although the interpreters were directly present at the making of the broadcasts. The statements about the agreed solution turned out to be deceiving. The representatives of the deaf rejected the explanation on the compromise solution as untrue and cautioned that the authority did not take a position regarding their statements on the discriminatory editorial policy of the TV Slovenija. At the same time we also received some indignant responses of

the deaf who were unable to watch the repeats of the broadcasts due to inappropriate time. Namely, they were on the air at 3 p.m. when most employed persons are still at work. We found that there is no sensible reason for the solution with repeated pre-election debates, and the total financial expenses for the translation are low.

We regret that our warnings were not met with a suitable response of the management of TV Slovenija and RTV Slovenija. Their conduct affirms our conviction that, with the exception of MMC, these authorities do not respect the principles of good administration. In addition, TV Slovenija did not accept our recommendation to ensure translations into the sign language also for other key live information broadcasts (e.g. the daily news). Therefore, the initiative was partially justified because reasonable adjustments for watching the TV-programme have not been appropriately ensured. The problem indicates that this issue needs to be governed with regulations. **10.0 -25/2007**

5. Hate speech in school journal

A text that was published in a high school journal was sent for information to the Human Rights Ombudsman. The initiator who felt hurt because of such writing, regarded the article as extremely offensive towards the members of ethnic minorities living in Slovenia, and called on the editorial of the journal to apologize for their conduct in the next issue.

After reading the mentioned text, we send an inquiry to the school, in which we expressed disappointment over the fact that this kind of hate speech, loaded with discriminatory prejudice and stereotypes, finds its way to the school journal of an education institution. We cautioned that tolerating or even encouraging such writing in a school journal is certainly a shift away from the goals of multicultural and multi-language dimension of education, evident in the Elementary School Act. We underlined that the professors themselves should first of all be aware of the negative influence of prejudice and stereotypes, inform the pupils about the consequences of intolerance and discrimination, and of that how important it is that we ourselves do not discriminate nor tolerate others who are doing this.

We also gave information to the school management on what hate speech is and how persons of a certain ethnic origin can feel pushed away and personally hurt because of such offensive and hostile writings. In accordance with the recommendations of the European Commission against Racism and Intolerance (ECRI) no. 10 on the fight against racism and intolerance in education, we also recommended the school to place the endeavours against such occurrences among their priority tasks, prepare rules or code of good treatment, and continuously educate their employees and raise the awareness for work in a multicultural environment.

The management of the school informed us that extra inspection was carried out at school. Regarding the content of the contentious article, the inspector passed a warning that director, as a responsible person, needs to examine the initiative against the publication of the contentious article and adopt appropriate measures that texts with intolerant content would not occur and spread in school journals. In the answer to the inspectorate and the Ombudsman, the management of the school wrote that they will avoid articles with similar content in the future and that they will discuss the reasonableness of issuing articles with similar content with the editorial board. They promised that they will apologize for the contentious writing in the next issue of the school journal. **10.0-7/2008**

2.3 RESTRICTION OF PERSONAL LIBERTY

GENERAL

In this chapter we are dealing with issues related to the restriction of personal liberty of persons serving prison sentence, detainees, persons who are placed in protected wards of psychiatric hospitals against their will due to their mental disorders or diseases, social care institutions or homes for the elderly, and aliens whose movement is restricted by law.

2.3.1 Detainees and persons serving prison sentence

In 2008, we handled 97 initiatives of prisoners and 26 initiatives of detainees, and we continued visits to prisons (ZPKZ) and the Radeče Re-education Centre. The number of handled matters in this field decreased in comparison with 2007, but we think that this is connected with greater presence of the Human Rights Ombudsman in prisons. Besides the visits within the framework of the execution of powers and tasks of the state preventive mechanism, we have been visiting prisons also because of the wishes of some initiators to have a personal talk.

This time the initiatives of prisoners were also mostly related to (bad) living conditions in ZPKZ due to congestion in prisons and the conduct of prison staff, and some of them were related to the (outstanding) criminal proceedings, in which the initiators were involved.

In his preventive role (e.g. visits to prisons) and in handling individual initiatives of prisoners, the Ombudsman examines the compliance with minimal rules and standards of treatment of persons whose personal liberty has been deprived or limited. At the same time, the Ombudsman constantly encourages the respect of one's humanity and dignity in cases of deprivation of liberty. Therefore, we found that severe control of one of the prisoners which implied that the sentenced prisoner, after having completed his work in the kitchen, had to wait for three more hours (usually without work), is not a reasonable measure.

In spite of the constant rise in the number of prisoners and a decrease in the number of prison guards, the prison system still ensures safety. However, we found that due to understaffing, the obligatory safety tasks are being abandoned and the rights of employees violated. The escorts of detainees to the court are being cancelled, and the medical examinations of prisoners are being postponed. For these reasons, we estimated the situation in some ZPKZ as critical, which is confirmed by the fact that one prison guard is entrusted with the custody of as many as 50 prisoners or more. In the Ombudsman's belief, this demands prompt and efficient solutions for ensuring the improvement of the present conditions, by increasing space possibilities and the number of staff. More frequent use of alternative criminal sanctions in case-law would also contribute to the reduction and elimination of congestion in ZPKZ. With the purpose of efficient execution of criminal sanctions, the Enforcement of Penal Sentences Act was amended in 2008. Nevertheless, the adopted amendments reduced some benefits of the sentenced prisoners (the scope of mail is limited, deciding on some aspects of serving prison sentence is now possible only with a written record in the personal plan, without a special decision being issued on the matter). In spite of that, we did not handle any initiative related to this in 2008.

Execution of compliance detention

Persons on compliance detention present additional problem in the already overcrowded detention institutions or prisons (ZPKZ). Pursuant to amended instructions on placing and sending sentenced persons to serve prison sentence in detention institutions, the competent court can send persons to compliance detention (also) in semi-open and open units, irrespective of the personal arrangement and the risk of escape which in practice presents a number of problems. This can hinder the provision of safety, order, and discipline, and may be disturbing for the sentenced prisoners who have already organised their daily duties very well. The Ombudsman therefore supported the plans of the Slovenian Prison Administration to provide suitable separate rooms for the execution of compliance detention.

The time of serving prison sentence needs to be given a meaning

The execution of prison sentence needs to be organised in a way that sentenced prisoners have access to activities for improving their life quality, and greater social inclusion after having served their sentence. It is very important that detention institutions or prisons (ZPKZ) enable sentenced prisoners quality ways to spend the time of serving prison sentence. One of the most important factors is certainly work, because through work the prisoners can maintain and gain working habits. The Ombudsman found that the possibilities for work are decreasing, and due to the ever lower educational structure of prisoners it is more difficult to find appropriate work. For this reason, we cautioned of the urgency to adopt measures to increase the possibilities of employment for prisoners.

The Ombudsman welcomed the possibility of sentenced prisoners to voluntarily accept treatment for addictions while serving their prison sentences, even if the court has not imposed such a measure. He cautioned that, in this case, they should not be presented with additional conditions or obstacles for gaining out-of-institution benefits and parole. However, we found that due to lack of properly trained and competent workers (psychologists, pedagogues and social workers), the personal progress of prisoners is less and less taken into consideration, and serving prison sentence is becoming barely the restriction of liberty.

The Ombudsman has underlined several times already that by all reasonable measures, the ZPKZ needs to prevent physical violence or psychological harassment among prisoners. Equally, in the relation between prison guards and prisoners, no violence or use of restraints is acceptable unless there are good grounds for their use. Therefore we suggested in some of the cases handled that appropriate measures be accepted, including transfer to another institution, if safety could not be ensured in the institution where the endangered person is accommodated.

For the purpose of examining the allegations regarding the use of restraints in several cases of sentenced prisoners by prison guards in ZPKZ Dob pri Mirni, a special commission was established. We requested the Prison Administration of the RS (UIKS) to inform us with the findings of the commission. The report of the latter indicated that, in some handled cases, the police was informed of the suspicion of a criminal offence, and a procedure of establishing disciplinary responsibility was initiated against some prison guards. In addition, some other measures, for identifying and preventing the excessive use of prison guards' powers, were adopted, including the organisation of (additional) forms of education. We welcomed the adopted measures, since they indicated that an overall and efficient investigation was ensured, regarding the allegations of sentenced prisoners that prison guards ill-treated them. At the same time, we expect that the measures carried out will contribute to that the established irregularities in relation to prisoners will not repeat.

Ensuring the right to appropriate health care

Detained persons have compulsory health insurance in line with general regulations on health care and health insurance. Since the rights to health care services are provided to them by general regulations, the general public health network should assure and perform health care services and medical treatment of prisoners. A sufficient number of health care professionals for the performance of health care services in prisons (ZPKZ) should be guaranteed. In spite of this, there were no changes in this field in 2008. So, the health care in ZPKZ was still carried out by contractual doctors, and we received numerous complaints about their work in terms of accessibility and the quality of treatment.

Cases of death also in prisons

According to the information of the Head Office of the Prison Administration of the RS (UIKS), in 2008 (until October), five cases of death of prisoners (of which two suicides) were recorded.

The Ombudsman underlined, already several times, that during serving prison sentence, special attention needs to be given also to psychiatric examination and the assessment of mental health of prisoners from the aspect of possible risk of suicide. Persons with such diagnose need permanent psychiatric treatment or at least regular contact with a psychologist.

While dealing with the initiatives, we found that the staff working with prisoners, attends training for the recognition of signs of risk of suicide of prisoners. About 100 workers take part in the training annually, and the subject on the prevention of suicides is included in the obligatory curriculum of the newly recruited prison guards. In addition, appropriate professional recommendations for internal use were elaborated.

2.3.2 Persons with mental disorders

In 2008, we handled 22 initiatives of persons deprived of freedom of movement due to a mental disorder or disease which is a little more than the year before (17). This time, as well, we mostly explained the initiators the course of the detention procedure pursuant to the provisions of the Non-litigious Civil Procedure Act and acted if the circumstances indicated a violation of rights in this procedure or inappropriate living conditions in the institution where the initiators were placed.

Different practices of district courts concerning detention in social care institutions and homes for the elderly

As a rule, detention of persons with mental health problems is carried out in psychiatric hospitals, some (special) social care institutions, and the detention of persons with different types of old-age dementia in protected departments of some homes for the elderly. While visiting the latter, the Human Rights Ombudsman found different practice of courts which decided on the detention of individuals in such institutions against their will. We also found that in numerous cases, the courts were not informed of the individual's detention against his will in a protected department of an elderly home, or if they were informed, they failed to perform the prescribed procedure provided by the Non-litigious Civil Procedure Act. Among the most frequent reasons were that homes for the elderly are not a "health care organisation", that "treatment" is not carried out there, and that it concerns an "incurable" mental disease or mental situation, and therefore it is no longer a procedure of treatment, but only of care.

We could not agree with the explanations of the courts which do not carry out the procedure provided by the Non-litigious Civil Procedure Act, after the notice of the home for the elderly or a (special) social care institution. Because of the obviously different practices of courts which decide on the detention, the level of legal security of citizens in the area of individual

courts, with the same type of mental disease and at different entities of the health and the social care systems in the field of mental health, is different. Since it involves deprivation of one of the fundamental human rights under Article 19 of the Constitution of the Republic of Slovenia, the persons, placed in protected departments against their will should have the right that the court decides on their placement.

A visit to the Vojnik Psychiatric Hospital

The Human Rights Ombudsman regularly visits all psychiatric hospitals, either in the framework of the exercise of tasks and powers of the state preventive mechanism to the UN Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment, or within solving individual initiatives. When we visited the Psychiatric Hospital Vojnik (hospital), we assessed the living conditions of patients, the use of special protective measures, and hospitalization procedures against the patients' will. We found that the female reception ward is overcrowded due to space shortage. We proposed tackling the space shortage by transferring patients into a separate room at one of the open, vacant wards. Also otherwise, we encourage the arrangement of rooms with fewer beds because (too) big rooms do not ensure enough privacy to individuals.

As a special physical protective measure the hospital still uses only the containment with belts (segufix) which means a grave interference with the persons' dignity and their possibility of movement, and, therefore needs to be used only as ultima ratio and for the shortest possible time. Orders and the use of special protective measures need to be recorded and supervised. We found that the hospital keeps a collective record of these measures only at the female reception ward. The record was also somewhat incomplete. We proposed that they add a section on the doctor who ordered the containment, and that they introduce the same record also at the male reception ward. From the record at the female reception ward, we understood that, as a rule, containments were not of long duration. In one of the concrete cases we estimated that, in case of 10 hours long containment, it needs to be precisely defined why such long containment was necessary, and, above all, did it actually last for all the stated time or were there breaks in between (at least for the time of sleeping, eating, use of sanitation, doing basic hygiene needs). The continuation of more than 24 hours of uninterrupted containment should be decided by a council of doctors reviewing their decision each subsequent 24 hours.

The means of complaint in the hospital were rather different in different wards. The rules on dealing with appeals were also not precisely defined. We cautioned that rules on that need to be written and accessible at least at the notice board of hospitals. It would also be appropriate that a uniform record is kept on all appeals which would enable transparency and suitable supervision, and encourage decisions for changes for the benefit of the patients. We also proposed the hospital to place letter boxes, into which appeals or praises could be submitted because entries in a notebook or handing over envelopes do not ensure appropriate anonymity.

The possibility of visits to patients is very important. In the hospital, we missed special rooms for visits, particularly at reception wards. Therefore we proposed that the hospital examine the spatial capacities and ensure that visits take place in rooms which provide at least some privacy.

At reception wards, patients were wearing their sleeping suits (pyjamas) also at daytime. Such practice (demand) of hospitals was inappropriate because daily clothes contribute to building self-confidence and human dignity, and are an important factor for treatment and the subsequent reintegration of patients. For this reason, the hospital should encourage patients to dress up in their daily clothes and, if necessary, also provide clothes for them.

2.3.3 Aliens, illegally staying in Slovenia and applicants for international protection

As a rule, aliens who were found to be staying illegally in the Republic of Slovenia, are placed in the Aliens Centre (Centre) in line with the provisions of the Aliens Act. Applicants for international protection can also be placed at the Centre if they are subject to the restriction of movement; otherwise they are, as a rule, placed in the Asylum Centre (AC). Initiatives (12) were mostly related to living conditions in the Centre and the AC and the conduct of the staff towards the aliens accommodated there. We visited both institutions in 2008 within the framework of the exercise of powers and tasks of the state preventive mechanism, and the AC also in relation to the processing of some initiatives.

We visited the AC on the event of self-injury and hunger strike of two applicants for international protection. We found that the AC did not provide psychiatric help to applicants for international protection in cases of self-injuries and hunger strikes, although it was evident that they needed it. Therefore we proposed the Ministry of the Interior to adopt reasonable and efficient measures for ensuring psychiatric help to applicants for international protection in cases when their conduct (particularly in case of self-injuries, hunger strikes etc.) indicates that they need such help. The Ministry responded to the proposal and informed us that they will provide psychiatric help.

Dealing with initiatives of two other applicants for international protection, we found that the provisions of the AC House Rules, which specify exceptions for taking food from the dining room, are incomplete because they do not explicitly state that children below 14 years (or their legal representatives), have the possibility of taking morning and afternoon snacks into their rooms. We proposed the Ministry of the Interior to complete the respective provisions of the AC House Rules accordingly, so that it will be clear to everyone in which exceptional cases (not only those approved for medical reasons) it is allowed to take food from the dining room. The Ministry of the Interior responded to the proposal and informed us that they will include the proposal into the new House Rules which are under preparation.

At our present visits to the Centre, we cautioned that this institution did not have a (special) room for religious ceremonies. Therefore we evaluated, as a positive development in this field in 2008, the opening of a special room in the institution, called "the silent room", intended for persons with different religious beliefs and open for their ceremonies or meditations in silence.

OMBUDSMAN'S PROPOSALS AND RECOMMENDATIONS - SUMMARY

- ✚ The Ombudsman recommends the consistent respect of the rules and standards of the state of Slovenia, as defined by its constitution and international conventions that call for the respect of human rights, particularly one's humanity and dignity, during the deprivation of liberty.
- ✚ The Ombudsman proposes the adoption and conduct of a criminal policy that is not only focused on the suppression of criminality via repression, but instead on providing adequate measures for its prevention.
- ✚ The Ombudsman recommends that institutional staff always act correctly and legally in their relations with prisoners, including at a verbal level, and avoid humiliating treatment which could adversely affect human dignity. The means of restraint against prisoners should be used only as a last resort to prevent escape, attack, self-caused injury or the greater material damage of prisoners.
- ✚ The Ombudsman recommends the adoption of other efficient measures in obtaining new housing capacities and providing sufficient institutional staff. It is essential to provide separate suitable rooms for persons in detention. The Ombudsman positively notes the adoption of current legal measures addressing the space shortage in prisons.
- ✚ The Ombudsman recommends the organisation and executing of sentences in a way that sentenced prisoners have access to activities for improving their life quality, and greater social inclusion after having served their sentence, thus creating an opportunity for each prisoner to never return. For this purpose, it is essential to employ enough properly trained and competent workers, particularly psychologists, pedagogues and social workers.
- ✚ The Ombudsman notes the urge to adopt measures to increase the possibilities for the employment of prisoners, while considering the fact that this can not be based only on economic criteria. One of the possibilities is to develop activities for the needs of the prison system, courts and other state bodies.
- ✚ The Ombudsman proposes to allow prisoners as much contact as possible with the outside world -- restricting this only in cases when it is necessary to enforce criminal sanctions. The Ombudsman proposes amending the regulations so that the sentenced prisoners may also receive mail via express parcel.
- ✚ The Ombudsman proposes the adoption of reasonable measures (including transfers into other institutions and the assurance of sufficient accommodation capacities) for the prevention of physical violence or psychological harassment among prisoners, especially the adoption of additional measures providing greater security for juveniles in rehabilitation centres.
- ✚ The Ombudsman supports the possibility of sentenced prisoners voluntarily accepting treatment for addictions while serving their prison sentences, even if the court has not imposed such a measure, and at the same time recommends the provision of appropriate conditions for such treatment.
- ✚ The Ombudsman recommends that special attention be given to those persons serving prison sentences who show signs of mental disorders or illnesses, or may be at risk of suicide. The persons affected need permanent access to psychiatric treatment and regular contact with a psychologist.

- ✚ Sentenced persons and detainees have been deprived of their liberty by the state, therefore the latter has to take reasonable measures to prevent their death during the deprivation of their liberty.
- ✚ The Ombudsman recommends that in cases when the prison deems it necessary to deprive a sentenced person of any benefit because of a loss of confidence, it previously issue a formal statement changing the status or individual programme of such a person.
- ✚ The Ombudsman proposes an orientation towards the reduction and elimination of congestion in prisons via the more frequent use of alternative criminal sanctions in case-law and therefore welcomes the amendment of the Criminal Code in this part and the adoption of the Rules on the Carrying out of Work for the Common Good.
- ✚ The Ombudsman recommends the respecting of the fact that sentenced people serving a prison sentence preserve their status as a legal entity; therefore the prison has to enable their presence at hearings before the court and provide them with transport and security.
- ✚ The Ombudsman proposes that the general public health network assure and perform health care services and medical treatment of prisoners. A sufficient number of health care professionals for the performance of health care services in prisons should be guaranteed. The Ombudsman discourages against this work being done by contractual doctors, as there were numerous complaints about their work in terms of accessibility and the quality of treatment.
- ✚ The Ombudsman recommends that the reception wards of mental hospitals remove temporary beds without personal lockers. The Ombudsman also recommends a rearrangement of rooms with fewer beds inside in order to guarantee patient privacy.
- ✚ The Ombudsman proposes that more than 24 hours of uninterrupted containment of a psychiatric patient be decided by a council of doctors reviewing their decision each subsequent 24 hours.
- ✚ The Ombudsman proposes the provision of psychiatric help to applicants for international protection in the Asylum Centre, particularly in cases of self-inflicted injuries and hunger strikes.

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6. A case of violence among the persons serving prison sentence

The initiator, a sentenced person serving prison sentence in the detention institution (ZPKZ) Dob pri Mirni, pointed out that he was exposed to threats and violence of an inmate. Although a criminal procedure was initiated for violence against him, the commander and the director of the block did not take his complaints seriously. This was destroying him mentally, and he even felt that some of the employees were making fun of him.

We had a private talk with the sentenced prisoner. On this occasion, he said that the inmate attacked him physically again, as he was transferred to the same room where the initiator was placed. The reason for placing the initiator in this department was to ensure safety conditions during the prison sentence. The persons who are placed in the ward with a stricter regime due to security reasons should in no case be exposed to the situations which could lead to additional conflicts with inmates. Therefore, in our view, it was inadmissible that the sentenced prisoner, with whom the initiator already had some problems in the past, was placed in the room where the initiator was accommodated.

We cautioned of this problem in our inquiry sent to the Prison Administration (UIKS). We asked for a report of measures adopted in order to ensure safe prison sentence to the initiator, and wanted an explanation how could it happen that the inmate was placed in the room where he could get in touch with the initiator. We also wanted to know which measures were adopted following repeated attacks, as this obviously implies inappropriate acting of the prison staff. In addition, we proposed the UIKS to consider if this event might require transferring of the initiator to another ZPKZ.

The UIKS agreed that the institution needs to prevent, by all reasonable measures, any physical and psychical violence among sentenced prisoners serving prison sentence which, due to spatial conditions, particularly the congestion of residential capacities, cannot always be completely prevented. They also explained that the initiator was transferred several times during serving prison sentence and placed in the specially protected ward in order to ensure his safety. They added that the initiator himself is also partly responsible for some cases of threats. They confessed that they found defects in the last placement of the inmate in the room of the initiator. Namely, the competent workers of the prison should have taken into account that there was a conflict between him and his inmate.

By notice from ZPKZ Dob pri Mirni, the initiator was transferred to the original ward IV of the prison. This led to a conclusion that he was provided safe serving of the prison sentence. We encouraged the initiator that he can also contribute to it by obeying the House Rules and other rules related to the execution of criminal sanctions during his stay in the detention institution Dob pri Mirni. We also warned him that he should continue informing the responsible workers of the prison ZPKZ of cases of threats because this is the only way to ensure efficient conduct of the prison which needs to take care of his safety during serving prison sentence. We also told him to inform us if that was not the case. **2.2-49/2008**

7. Attack on a minor person in Radeče Re-education Centre

A juvenile from Radeče Re-education Centre turned to the Human Rights Ombudsman of the Republic of Slovenia. He stated that supposedly a group of co-boarders had beaten him in the presence of a social worker. The Re-education Centre than supposedly separated him from the other juveniles due to safety reasons which supposedly lasted for a few weeks. He wanted us to visit him.

We made an inquiry at the UIKS and visited the initiator at the institution. We found that his statements on the attack are true. The UIKS estimated that it was a bold attack on him because the vigilance of guards was not enough in this case. The guards reacted quickly, but were unable to prevent the attack completely. They only prevented further physical squaring of juveniles and, by that, serious bodily injuries. The initiator was examined by a doctor the same day after the attack, and he was offered psychological or psychiatric help. Regarding the Statements in the appeal on the consecutive isolation, we found that in the case of the initiator, it was (only) a placement in a special educational group, and that there were no irregularities in the placement. It turned out also that the reason for this placement was the initiator's attack on another juvenile, and not his own endangerment.

We estimated the initiative as justified in the part relating to the safety of juveniles. Namely, the Re-education Centre needs to ensure appropriate safety of all juveniles and prevent mutual pressure, squaring or threatening, exploitation, insulting, humiliating or mocking. Particularly worrying was the fact that it was an open attack, done in the presence of institutional staff. Our recommendation is that the Radeče Re-education Centre needs to adopt additional measures in order to prevent such incidents in the future. **2.5-4/2008**

8. Changing the regime of serving prison sentence without a formal change of the status is not legal

A female prisoner serving sentence in the detention institution (ZPKZ) Ig complained to the Human Rights Ombudsman about the changed regime from a semi-open to a strict one without any formal change of her status. Following our inquiry, the UIKS explained that the prisoner in question was serving prison sentence in a semi-open regime. For reasons of safety (risk of escaping), the ZPKZ Ig decided that during one month the initiator may leave the prison only if accompanied by a prison guard and that she is not allowed to take walks in the park beside the prison.

We assessed the initiative as justified. One of the key benefits of serving prison sentence in a semi-open regime at ZPKZ Ig is the possibility of taking walks in the outside court and in the park beside the prison. Therefore, if the ZPKZ Ig considered that the prisoner did not enjoy enough trust to enjoy this form of benefit, it should formally change her status or individual programme. **2.2-33/2008**

2.4 JUSTICE

GENERAL

The majority of cases handled by the Human Rights Ombudsman in 2008 again referred to *judicial and police procedures* (810 or 23.9 %, the Index of increase compared to 2007 was 110.4). They include cases related to police procedures, pre-litigation, criminal and civil procedures; procedures concerning labour and social disputes, offences, administrative judicial procedures, cases related to attorneyship and notariat. Taking into account the 4.4 % increase compared to the former period (from 341 to 356), the largest share among all the cases handled fell under civil procedures.

2.4.1 Judicial procedures

In 2008, there were several normative amendments for speeding up or shortening individual judicial procedures. Eliminating court backlog needs to continue being the priority task of the judicial and also of other branches of power. Since this goal has not been reached yet, we welcome the legislative and practical measures adopted for this purpose in 2008.

The majority of the Ombudsman's interventions in cases in this field were still related to unjustified delays in individual cases. This could be connected with noncompliance with the rule on the order of precedence of handling cases and with the violation of those provisions of the process law whose purpose is ensuring prompt and efficient treatment and decisions in judicial procedures. We also discovered some cases where official supervision of the judge's work was performed following our intervention.

In 2008, we again received several initiatives from individuals who are not satisfied with the judicial decision in their case and expected the intervention of the Ombudsman towards a different solution. We cautioned the initiators that they need to exercise their disagreement with individual judicial decisions on their own, with legal means available to them as a client in a judicial procedure. We also found that an individual alone, without an attorney, cannot eliminate an obvious formal error of the court. This means that legal security to an individual, who does not understand the law, is not always completely ensured. We also found that a client's not-understanding of the law, merely because he insists with a lawsuit claim (with the court's doubt of its justification), could also be the reason for the court's doubt of a client's legal capacity. Towards this end, we cautioned the court that careful statement of all circumstances and reasons, which are the basis for doubt of a client's legal capacity, is essential. If the court does not state the reasons for the doubt of a client's legal capacity, the client is not informed of them. For this reason, a client can misunderstand such conduct of the court or even consider it offensive. Solely the fact that a client in a legal proceeding does not understand the law, is not and cannot be a sufficient reason for the doubt of a client's legal capacity or even the basis for the court's "conviction" on his legal incapacity.

State bodies also need to respect the decisions of the courts

In one of the handled cases, we stressed that final court decisions bind courts and all other state bodies of the RS. Therefore, the decision of another state body cannot impede the

execution of a court decision. The decision of a certain state body to refuse to execute at will the court decision, by which it should pay a vast amount of money and remunerate the expenses of the judicial proceeding represents a violation of the principles of the rule of law. Such decision provides a bad example to all Slovenian citizens that they need not respect the final decisions of state bodies if they disagree with their contents.

Expert witnesses

In the present annual reports, we already cautioned of the dissatisfaction of individual initiators with unconscientiously and poorly (in the scope and quality) performed work of expert witnesses. The Ombudsman found that no codes of ethics for the work of expert witnesses were adopted, and that professional education and certain professional standards were not prescribed in certain fields. In addition, an expert witness cannot be relieved of his post solely on the grounds of unconscientious work, if at the same time the condition of irregularity in the performance of his work is not forwarded. All the stated demands reconsidering the suitability of the expert witness regulations and the adoption of necessary measures, including amendments to the Courts Act, which governs this area at the normative level.

2.4.2 Offences

In 2008, the Minor Offences Act (ZP-1) was amended for the fifth time already. It involves comprehensive and important amendments which indicate that the law on offences is still developing. A 32 percent greater share of initiatives in this field of work compared with the year before shows that this causes problems in the practice.

Initiatives related to the work of the police as the misdemeanour authority stood out. In one case, we found that the police issued a payment order based solely on a received complaint, without establishing the actual situation of the alleged violation also with the alleged perpetrator. Thus, the alleged perpetrator was not even given the possibility to become informed of the alleged violation which is important for efficient exercise of legal protection. In some cases the police issued a payment order, the conditions defined by the law not being fulfilled, and the written actual situation of the alleged offence, in some cases, mainly just summarized the abstract legal actual situation from the regulation, stipulating the offence, however, it was not possible to establish what conduct of the initiator constituted the violation. The majority of initiatives were related to the dissatisfaction of initiators with individual decisions in the offence procedure because the actual situation of the alleged violation was not properly and completely established.

We cautioned that in misdemeanour proceedings, as well, fundamental constitutional rights to a fair trial need to be respected, and that perpetrators have to be informed of the actual and legal basis of the charges. In addition, quality decisions on the offence should be made, and reasons for the justification of a decision and evidence assessment concretely and transparently presented in order to reach a proper and legal decision.

2.4.3 Free legal aid

In 2008 amended Free Legal Aid Act aggravated the conditions for acquiring free legal aid and eliminated the offering of first legal advice. At present, one needs to fulfil the conditions for the granting of free legal aid even for the first free legal advice. This intensifies the distress of people seeking legal advice, but who do not fulfil the conditions to benefit from free legal aid. We found that it can take a year to wait for the decision on the request for free legal aid and the decisions of authorities behind free legal aid are frequently insufficiently explained. The cases when after a successful lawsuit, a repeated decision procedure on the submitted request for free legal aid is needed, bring to additional standstills. This

situation is inadmissible and constitutes violation of the instruction period for the competent authority to issue a new administrative act.

2.4.4 State prosecution

In 2008, our work in this field was again aimed at explaining individual decisions on the rejection of criminal complaints because in some cases the prosecution did not study all the statements in the complaint carefully enough, and in other cases, the reasons for the rejection of complaint were only poorly explained. In case of (hasty) rejection of complaint, the correction of the possible incorrect decision of the prosecution lays only in the hands of the victims because they can start the prosecution on their own.

Restitution of a seized stolen vehicle

In 2008, police officers found several stolen vehicles at the border and in the interior of the state which were stolen abroad and then registered again. In such cases, police officers seize the vehicle and inform the competent state prosecution of this by criminal complaint or report.

With reference to this, in 2008, a legal position of the State Prosecutor General (VDT) was adopted which comprehensively solves legal issues related to seizure and return of seized motor vehicles. According to this position, police officers need to inform the State Prosecutor, immediately after the detection of a vehicle, of all cases of the detection of a vehicle, for which a search in the Schengen information system is issued due to a criminal offence, connected with the vehicle. If the State Prosecutor considers that the circumstances of a concrete case indicate a basis for criminal prosecution against the owner of the vehicle, he shall, as a rule, order the seizure of the vehicle which shall then be, together with the criminal charge, without delay, and against written confirmation, handed over to the court for safekeeping as evidence. If the circumstances in a concrete case indicate only suspicion that a criminal offence, connected with the vehicle (or its documents), was committed by an unknown person (claim against an unknown perpetrator), the State Prosecutor shall decide on the seizure of such vehicle after considering the necessity of such evidence (i.e. the vehicle in its physical form beside the professional opinion and the photos of the alteration of identification signs of the vehicle) and the damage that could occur due to uncertainty of tracking down the perpetrator (the danger of destruction of the vehicle in the sense of its evidential and material value). If the report of the police indicates that, in the case of detection of such vehicle, there is no basis for a criminal complaint, the decision on the seizure or the return of the vehicle is not in the powers of the State Prosecutor but of the police.

In cases when the vehicle is already seized and handed over to the State Prosecutor, and the latter afterwards (but before the submission of indictment act) considers that the basis for the seizure no longer exists (rejection of complaint, unnecessary evidence etc.), he orders that the vehicle is returned to the person from whom it has been seized, and informs the police and the possible persons who have, in connection with the vehicle up to then, already submitted a property-law claim (e.g. the primary owner, the insurance company).

We expect that the adopted position shall ensure equal treatment of foreign and domestic citizens, because now the decision of the State Prosecutor regarding the seized vehicle is based on related circumstances which do not regard the citizenship or the residence. In addition, appropriate balance between the ownership and procedural law positions of the participants in the procedure is ensured. The response of the prosecution indicates that it considered the Ombudsman's warning and adopted the necessary measures for the regulation of the exposed issue.

2.4.5 Attorneyship

Attorneyship service is indispensable for legal security of individuals. This year, we received again some initiatives of individuals dissatisfied with the work of the attorney in their case (frequently, they connect failure in the procedure with this fact), and concerning the problems related with the payment for the attorney's work. Since the processing of these appeals is not directly in the powers of the Ombudsman, we informed the initiators of the course of the disciplinary procedure against attorneys and monitored those procedures.

Amendments to the Attorneys Act

The Ombudsman supported the proposals for the amendments to the Attorneys Act (Zodv-C) whose purpose is to strengthen the accessibility and quality of legal aid in cases of ex officio representation and performance of free legal aid. We also welcomed the proposals for ensuring greater safety of the rights of attorneys' clients in the cases of damage related to their performance as attorneys and the establishment of a mechanism for its implementation. The Ombudsman also positively estimated the provision which protects the public interest in the evaluation of individual attorneys' services with the consent of the Minister of Justice before the adoption (or change) of the attorneys tariff at the assembly of the Bar Association of Slovenia.

In the proposed amendments to the Attorneys Act (ZOdv-C), the Ombudsman's recommendations were also taken into consideration in the chapter on disciplinary responsibility of attorneys, articulated clerks and lawyers in trainee. This way, the range of persons, on the basis of whom, the disciplinary prosecutor must initiate a disciplinary procedure, and of persons who have the possibility to continue the prosecution on their own in the case when the disciplinary prosecutor withdraws from prosecution, and who have the right to lodge an appeal against the decision of disciplinary commissions. The proposed amendment also follows our caution that prompt, efficient and objective decision-making of disciplinary commissions should be guaranteed, or the composition of disciplinary commissions changed in order to protect public interest in accordance with the role of attorneyship in the legal order. Persons who are not attorneys are also envisaged as members of disciplinary commissions and this introduces public supervision of the decisions in disciplinary cases against attorneys, because disciplinary commissions will not be composed only of attorneys. Nevertheless, we cautioned that the submitted draft does not clearly define the composition of an individual senate of a disciplinary commission of the first and the second instance, i.e. how many of its members shall be attorneys and how many shall be graduate lawyers, appointed by the Minister of Justice. Supposedly, the statute of the Bar Association of Slovenia will define more precise provisions on disciplinary authorities and their composition. The composition of disciplinary commissions should be provided by law, like the composition of the disciplinary court. Individual time frames for the course of a disciplinary procedure should also be defined by the law. With the purpose of eliminating slow, uninterested and inefficient processing of clients' proposals to initiate a disciplinary procedure against attorneys, the proposed amendment provided some Ombudsman's powers in these procedures. In this context, we cautioned that handling the appeals related to the work of attorneys is not in the Ombudsman's competencies because attorneyship cannot be deemed as a state body, and attorneys cannot be holders of public authorities either. The Ombudsman can perform the supervision of the work of attorneys only indirectly, through the supervision of the conduct of the Bar Association of Slovenia or its authorities, namely in the part involving the exercise of public powers. The proposed solutions related to the Ombudsman, i.e. the subsidiary prosecution in the case when the prosecutor withdraws from the prosecution and the possibility of appeals against the decision of the disciplinary commission of the first instance also exceeds the constitutional framework of the Ombudsman's jurisdiction. The proposed regulation in this part interfered with the

Ombudsman's independence and impartiality, since he would participate in proceedings where he might also serve in a supervisory role (in line with his constitutional role) and perhaps later even handle the issue following the request of the affected national.

Not everyone can decide on complaints of the violations of attorney's duties

The initiation of a disciplinary procedure is requested by the disciplinary prosecutor of the Bar Association of Slovenia (OZS). The handled initiatives indicated that in some cases the notifier received the answer from the (acting) secretary of the OZS, and not from the disciplinary prosecutor. With reference to this, the OZS explained that notifications of clients, dissatisfied with the work of attorneys, which are not addressed to its disciplinary authorities, are handled by the OZS and the case is assigned to the disciplinary authorities only if, after having acquired the explanation of the attorney, they consider that violations in the performance of attorney's profession were actually committed.









Such conduct of the OZS was not conflicting and we encourage it also in the future. However, we suggested that the answer prepared for the notifier would always include legal instruction that the case shall be assigned to disciplinary authorities of the Bar if the individual, after having received the opinion of the Bar and enclosed explanation of the attorney, insists on the allegations against the attorney and the initiation of a disciplinary procedure, or a notice that the notifier may suggest the initiation of a disciplinary procedure on his own directly with the disciplinary prosecutor

Clients need to be informed on higher prices of specialist attorneys

One of the initiators claimed that the attorney did not give any explanation of the clearance of the lawyer's fee and has not informed him of the tariff or never declared that he was entitled to up to 100 percent increase in payment for his work due to his specialist knowledge. The assertions of the initiator suggested that the information on the cost of representation which he received from the attorney was, at least, incomplete. This indicates that the power of attorney was not (sufficiently) transparent. For this reason, we cautioned the Bar Association of Slovenia (OZS) that special informing of the client of (increased) cost of representation is even more necessary if it concerns a case when due to additional knowledge, the attorney is entitled to an increase in payment for his work. The Administrative Board of the OZS handled our caution and stressed that an attorney should inform a client of the fact that he is a specialist for a certain field which enables him higher charging for lawyer's fee accordingly.

OMBUDSMAN'S PROPOSALS AND RECOMMENDATIONS - SUMMARY

- ✚ The Ombudsman recommends efficient implementation of all legal and other measures which would help eliminate the backlog of court cases, which must remain the priority of the judiciary and other branches of power. The Ombudsman insists that staffing and other problems of courts, including extensive changes of legislation which cause excessively long decision making, are not acceptable reasons to violate the constitutionally protected right of deliberation without undue delay.
- ✚ The Ombudsman recommends the provision of all the necessary conditions for efficient application of the Act Regulating the Protection of Right to Trial without Undue Delay, and the adoption of amendments for a better protection of the constitutional and conventional rights of clients in legal proceedings.
- ✚ The Ombudsman proposes a more careful court deliberation on doubts about the capability of clients to take care of their interests due to their mental and physical condition. A client's incapacity for legal proceeding can not be based solely on the conclusion that it concerns clients who do not understand law.
- ✚ The Ombudsman recommends a more efficient implementation of the house detention control to prevent the defendants from continuing their illegal acts and thus protect eventual victims against their criminal conduct.
- ✚ The Ombudsman recommends the adoption of measures for ensuring faster deliberation on interlocutory injunctions, since it was established that some courts need several years to issue an interlocutory injunction.
- ✚ The Ombudsman notes that in cases when Executive Courts take six years to decide upon a debtor's objection, we can not speak about deciding in a reasonable term, therefore the Ombudsman recommends the provision of all the conditions for carrying out enforcements in the shortest possible time.
- ✚ The Ombudsman underlines that disagreement with the final judicial decision does not provide a basis for non-compliance of obligations to anyone, not even state and local authorities, therefore the Ombudsman recommends fulfilment of court decisions without any delay.
- ✚ The Ombudsman recommends such conduct of the prosecuting and judicial authorities which can guarantee that perpetrators in misdemeanour proceedings enjoy fundamental constitutional rights to fair trial and legal remedy, so that the perpetrators are fully informed with the charges, the description of the actual situation, and the presentation of evidence, based on which they may (efficiently) challenge the contents of the decision.
- ✚ The Ombudsman proposes a review of the suitability of the present free legal aid system, which allows even a year long waiting for granting; it is complicated and less accessible, particularly for those seeking legal advice in intense distress who do not fulfil the conditions to benefit from it. The Ombudsman recommends the issuing of more carefully prepared and better explained decisions on granting free legal aid. The Ombudsman recommends the authorities for free legal aid to respect, after the elimination of the decisions, taken by the Administrative Court, a 30-day period for the issuing of a new administrative act.

-  The Ombudsman proposes that the courts state precisely, already in the decision on the pronouncement of detention order of psychiatric confinement, the duration of the measure, its beginning and end, and in the procedure of reconsideration make a timely decision on the duration of the measure after a period of one year of its execution, notifying the defendant unequivocally.
-  The Ombudsman proposes that the juridical branch of power precisely implement the legislative provision to obtain, without exception, the opinion of the Consultative Commission at the Ministry of Justice prior to the decision on defining the place of the execution of the detention order of psychiatric confinement and care in a public health institute.
-  The Ombudsman insists that competent authorities ensure appropriate conditions so that expert witnesses and valuers are able to perform their work of preparing expert opinions and appraisals with all the professional and moral responsibility: precisely, responsibly and impartially, and within the laid down periods. Therefore the Ombudsman proposes a review of the suitability of the applicable regulation on designated experts, and the adoption of the necessary measures, primarily for the supervision of professionalism, including amendments of the Courts Act which governs this area on a normative level.
-  The Ombudsman proposes the elimination of the police practice to issue payment orders solely on the basis of a received complaint, without establishing the actual situation of the alleged violation also on the part of the alleged perpetrator.
-  The Ombudsman proposes greater care in proper and complete establishment of the actual situation of the alleged violation, in order to reduce the share of those who express dissatisfaction with individual decisions. Only a general description of the alleged violation without defining what conduct of the initiator constitutes violation, is by no means satisfactory.
-  The Ombudsman supports the adoption of amendments to the Attorneys Act expected to provide greater accessibility and quality of legal aid in cases of ex officio representation, or free legal aid, and govern the insurance of the attorneys' clients in the cases of damage related to the performance of attorneyship.
-  The Ombudsman proposes the adoption of additional measures to ensure efficient work of the disciplinary authorities of the Bar Association of Slovenia and the establishment of a system where decisions on complaints will not be made by lawyers alone. The Ombudsman insists that the composition of disciplinary commissions should be provided by law; the conditions for their prompt, efficient and objective deciding should be guaranteed; and individual time frames for the course of a disciplinary procedure should also be defined by law.
-  The Ombudsman recalls the unacceptable proposals for solutions related to the Ombudsman's co-operation in disciplinary commissions of the Bar Association, which exceeds the constitutional framework of the Ombudsman's activity interfering with its independence and impartiality, since the Ombudsman is supposed to participate in proceedings which it also can supervise in line with its constitutional role, and might later even handle following a request of an affected national.

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9. Five years for a decision on the proposal for issuing interlocutory injunction

A female initiator turned to the Human Rights Ombudsman due to the long waiting period for the decision on the proposal for issuing an interlocutory injunction. She stated that in the procedure of divorce and the payment of child support which was underway at the District Court of Maribor, she, in the role of a defendant, submitted a proposal for issuing an interlocutory injunction for the payment of child support to the divorced spouse through her proxy in March 2003. Since the Court still has not issued a decision on the proposal for issuing the interlocutory injunction, she asked the Ombudsman to intervene.

We made an inquiry at the District Court of Maribor. It explained that in the civil procedure of divorce and the payment of child support, the initiator, as defendant, submitted a response to the lawsuit on 4 March 2004 and at the same time a contrary lawsuit and the proposal for issuing an interlocutory injunction for the payment of child support to the divorced spouse. The Court held several scheduled hearings for the main hearing and, on 7 March 2006 issued a partial decision, by which it terminated the marriage of the litigating parties. The decision became final on 19 September 2006. On 1 January 2007, the case was assigned to a new judge. The latter separated the contrary lawsuit for the payment of child support to the divorced spouse from the primary document and opened a new reference number for the file. Since the stamp "interlocutory injunction" was not imprinted on the document, the judge overlooked that the decision on interlocutory injunction was not issued yet. In this case, two scheduled hearings for the main hearing were published and both cancelled. The President of the Court, within her competencies, ordered that the judge shall make a priority decision on the proposal for issuing an interlocutory injunction. The decision was issued on 9 September 2008.

We considered the initiative justified. Judicial decisions on interlocutory injunctions should be (and, as a rule, are) relatively prompt since the purpose of the interlocutory injunction can be achieved only in this way. In the handled case, the Court took more than five years to decide on the proposal for issuing an interlocutory injunction. The fact that before the decision was made, the case was assigned to two judges who both overlooked that the proposal for issuing an interlocutory injunction was even submitted, cannot be ignored. Obviously, the Ombudsman's intervention finally resulted in the Court's finding that a proposal for issuing an interlocutory injunction was submitted and that no decision has been issued yet, and that it finally issued the decision. **6.4-193/2008**

10. Long execution procedure for the recovery of child support is unjustified

The initiators turned to the Human Rights Ombudsman because of the long duration of the execution procedure for the recovery of child support at the District Court in Maribor. Since there was no progress in the procedure, they asked for the Ombudsman's intervention.

We turned to the lady vice-president of the District Court in Maribor for explanations related to the execution procedures. She explained that the court summoned the debtor on 6 October 2008 to complete his appeal by signing it. The unsigned appeal was the reason why the Higher Court in Maribor returned the debtor's appeal to the execution court. Six months passed from the time when the Higher Court in Maribor returned the execution file together with its decision to the District Court in Maribor (23 March 2008) to the time when the first actions were taken by this court upon receiving the file. The reason why the Higher Court had not decided on the debtor's appeal was that the execution court had not verified if the formal conditions for lodging the appeal were fulfilled. Following the finding that the debtor's appeal was not signed (thus making it incomplete), the execution court should have issued a decision itself and summon the debtor to complete the appeal by signing it. This was obviously not done in this particular case. Such conduct lengthens the execution procedure for the recovery of the child support claim which belongs to matters of priority following the Judicial Regulations and Courts Act. Therefore the initiative was seen as justified for that part. The intervention of the Ombudsman obviously helped to speed up the proceeding since following our inquiry the court responded and summoned the debtor to fulfil his appeal and promised to process the case as soon as the file is returned from the Higher Court.

In this case, as well, the initiative was seen as justified since the fact that the court is overburdened or has accumulated backlogs is not an argument to justify the lengthy judicial proceeding. At the same time we established that the Ombudsman's intervention was successful in this case as well, since it

lead the court to finally decide about the filed appeal. That our intervention was truly successful was corroborated also by the initiators who informed us that the outstanding child support was paid out in full. **6.4-190/2008**

11. The Ministry of the Interior did not respect the final and enforceable judicial decision

On 23 April 2008, the initiator asked for the intervention of the Human Rights Ombudsman. In the initiative for the start of the proceeding he stated that following the decision of the Ministry of the Interior State, the State Attorney's Office of the Republic of Slovenia, which represents the Republic of Slovenia, still did not pay the compensation determined by the court nor the challenge procedure costs following the final and enforceable decision of the District Court in Ljubljana of 14 March 2007 in connection with the decision of the Higher Court in Ljubljana of 5 March 2008.

The judicial decision is enforceable if it has become final and if the deadline for a voluntary fulfilment of debtor's obligation has expired. The deadline for the voluntary fulfilment of obligations begins the day after the debtor received the decision. Taking this fact into consideration, we demanded on 24 April 2008 an explanation from the Ministry of the Interior on the reasons for the failure to fulfil obligations from the judicial decision if it was enforceable.

In the reply we received on 7 May 2008, the Ministry of the Interior stated its opinion that the court violated the provisions of substantive law and that certain procedural misconduct has been made. In the opinion of the Ministry of the Interior, the decision of the court to ascribe the liability for the damage caused to the initiator in 1998 to the Republic of Slovenia was erroneous. The Ministry of the Interior insisted that, in the given case, the conduct of the police was lawful and correct and that the Court of Appeals misinterpreted the (disputable) facts in the judgement. The Ministry of the Interior initiated an extraordinary judicial review (i.e. revision) against the decision of the court. The law firm representing the initiator was notified and the Ministry suggested that the execution of the decision should wait until the decision of the revising court, because it considered that the revision would be successful. The reply of the Ministry of the Interior was concluded with the statement that the legal proceeding in this matter was not finished yet and that not all legal means had been exhausted.

The Human Rights Ombudsman spoke on the telephone with the Minister of the Interior about the initiator's matter. The Minister repeated the already known statements from the reply of the Ministry of the Interior and called the attention to the problem which would arise if the Ministry paid the damages and the revision later decided otherwise. Nevertheless, the Minister took it upon himself to invite the initiator to a meeting. Our intervention led to a meeting between the Minister of the Interior and the initiator on 13 May 2008. At the meeting, "it was agreed that the decision of the Higher Court in Ljubljana had to be carried out." The decision was carried out by the Ministry of the Interior on 19 May 2008, when the determined damages were transferred to the initiator's account. The judicial decision was thus resolved to the initiator's benefit, but obviously only after the intervention of the Ombudsman. Nevertheless we suggested to the Court of Auditors of the Republic of Slovenia that, in the limits of its jurisdiction, it revise the correctness and expedience of the conduct of the Ministry of the Interior in this case. Moreover, we turned also to the Ministry of Justice for its opinion on the execution of final judicial decisions by the state bodies.

The Court of Auditors of the Republic of Slovenia notified us that it will deal with our initiative within the limits of its programme of work for executing its audit mandate. And the Ministry of Justice agreed with our warnings. It stressed that an issued decision which is final is of legal value and consequently even actual value to the client. If the Republic of Slovenia is the debtor who assumes obligations from the final decision, the Ministry of Justice deems that it is essential from the point of view of the creditor, as well as the legal order as such, that the Republic of Slovenia voluntarily fulfils its obligations, that is, without the execution procedure. This is a goal which the Republic of Slovenia strives for in general with its legislative and other measures. By fulfilling such obligations itself, it will set a positive example to its citizens, thus strengthening the trust they have in law and legal security in general. This can avoid numerous execution procedures and costs connected with forcible collection of final and enforceable judicial decisions, as well as payments of interest on arrears caused by the failure to fulfil such obligations. **6.4-123/2008**

2.5 POLICE PROCEDURES

GENERAL

In 2008, the Human Rights Ombudsman processed 125 initiatives related to police procedures (the year before: 116; the growth index of 107.8). We continued visiting police stations: we visited the police stations Lenart and Trbovlje, and in the context of executing the jurisdiction and tasks of the National Preventive Mechanism we visited 17 other police stations.

Among the treated initiatives, the majority was connected with procedures performed by police officers in carrying out their duties in road traffic. Quite a few exposed the work of the police as an offence body. Some conclusions from this field are therefore reported on in the section on justice administration. In 2008, like previously, we also dealt with a number of cases where a payment order was issued even though the legal requirements for its issue were not fulfilled. Following the provisions of the Minor Offences Act, an authorised person of the offence body may issue a payment order only if they directly see (or establish with the use of appropriate technical means or instruments) the commitment of the minor offence and the offender. Being notified about the minor offence from witness testimonies or possible reports is therefore not sufficient.

Some of the initiatives were connected with the use of police authorizations also this time, including detainments. The number of people who were detained by the police rose rapidly from the end of April 2008. The reason for this are amendments to the Road Traffic Safety Act, according to which the police are obliged to detain a driver who exceeds the legal limit of blood alcohol concentration or declines the breath test.

2.5.1 The police is bound by the Code of Ethics

The Code of Police Ethics plays an important role in informing police officers about the meaning of moral and ethical standards of the police. We therefore commend the fact that it was renewed in 2008 and brought into line with the European Code of Police Ethics and that the provisions of the Code are included into the programmes of education, basic training and advanced training in the police.

2.5.2 For decisive and efficient police actions

The police, acting defensively and not in accordance with the entrusted duties and related powers, can violate an individual's rights and freedoms. In dealing with the initiatives we again came up against cases which show that police officers who intervene due to domestic violence often determine only the signs of the minor offence(s), but not also the signs of potential criminal offences and therefore do not act with sufficient determination. Reasons for this are also to be found in the insufficient education of police officers when (especially larger) amendments to legislation are made, which would call for the adoption of appropriate programmes of training and education of police officers.

2.5.3 Internal challenge procedures

The experience of the Human Rights Ombudsman in examining the functioning of the challenge procedure is not bad, even though the point of view of the Ombudsman does not always match the findings in the challenge procedure. It is important that the police has an established internal system of dealing with the individuals' appeals. It is right that the person concerned has, besides the formal (judicial and administrative) possibilities, also less formal possibilities of appeal at their disposal. These can be more efficient, but they are in the first place quicker and less expensive and they also enable the treatment of allegations which are not necessarily in a causal link with the correctness and lawfulness of a given decision in the procedure (e.g. they may be connected with politeness or courtesy in the relation with the client). Independent and nonbiased investigations of criminal offences, which police officers and other persons with police powers are suspected of, are led by a specialised unit of the State Prosecutor General of the Republic of Slovenia. In connection with the work of this specialised unit the Ombudsman has not dealt with any initiative to date.

2.5.4 Media exposure of persons suspected of criminal acts

The Ombudsman warned that media exposure of suspects who are arrested may interfere with the constitutionally provided human rights to the presumption of innocence and personal dignity. Even if the circumstances of the case give legal basis for the use of police powers, this does not give basis for unnecessary and degrading exposure of persons suspected of criminal acts to media attention. In such cases the question of the rehabilitation of the rights and personal dignity of persons who were, as suspects in criminal acts, unjustifiably exposed to the media, often remains open.

When do we speak of a police arrest?

Any situation where an individual cannot freely leave or exit a given space should be considered as arrest. Thus also the Criminal Procedure Act defines as an arrest any deprivation of freedom which entails forceful detainment. The Police Act considers only arrests as deprivation of freedom. Therefore the police officer is obliged to inform of the Slovene version of the so called Miranda rights only a person who is detained (restrained) and not a person who is arrested or produced. The police officers therefore still do not give any information or legal instruction to an arrested or produced person, which is demanded by Article 19 of the Constitution upon arrest. Upon detainment, the police officer merely informs the person about the reasons for detainment, what they have to do or stop doing and warns them about the consequences of not following orders. With detainment, the police officers temporarily limit the movements of a particular person, however, when a person is produced, they are brought to the official quarters of the police or to a specified place. Limiting the movement at detainment and being produced are in their content in reality no different from an arrest. Therefore we commend the amendment to the Police Powers Regulations, according to which a person who is detained and has not received a decision or resolution on detainment, should immediately be handed a formal note on detainment, with the information on the rights the detained person was told about.

The use of instruments of constraint and mechanical restraints

Matters of special concern include cases where a police officer consciously and intentionally misuses police powers and in this way breaches human rights and fundamental freedoms of an individual. The Police Act permits the use of instruments of constraint and mechanical restraints if there is suspicion that an individual will resist the police officer or cause injury to themselves or that the individual will attack or flee. The Act does not contain a definition of the notion "existent suspicion", but it appears that this phrase means a likelihood that

a specified individual will do or attempt to do something which would hinder or render impossible the carrying out of a concrete, precisely determined police task. In the opinion of the Ombudsman, justifiable reasons for the use of instruments of constraint and mechanical restraints must be stated. Any use of instruments of constraint and mechanical restraints for which the motives are not stated is therefore illegal. The existence of suspicion of resisting arrest or self-injury, or attack or flight, must therefore always be explained with the establishment of the circumstances in each individual case. General danger, or merely the fact that the person in the procedure is an expert at martial arts and that they have been previously known to the police for violating law and order is not sufficient. In one of the handled cases this was obviously also the opinion of the authority in the challenge procedure against police conduct, since the appeal of the individual concerned was judged as justified in this part.

Delay in the inspection of confiscated items is intolerable

In carrying out their tasks, the police have the power to confiscate items. However, the confiscated items have to be returned immediately when the legally determined reasons for confiscation do not apply anymore. In the case of the confiscation of items, the police have to carry out their work especially fast, in the Ombudsman's opinion. In one of the handled cases, we were surprised by the datum that after more than five months had passed since the confiscation of items, the inspection of these did not even begin. The Ministry of the Interior assured us that inspections of confiscated items were a matter of priority, but that there is, however, noticeable growth of criminal acts in which professional inspection of computer equipment is required.

This message from the Ministry of the Interior is a cause for concern, since delays in the inspections of confiscated items cannot be justified by the growth of criminal acts which require a professional inspection of the items. We warned the Ministry of the Interior that in such cases the police has to be provided with staff and material conditions to enable fast and efficient work at the inspection of confiscated items. This might have an important influence also on the efficiency of the work of the state prosecution and courts. We suggested also the adoption of such measures which would enable the inspection of confiscated items to be carried out without unnecessary delays in all cases.

Changes to the form on the decision of detainment (JRM-3)

Following the inspection of randomly selected cases of detainment in the course of the visit at one of the police stations (in the context of exercising the powers and tasks of the Human Rights Ombudsman as a State Preventive Mechanism following the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), it was established that for the detainment of individuals following the second paragraph of Article 43 of the Police Act, police officers were using the form of the Detainment decision (JRM-3, print: MNZ (mac 2)). This form is used especially in the case when a person was (first) restrained following the National Border Control Act and then (further) detained for the extradition (return) to the country which they had come from. We determined that the content of the standard form was not suitable for these cases since it did not show the actual state of affairs in the case for which such a form was used. In the case of detainment of a particular foreigner we even found a form of the Detainment decision, which had only the personal data of the foreigner and no explanation whatsoever.

We suggested to the Ministry of the Interior that the detainment decision form be appropriately supplemented or changed in such a way as to allow police officers to write down actual findings or data on a particular case, when dealing with a foreigner (an illegal immigrant) who was arrested on the territory of the Republic of Slovenia. We suggested

also that these forms stop being used in cases such as the one we mentioned above. The Ministry of the Interior accepted the Ombudsman's comments or suggestions and prepared a changed form.

2.5.5 Information on the rights of persons held in custody

During its visits to Slovenia, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment recommended that measures be taken in order to ensure that information about their rights is systematically forwarded to all persons detained by the police from the moment they are deprived of liberty. This has repeatedly drawn attention to the Ombudsman. So we welcome the 49th amendment of the Rules on police powers, according to which the detained person, which can not issue a decision or order of arrest, immediately served on the official record of the arrest, which also contains information on the rights which were vested in a person's attention.

2.5.6 Shorter detention (up to 12 hours) and the right to a meal

The detainees should be treated and protect their human personality and dignity. Thus, they should also be provided food and drink. Detainees have the right to food at the appropriate time when the people at large generally consume individual meals (breakfast, lunch, dinner), including at least one full meal a day.

In one case, we are the initiator, against which the police ordered detention, noted that at the time of arrest did not find the food. Ministry of Interior of them in response to their complaint stated that food did not achieve because they did not belong, "because they were reserved within 12 hours." We found that this practice is contrary to the Rules on Police Powers, which provides that persons detained for up to 12 hours generally belong to the dry meals.

For clarification, we contacted the Ministry of the Interior. This is the message that in practice, different interpretations and understanding of the Rules on police powers, particularly in so far as the rights of detained persons in the provision of food. It found that in some cases, detainees from 6 to 12 hours, which are under the influence of alcohol, food is not ensured because the police follow the existing guidance and direction in the field of police powers in January 2008, which provides that persons under the influence alcohol are not entitled to food. The Ministry of the Interior has concluded that such a practice is not in accordance with the Article 56 of the Rules on Police Powers. Therefore, the General Police suggested that these policies comply with the Rules on police powers.

Private Security

Private security pursued as gainful activity by economic operators who meet the conditions of the Private Security Act. This is a sensitive activity, governed and controlled by the state through its bodies. Inspection of carrying out the private security is performed by the Inspectorate for the Interior (Inspectorate), which operates under the ministry responsible for internal affairs. Considering the current staff capacity of the Inspectorate, the question is if only 21 inspectors can perform efficient control of over 130 security services. However, if the control is not efficient, one cannot expect consistent reaction in all the cases of irregularities in the activity of private security services. Nevertheless, some cases of withdrawing licenses for performing private security that we were informed of in 2008, show a certain progress in this area.

OMBUDSMAN'S PROPOSALS AND RECOMMENDATIONS - SUMMARY

- ✚ The Ombudsman recommends consistent compliance with the provisions of the Minor Offences Act which stipulates that a payment order can be issued by authorized persons of the misdemeanour authority only when they directly perceive (or establish by the use of appropriate technical measures or devices) the committing of misdemeanour.
- ✚ The Ombudsman recommends additional programmes and forms of education, basic training and advanced training for police officers on the role of the respect of human rights and fundamental freedoms and the moral and ethical standards of the police, stated also in the Code of Police Ethics and the European Code of Police Ethics.
- ✚ The Ombudsman recommends that the challenge procedures against the police be carried out with more care, propriety and thorough consideration of each case of appeal, particularly when the statements of appellants, witnesses and police officers are conflicting. The Ombudsman recalls that it is not the appellant's duty to prove whether their appeal is well founded. The burden of proof to take all necessary action to clarify the appellant's allegations is the responsibility of the Police or the Ministry of the Interior, i.e. of the state.
- ✚ The Ombudsman recommends that in the case of a decision that the appeal was justified, the police or the Ministry of the Interior present the appellant also with the adopted measures, for example initiation of disciplinary proceedings, lodging of a criminal complaint or other, taking account Article 26 of the Constitution of the Republic of Slovenia, which provides that everyone has the right to compensation for damage caused through unlawful actions in connection with the performance of any function or other activity by a person or authority performing such function or activity.
- ✚ The Ombudsman recommends avoiding excessive, unnecessary and humiliating exposure of suspects deprived of liberty, to refrain from unnecessary interfering with the constitutional right to the presumption of innocence and personal dignity, since it is often impossible to retrieve personal dignity to persons who were unduly exposed by media.
- ✚ The Ombudsman recommends that police officers, when depriving a person of freedom, give the affected person information and legal instruction on their rights as provided in Article 19 of the Constitution of the Republic of Slovenia, and a clear explanation on which police powers are being exercised and what the possible consequences are.
- ✚ The Ombudsman recommends consistent conduct of the police in line with the Constitution and the law; respect and protection of human rights and fundamental freedoms in the performance of duties, and proportional use of tying and handcuffing instruments only in exceptional (emergency) cases when a police task could not be done without using the means of restraint.
- ✚ The Ombudsman recommends such organisation of police work that enables swift investigation of the cases in which items have been seized.
- ✚ The Ombudsman proposes the Ministry of the Interior to ensure consistent exercise of the detainees' right to food.
- ✚ The Ombudsman recommends more efficient work (also by reinforcement of the staff) of the Ministry of the Interior Inspectorate in the field of private security in supervising the implementation of the Private Security Act and examining the legality and professionalism of private security agencies.
- ✚ The Ombudsman proposes amendments to the Electronic Communications Act which should envisage the possibility that, under certain conditions, a mobile operator has to report to the police the whereabouts of a person carrying a mobile phone, in the cases when the health or the life of this person are at risk.

CASES

- 12.** The Ombudsman helped revoke the recovery of a fine **66**
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12. The Ombudsman helped revoke the recovery of a fine

The Ombudsman was approached by an initiator who said that her parents each received payment orders from the Celje police station because of the alleged violations of law and order. They submitted an application for judicial protection against the fines, and later completed it on the request of the police station Celje. In spite of that, they received two decisions of the Celje police station about rejecting their application for judicial protection because they failed to complete it. In March 2008, the initiator's parents received a tax enforcement admonition from the Celje Tax Office referring to the payment orders of the police station Celje.

We asked the Ministry of the Interior to present the legal basis for issuing these payment orders, as it resulted from the initiator's statements that the police did not directly detect the alleged offence. We also asked for the grounds of rejecting the judicial protection request, as the initiator declared that the offenders submitted the completed requests for judicial protection in person at the police station Celje.

The Ministry of the Interior confirmed that in this case the police officers of the Celje police station did not directly detect or identify the alleged offence by technical means, but that offence was established by collecting information. The Celje Police Station should have issued a written decision in a fast-track procedure under Article 56 of the Minor Offences Act. The Celje Police Administration was therefore cautioned of the mistakes and irregularities in conducting the procedure. The Ministry of the Interior stated that the requests for judicial protection were discarded because the police station Celje did not receive a completed application although the applicants were asked to complete it. The ministry also noted that the police station Celje did not record the visit of the initiator's parents on 20 August 2007 (when they submitted the updated application for judicial protection).

Based on this, the Ministry of the Interior concluded that the officer on duty at the police station Celje confirmed the receipt of completed requests for judicial protection by putting the date of receipt on the said request, added his signature, and authenticated both with the seal of the police station Celje. However, he failed to file the completed requests for judicial protection when he returned the original documents to the applicants, obviously forgetting to make copies of the completed requests. The inspector who conducted the offence procedure therefore did not know that the requests for judicial protection had been completed.

The Ministry of the Interior reported that the police station Celje apologised in writing to the persons in question because of the negligent behaviour of the police officer. In addition, it filed an initiative to the prosecution bring the extraordinary remedy - request for judicial protection. The leadership of the Celje police station warned the police officer on duty that his performance of duties was negligent, but the imposition of disciplinary measures was no longer possible because of the remoteness of the event.

The Ministry of the Interior assessed the conduct of the police officer who failed to file the updated requests for judicial protection as incorrect. Undoubtedly, such conduct of the policeman violated the initiator's parent's right to appeal. We asked the Ministry for further information on whether the tax authority in this case has already made a forced execution of the payment orders. The Celje Police Station sent a cancellation of the recovery of unpaid fines to the Celje Tax Office, and the recovery was suspended. In this context we assessed that the Ombudsman took all the necessary steps to determine the circumstances of the case in question. Apparently, only after our intervention, errors in the work of police officers were identified and this served as a basis to revoke the recovery of the erroneously imposed fine. **6.6-24/2008**

13. Removal of alien from the Republic of Slovenia before the decision became final

On 20 April 2008, the police removed a complainant from the Republic of Slovenia on the grounds of illegal residing in the Republic of Slovenia. The initiator applied for the renewal of a temporary permit at the Administrative Unit Ljubljana on the grounds of employment, but the Administrative Unit issued a decision on 31 January 2008 rejecting his application. On 16 February 2008, the initiator's proxy filed a complaint concerning the decision which was still pending before his removal from the country.

Upon the Ombudsman's inquiry, the Ministry of the Interior stated that an identification process was carried out with the initiator in line with Article 35 of the Police Act, and he showed a valid passport of the Republic of Macedonia. When checking the electronic records, the police discovered that

the initiator was illegally residing in Slovenia, and he didn't state in the police procedure that he filed a complaint against the negative decision of the Administrative Unit Ljubljana. This was found only after they received a letter from his representative on 21 April 2008. It was also found that, by mistake, the Administrative Unit entered the decision of 31 January 2008 in the computer records as a final decision. Therefore the information in the official records showed that initiator does not have a regulated status in Slovenia.

The officer who conducted the procedure was notified of the error. In order to avoid similar errors in the future, the Administrative Unit held a meeting to inform all the officials again about the instructions on correct entry of data in the register of aliens. In addition, by a letter to the Administrative Unit Ljubljana, the Ministry pointed out to the errors again underlining that decisions have to be entered in the aliens' register as soon as it was an administrative act is issued. Special attention has to be made not to enter the date of finality before it occurs, since the status of the person changes on the date of entering the final decision in the register of aliens despite a registered complaint. This letter was sent for information to all other administrative units.

The initiative was evaluated as grounded. We expect that the adopted measures will prevent the irregularity from happening again. **6.1-34/2008**

14. Disclosure of mobile operators' data on the whereabouts of a missing person

The Ombudsman received information that an elderly person with dementia has been lost. Her relatives reported her disappearance to the police hoping that the police will propose the investigating judge to issue an order to obtain the location of the missing person's mobile phone which the latter carried with her. The investigating judge rejected such proposal.

On the Ombudsman's inquiry on police actions in this case, the Ministry of the Interior stated that it applied all possible measures to trace the missing person. Among other things, a search campaign was carried out (which also involved the guides of service dogs) and a survey of the area; police units were informed of the case, and a search action was launched. The investigating judge was informed that the missing person carried a mobile phone, but found no sufficient grounds for issuing an order to obtain the list of calls.

The Ombudsman found no irregularities in the conduct of the police. The report of the Ministry of the Interior shows, among other things, that both the investigating judge and the public prosecutor rejected the proposal to obtain information on the location of a mobile phone, because there were no legitimate reasons for this. The mobile operator also considered that there are no legal conditions for the disclosure of data on the use and the location of the mobile phone.

The Ombudsman was invited to a meeting convened by the Information Commissioner with the representatives of mobile operators, the police and the competent national authorities. We stressed that in the cases like the one in question, the law does not provide adequate solutions. The Electronic Communications Act should therefore be amended as soon as possible. The law should provide for the possibility that the mobile operator in cases of a health risk to life or a person having a mobile phone, the police can, under certain conditions, provide data on the location. **6.1-73/2008**

2.6 ADMINISTRATIVE MATTERS

GENERAL

2.6.1 Citizenship

In comparison to 2007, the number of initiatives decreased, but their substance was quite diverse. As many years before, the initiators complained to the Ombudsman about lengthy procedures of determining and granting a citizenship, which can take several years. Very often, a case is exchanged between the administrative unit which issues a negative decision, and the Ministry of the Interior, which grants the appeal and refers the case back to the administrative unit to decide on it once again.

2.6.2 Aliens

We were approached by initiators - foreigners who wanted to find out how to regulate their status in Slovenia. Frequently asked questions included: what conditions have to be met in order to obtain a residence permit in Slovenia, and who decides about it. We processed the initiatives of two persons who complained of a breach of the Law on Asylum and the International Protection Act. Although concrete violations of these laws were not found (in one case the letter concerned a breach of the confidentiality of mail, and the other the opposition to the restriction of movement and the related legal procedures), we would like to repeat that the new International Protection Act introduces an asylum system with lower standards and limited scope of remedies that are available to applicants. Free legal aid is limited to the procedures before the Administrative and the Supreme Court. The Ombudsman insists that Slovenia, as a signatory to the Geneva Convention on Refugees, and the Protocol on the status of refugees in asylum procedures has to ensure or maintain higher standards than those adopted by the European Union.

Upon our visit to the Asylum Centre in Ljubljana, we verified the situation of applicants and their treatment. We had interviews with some of the applicants and residents of the Asylum Centre who already enjoy protection under the International Protection Act.

As regards erased persons, the Ombudsman reiterates its repeatedly published position that they undoubtedly suffered injustice by the act of deletion which needs to be corrected and a permanent residence has to be recognized to these people starting with the date of the erasure.

2.6.3 Denationalization

By adopting the Denationalization Act in 1991, the Republic of Slovenia committed to repair injustices caused to private owners whose private property was nationalized after World War II. The process of denationalization has not been completed yet. In 2008, we received 16 initiatives related to denationalization. In monitoring the implementation of denationalization (report of 30 September 2008), the Ministry of Justice found that there are 926 unresolved cases in all administrative bodies at the first instance of decision-making, of which 567 cases are pending in the first stage, and 86 cases in the second stage, while the Administrative or the Supreme Court still have 273 unresolved cases.

According to the plan, the processing of appeals should have been completed by now. Despite the decisions of the Slovenian government to speed up denationalization procedures, none of the responsible ministries decides on appeals within the two months' deadline. The Ombudsman calls on the compliance with the statutory time limits in deciding on appeals, and on the speedy implementation of the plan to bring the denationalization procedures to an end.

2.6.4 Taxes and duties

Some initiators informed us of the circumstances and the hardship they are going through due to tax debts and the resulting tax enforcement. We also processed cases related to allegedly excessive assessment of profits on sale of real estate, and the taxation of income from working in Austria. We believe that many ambiguities were clarified with the help of the exemplary web site of the Slovenian Tax Administration.

In 2008, a substantial share of initiatives concerned the long-lasting appeal procedures. Although in the previous annual reports we repeatedly pointed out to non-compliance with the statutory two-months period for deciding on appeals, the Ministry of Finance still has not manage to organize its work so as to respect this deadline.

Several initiators have turned to the Ombudsman because they disagreed with the taxation of state subsidies. Thus, two initiators received a notice from the Ministry of Finance on the amount of income from the basic agricultural and the basic forestry activities for 2007, which, *inter alia*, included an average amount of the subsidy for the land in use, which they never received. They disagreed with the notice, and subsequently, with the decision on liabilities levied on the agricultural activity, but they could not react because the decision was not open to appeal. The Ministry of Finance admitted to many taxable persons that it made a mistake and in wrote the press release that subsidies will not be levied on taxable persons who never received them. In our view, the approach of "correcting" the inadequate regulation by informing the press that the valid rules will not be applied, i.e. that subsidies will not be levied on taxable persons who actually haven't received them, is not acceptable. Irregularity was found in the procedure of reviewing the efficiency and the proper operation of the information system of the Tax Administration, carried out in February 2007 by the Court of Auditors of the Republic of Slovenia. It was found that at certain times the e-system enabled erroneous calculation of income, as no controls were in place to detect errors and eliminate them. The general tax office informed us that 3512 decisions were abrogated under the right of scrutiny in the income tax assessment for 2005. The amount of under-assessed income tax was EUR 1.2 million. However, like in the annual report for 2007, the

Ombudsman finds that the conditions for the elimination of errors under the right of scrutiny are not fulfilled, since the general tax office quoted the violation of the substantive law. For obvious reason of the breach of substantive law, as the competent tax authority claimed in this case, under Article 274 of the General Administrative Procedure Act, the decision of the first instance body should be *annulled* and not *withdrawn*. The difference between the two is in their legal consequences. When a decision is withdrawn, all legal consequences arising from it are also withdrawn. If a decision is annulled, the already incurred legal consequences are not withdrawn, but no further consequences can arise from such a decision.

2.6.5 Property law matters

Several initiators addressed the Human Rights Ombudsman concerning border disputes with their neighbours. These were mostly cases from a rather distant past, often even those where a final court decision has been taken, but the persons concerned disagreed with it

and turn to the Ombudsman for help. In such cases, we propose mediation or some other means of resolving neighbourhood disputes. What all these initiatives have in common is that individuals feel subordinate in relation to the municipality. The reason is that in determining the price of lands necessary for the implementation of public interest, the municipality often “blackmails” the owners with threats of expropriation procedure, if they refuse to sell land at the quoted price.

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

In 2006, we handled 19 such initiatives. Initiators addressed the Ombudsman because of difficulties in obtaining the status of peace-time war disabled persons. In one such example, the case has been made final, but the initiator could not accept the decision. In another case, the initiator missed the deadline for filing a claim under the War Disabled Servicemen Act (two years after the Act came into force, i.e. by 31 December 1997), thus losing the right under this Act. Like in 2007, we find that the procedures under the so-called war laws are running too slowly.

We would also like to point to the non-executed provision of the Constitutional Court No. UI-266/04-105 of 9 November 2006. With this provision, the Constitutional Court established that the law on victims of war violence collides with the Constitution, because it recognizes the status only to those civilians who were subjected to violent acts of the occupier, but not to those who were exposed to violent acts of partisan units. The Ombudsman considers that the National Assembly of the Republic of Slovenia should remove this discrepancy as soon as possible and implement the judgement passed by the Constitutional Court. Equally, the recovery of material war damage has not progressed. The government of the Republic of Slovenia has not yet identified its standpoint on this issue.

2.6.6 Social activities

In the area of **pre-school education** we received most complaints concerning the lack of vacancies in kindergartens. Several parents turned our attention to this problem in the Municipality of Ljubljana and in some other municipalities. We asked the municipalities and the kindergartens for information on the situation and the availability of those kindergartens where, according to parents, the commission decision for placing children did not comply with the regulations. Among the reasons for the lack of vacancies, the municipalities stated an unexpected increase in the number of births in the last three years.

As regards the complaints of parents about the procedures of placing children in kindergartens, we found that the decisions to reject children were not well substantiated and it was impossible to determine whether the commissions took into account the criteria of the Rules on Placing Children. We proposed that the decisions issued in this regard be substantially completed, which the mayors accepted.

In the area of **elementary education**, a number of initiatives contained criticism of the teachers’ attitudes and their ways of communicating with pupils and parents. Several initiatives also concerned the issue of violence among peers. Some referred to the (un)safety of school routes and the organization and the performance of school children transport.

An initiator asked the Ombudsman about the schools interfering into the right of privacy and family life of students and their parents. He claimed to have a document drawn up in one of Ljubljana’s elementary schools which shows that the school advisory service and the Social Work Centre “follow up the family situation” of all students attending this school, therefore including those where there is no grounds for this type of monitoring. In

this way, the school advisory service obtains a lot of information on the relationships and the family situation of all children, which the initiator thought was unacceptable. He stated that pieces of information about a particular family circulate around the neighbourhood. We informed the initiator of the Ombudsman's view that interfering into the right of privacy and family life is not admissible where this is not substantiated and the rights and interests of children are not jeopardized. Unjustified interference is also in contravention of the Slovenian Constitution and a number of laws (governing education and family), and the international rules on human rights. However, a total ban of schools interfering into the privacy of children and their parents would prevent or at least make it complicated for schools to protect the interests of children.

In the area of **secondary education** we handled initiatives like the issue of secret recording of education. Some students record teachers at work in the classroom, modify (distort) the recordings and put them on the Internet, thus causing the teachers a lot of inconvenience. Some schools have banned the use of mobile phones during the classes, but this measure has not proved to be sufficient.

Several students pointed to the problem of payments from the European Social Fund approved in 2006 to reduce the educational deficit. Following our intervention, the Ministry of Education and Sport explained that delays were caused by educational institutions which have not properly filled in the required documents. It appeared that the instructions of the Ministry of Education and Sports were not always clear and unambiguous. The initiatives were substantiated.

The Ombudsman received the appeal of a student concerning the obligation to organize free hot meals for all students in secondary schools. He said that this extended the instruction by one hour - the time needed for lunch - which caused many problems to students. Among other things, they would have missed the train which took them home. Moreover, most students had lunch at home, so he did not find this action appropriate. We informed the student of the Ombudsman's opinion that the provision of hot meals is a huge advantage for many students, as many of them did not have proper nutrition all day long. The Ombudsman is sure that the situation in schools (the conditions for preparing and consuming hot meals) will eventually be regulated, that the action is appropriate and beneficial for young people in the long run.

Complaints in the area of **higher education** contained, among other things, criticism of the new Bologna study arrangement, the problem of providing interpreter for a deaf student, a request to support the Student Organization of the University of Maribor in its efforts to keep the existing facilities for extracurricular activities, and the complaints of students who were asked to move out of the dormitory because they violated the house rules. Following our intervention, the dormitory leadership tried harder to investigate the facts and allow students to defend themselves.

We also discussed the problem of vocational college students who graduated outside the universities of Ljubljana and Maribor and want to continue higher educational programme of electrical engineering at the Faculty of Electrical Engineering in Ljubljana. Despite the formally grounded decision of the Faculty that the vocational college graduates from universities other than the universities of Ljubljana and Maribor can not be enrolled in the third study year, we believe that this means unequal treatment of candidates with college diplomas. We think that enrolment of candidates in the first (instead of the third) year of university studies is contrary to the principle of good governance. However, the Ministry of Higher Education, Science and Technology insisted that the programmes of higher professional education, typically focused on practice and oriented towards education for the labour market, differ greatly from higher educational programmes which were in use

before the school legislation was amended in the middle of the nineties. The persons in charge explained the Ombudsman that unequal treatment of candidates under the current legislation is based on technical reasons which lead the faculty to decide independently about the criteria for enrolment. It is difficult to contest such a decision given the autonomy of the university and its members. The Ombudsman considers that it is reasonable to find solutions which allow fast completion of higher professional studies, when the applicant already has a higher degree diploma.

Among the initiatives of people employed in educational institutions are the problems of **faculty employees** who wished to obtain the title of assistant professor. We found that in many cases the procedures are quite lengthy and may take several years, while the provisions in the Criteria for obtaining the titles of university teachers, scientific staff and research fellows are also rather unclear. Several complaints referred to the problem of mobbing at the workplace. The initiators usually did not want to speak openly at work, because of the fear to lose the job. According to the Ombudsman, these occurrences can be prevented by raising the awareness of the employees about the forms of harassment and the possibilities to act against perpetrators.

In the field of sport the initiatives concerned high compensations to be paid by the parents of underage players who choose another sports club for various reasons. We believe that a system solution should be found to regulate the practice of sports associations and sports clubs, although the engagement of children and young people in organized forms of sport within clubs is voluntary and a matter of young people or their parents, where the candidate accepts the terms of participating in the association.

The Ombudsman recommends that Slovenia, as a state which acceded to the Geneva Convention on Refugees and the Protocol Relating to the Status of Refugees, ensures appropriate asylum standards in line with the requirements of the Convention. At the same time, the Ombudsman calls on competent authorities to immediately eliminate the constitutionally inconsistent provisions of the International Protection Act.

OMBUDSMAN'S PROPOSALS AND RECOMMENDATIONS - SUMMARY

- ✚ The Ombudsman recommends that Slovenia, as a state which acceded to the Geneva Convention on Refugees and the Protocol Relating to the Status of Refugees, ensures appropriate asylum standards in line with the requirements of the Convention. At the same time, the Ombudsman calls on competent authorities to immediately eliminate the constitutionally inconsistent provisions of the International Protection Act.
- ✚ The Ombudsman once more calls on all public authorities to make every effort to execute the Constitutional Court decisions on the erased persons to redress the injustices committed and recognise their permanent residence from the day of the erasure of these persons.
- ✚ The Ombudsman recommends the adoption of additional measures which should contribute to the completion of the denationalisation procedures.
- ✚ The Ombudsman proposes the preparation of a more professional and prudent decision relating to the taxation of the agricultural subsidies to prevent the situations where individuals received decisions on the taxation of the subsidies they never received.
- ✚ The Ombudsman recommends a more frequent use of mediation as a voluntary, extrajudicial procedure for resolving conflicting issues also in the cases of property-law disputes.
- ✚ The Ombudsman proposes that the National Assembly of the Republic of Slovenia eliminate as early as possible the inconsistency of the Victims of War Violence Act with the Constitution, because it acknowledges this status only to civilians who were exposed to the violent actions of the occupier, but not to those who were exposed to violent actions of partisan units.
- ✚ The Ombudsman once more recommends the earliest possible legal regulation of the issue of the compensation of war material damage, suffered by exiles, injured parties suffering material damage, prisoners of war and persons mobilised by the German army against their will during World War II.
- ✚ The Ombudsman recalls that procedures for the recognition of the status and rights by war laws are often conducted too slowly. The state authorities have to do more to speed up the procedures and conduct them correctly despite the complexity of the cases and the time distance.
- ✚ The Ombudsman proposes a careful conduct of procedures for the entering of children into kindergarten, and issuing of substantiated and explained rejection decisions for children, so that the receivers of the decisions to understand, whether the commissions have respected the criteria from the Rules on Placing the Children.
- ✚ The Ombudsman proposes the adoption of programmes and measures in order to ensure sufficient number of vacancies for children in kindergartens and thus equal access for parents to the use of public means intended for the system of preschool education established by the state. It is essential to restore a clear and unified system of the placement of children in kindergartens.
- ✚ The Ombudsman recommends defining a timetable for the administrative authorities to conduct the procedures for the establishment of permanent residence.

- ✎ The Ombudsman recommends a more appropriate regulation of habilitation procedures in Slovenian Universities for appointing university lecturers, science fellows and co-workers which should be faster than the present ones (lasting several years) and provide efficient legal means for the protection of individual's rights (with a clear definition of the appeal body and the challenge procedures), when his candidacy for the title in a higher education institution is rejected.
- ✎ The Ombudsman proposes the adoption of a systemic solution of the transfer of juvenile sportsmen from one sporting club to another, and elimination of high indemnifications that parents of juvenile sportsmen have to pay the latter decide to enter another sporting club.
- ✎ The Ombudsman proposes the adoption of a regulatory framework (in legislation and University statutes) to guarantee additional financial resources for the minimum adjustments of educational process to students with special needs.
- ✎ The Ombudsman proposes that school authorities establish and adopt such rules for different competitions which would not condition the participation of students with the fulfilment of some other obligations of their educational institution.

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15. The state does not guarantee the rights of deaf students to an interpreter 76

15. The state does not guarantee the rights of deaf students to an interpreter

A deaf student turned to the Ombudsman stating that the faculty should make it possible for him to attend lectures and seminars with an interpreter. The competent authorities whom we asked for information (the Faculty, the University, the Ministry of Higher Education, Science and Technology, the Republic of Slovenia government), interpreted the law on the use of the Slovenian sign language to the detriment of the deaf student, stating that, as regards education, the law only provides 100 hours of interpreting per year. Even after the Ombudsman's intervention it seemed that the state is not prepared to fulfil its obligations deriving from the law it had adopted itself. A significant step forward has occurred only after discussing the problems of deaf people in the Assembly Committee for Labour, Family, Social Affairs and the Disabled, and the subsequent parliamentary question. In June 2008, the Ministry of Higher Education, Science and Technology took the position (defended also by the Ministry of Labour, Family and Social Affairs), that deaf people have the right to interpretation of all parts of the learning process (lectures, exercises), and that the 100 additional hours of interpreting are reserved for help in practical matters, for example in the office for student affairs, the library and so on.

In order to put this into life, the Ministry of Higher Education, Science and Technology obliged itself to find additional resources to be envisaged in preparing the new regulation on the public funding of academic and other institutions. The Ombudsman later discovered that the Ministry failed to fulfil its commitment and therefore continues its efforts to enforce the deaf people's right to interpreting during their studies. 5.8-2/2008

2.7 ENVIRONMENT AND SPATIAL PLANNING

GENERAL

In the field of environment and spatial planning, we received 112 suggestions in 2008, five less than in 2007. The initiators complained because of smell coming from different sources. Often they were exposed to noise from the nearby highways, restaurants, carpentry workshops, foundries, and amusement parks. Many complained because of church bells ringing. Noise and smell were behind many neighbouring disputes, and the persons involved turned to the Ombudsman for help. We also handled complaints concerning water permits, and received letters from individuals suffering because of poor quality of life near the highway. There are still many cases of lengthy adoption of spatial documents and disagreements with the foreseen regulation.

We received a number of initiatives expressing disagreement with the placement of the objects of national importance - the overhead power lines. All the comments that the interested public presented during public debates were studied in detail.

Several comments also referred to disturbing waste collectors, and opposition to the building of base stations. Many initiators warned us about spraying in residential environments and the effects of light pollution. Some hoped that the Ombudsman could assist them in legalizing their illegal constructions.

We can note that many letters, suggestions and complaints reflect the actual situation and the time we live in. The power of capital and economic lobbies are often evidently disproportional with the individuals' right to live in a healthy, clean and peaceful environment. Thus, several ill-prepared municipal acts allowing different interpretations, and spatial acts which follow the interests of the capital, can do or already have done irreparable damage to the environment. This does not only affect the life of this generation but often has long-term and even permanent effects.

Although the Ombudsman has been warning the Ministry of Environment and Spatial Planning for several years, it still has not adopted a rule on the mandatory measurement of emissions from small poultry and pig farms. A procedure has been put in place to measure discharges from the intensive breeding of poultry and pigs, fattening pigs and breeding sows subject to environmental permits for facilities which can cause large scale pollution (IPPC). However, the contents of the initiatives received shows that smaller plants can also be a frequent source of contamination and very disturbing for people. The Ombudsman expects that the above stated regulation will be adopted in 2009.

The Ombudsman notes that the regulations on monitoring the quality of permanent air measurements are quite vague. So far, no one has sought authorization to carry out permanent measurements in Slovenia, and no one has been accredited to do this. The Ombudsman suggests that a system of control measurements be put in place as soon as possible, and it is necessary to upgrade the system of authorizing the implementation and verification of the quality of permanent measurements.

As regards public participation in adopting the environment regulations, a positive move forward has been made in 2008. The Environmental Protection Act provides that in the process of drafting regulations which can significantly affect the environment, the ministries and local authorities have to inform the public about the draft regulation and let it present its opinions and comments. At this stage it is too early to speak about the practical effects of this provision, as the amendment came into force only in the second half of 2008.

It is alarming that in the period covered by the Ombudsman's report for 2008, none of the Slovenian non-governmental organizations (NGOs) in the field of environment had the status of NGO in the public interest. The criteria for obtaining this status are quite or even too demanding. Despite some changes in the Environmental Protection Act which simplified the conditions to obtain such status, there is still a requirement for NGOs to hold accounts audited in line with the law. We are aware that the prerequisite for audited accounts guarantees transparency of NGO operations and the seriousness of their intention to act in this area. However, the Ombudsman suggests that the necessity of this condition should be reconsidered. This status is a condition to participate in the procedures of issuing environmental consents and permits, therefore to have the right to judicial protection guaranteed by the Aarhus Convention. These concerns were forwarded to the Ministry of Environment and Spatial Planning in the period of amending the Environmental Protection Act, but our comments were not taken into account. However, the arguments of the Ministry of Environment and Spatial Planning were not convincing, so we are highlighting this problem again.

When handling the initiatives under the jurisdiction of the Ministry of Environment, we found that the Ministry has problems with handling documents. In the cases where it sends a file to the court for possible future treatment, it can do nothing in this respect, nor respond to the Ombudsman's inquiries on the matter. It does not have copies of documents, nor stores documents in the electronic form. We also found that file records were not managed properly, as upon our inquiry the ministry did not know where the file was. We recommended the Ministry to improve its business organization in order to avoid such problems in the future.

Inspection procedures

The reasons of initiators' complaints to the Ombudsman mainly concerned their dissatisfaction because of inactivity and lack of response by the Slovenian Inspectorate for Environment and Spatial Planning, and its failure to enforce inspection decisions.

The Inspectorate is authorised to monitor the adequacy of construction products installed in buildings, and the use and maintenance of facilities. The monitoring is extensive, but the inspectorate does not perform it efficiently. The inspectorate explained that this is due to lack of personnel and the extended scope of their duties. According to the Ombudsman, these are not justified reasons, since the Inspectorate should guarantee efficient inspection instead of finding excuses for non-performance.

Although in the event of a lodged complaint, the latter does not withhold the execution, the inspectors often wait for definitive or even final decision on enforcement order. In principle, the provision that appeal does not have suspensory effect is respected only in cases of priority or a broad public interest, which, according to the Ombudsman, is unacceptable.

We inspected the files of the first instance body and found that the latter did not have complete case-file documentation. The competent inspectors explained that files were submitted to the Administrative Court of the Republic of Slovenia because it was resolving legal remedies. Thus we could only take a look at some copies of scanned documents issued by the body of first instance. The rest of the file documentation was not copied or scanned, as the internal information system did not make it possible. The body of first instance did not have the relevant inspection records (or their copies) in the material form. We warned the Republic of Slovenia Inspectorate for Environment and Spatial Planning

that this kind of operation is inadmissible, since the inspector should have all the necessary documents available (in hard copy or electronic form) in order to conduct the process. It means that in the event of a lodged complaint and submission of file for decision making they have to make sure that the inspector has the case-file documentation (either in hard copy or in electronic form) required for performing the inspection.

The Ombudsman therefore recommended that the Ministry of Environment and Spatial Planning introduce a system of scanning documents as soon as possible. The Ombudsman also pointed to the need of reinforcing staff in the Republic of Slovenia Inspectorate for Environment and Spatial Planning, including the reassignments of civil servants. In the Ombudsman's opinion, organizational changes should be made to improve the situation of the entire sphere of inspection services. Let us mention in this respect the example of regional unit Ljubljana, which had as many as 4000 unresolved cases at the end of 2008.

OMBUDSMAN'S PROPOSALS AND RECOMMENDATIONS - SUMMARY

- ✚ The Ombudsman recommends the local government bodies to respect legal obligations and liabilities from international conventions (Aarhus Convention) and to enable the participation of the public in the procedures of adopting the regulations which may significantly affect the environment.
- ✚ The Ombudsman proposes the adoption of regulations which will also regulate, besides the already regulated emissions of the intensive poultry and pig farming establishment, the obligation of assessing the emissions of the so-called smaller breeding of poultry and pig farming in smaller establishments.
- ✚ The Ombudsman recommends the reconsideration of the suitability of strict conditions which need to be fulfilled in order to obtain the status of a non-governmental environmental organization operating in the public interest, and consequently obtain the right to participate in the decision-making process on the activities affecting the environment. It is unacceptable that NGOs have to wait for the decision of the Ministry of the Environment and Spatial Planning for so long, and that no NGO has acquired this status so far.
- ✚ The Ombudsman recommends amendment and more appropriate rules on the acquisition of the mandate for carrying out monitoring – the monitoring and control of the environment with systematic measuring. The Ombudsman proposes a prompt establishment of a system to obtain a mandate for permanent measuring (accreditation), a system of controlling the measuring, and the granting of powers for conducting and controlling the quality of measurements.
- ✚ The Ombudsman recommends that the Inspectorate for the Environment and Spatial Planning provide the necessary conditions for performing inspection tasks to ensure the quality of work, timely response to initiatives, and reduce lengthy inspection procedures.
- ✚ The Ombudsman proposes that the Ministry of the Environment and Spatial Planning regulate the handling of documents or keeping the records so that upon the submission of a file to the court, the ministry has copies of the supplied documents, thus enabling the continuation of all relevant procedures.
- ✚ The Ombudsman recommends that in case of a complaint submitted in response to the decision of the inspection, the latter continue with the procedure without waiting for the finality of legal decisions of the instrument permitting its enforcement, because the appeal does not restrain implementation.
- ✚ The Ombudsman draws particular attention to the responsibility of the competent authorities (the ministry, the inspection) to reduce and eliminate the risks of dangerous military explosive devices stored in order to eliminate the possibilities of accidents. The Ombudsman recalls their duty to protect the environment, life and health (primarily of workers in warehouses) and the property of people and considers that shifting of responsibility, delays due to difficulties in defining competencies, or unresolved ownership relationship are unacceptable.

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16. Operation of asphalt plant without a building permit

The Ombudsman was approached by the civil initiative for the environmental protection of Planinska vas trying to stop the operation of asphalt plant. Based on the final building permit, the administrative unit Šentjur pri Celju issued the operating permit for the asphalt base. With a decree of 30 November 2006, the Ministry of Environment and Spatial Planning abolished the building permit (issued on 14 September 2004), and rejected the investor's application to legalize the asphalt plant. This decree replaced the administrative unit's decision of 14 September 2004 (the building permit) and came into force upon being served to the parties involved. Therefore the Administrative Unit on 6 December 2006 *ex officio* initiated a review of the procedure for issuing the operating permit, in line with Article 260(1) of the Administrative Procedure Act. The investor appealed against the decision of the Administrative Unit, but the Ministry of Environment and Spatial Planning rejected his appeal with a decision of 27 March 2007. On 15 May 2007, the investor brought an action to the Administrative Tribunal of the Republic of Slovenia against the decision of the Ministry. On 20 September 2007, the Tribunal decided in his favour, annulled the Administrative Unit decision of 6 December 2006, and the Ministry decision of 27 March 2007, respectively, and returned it to the Administrative Unit for reconsideration. However, this procedure could not be carried out, because the file was lost. It could not be found at the administrative unit, nor at the Ministry of Environment, or at the Administrative Court. Finally, it was "found" on 3 April 2008 at the Inspectorate for the Environment and Spatial Planning and handed over to the Administrative Unit. Based on the copy of the file, the latter issued a decision of 5 March 2008 authorizing the review of the procedure for issuing the operating permit. The investor appealed against this decision. The Administrative Unit forwarded the appeal to the competent Ministry of Environment and Spatial Planning on 3 April 2008.

Despite a different promise, the Ministry of Environment decided on the appeal only on 6 January 2009. The Ministry annulled the decision to authorize the review of the administrative unit's procedure of 5 March 2008, and stopped the procedure of renewing the operating permit, initiated *ex officio*. The facility therefore has the operating permit, but not a building permit.

The Inspectorate for Environment and Spatial Planning stopped the enforcement procedure by its decision of 25 February 2008, as the person subject to inspection had a valid operating permit after the inspection decision of 24 July 2007, which imposed the duty to stop the building of asphalt plant and remove it within 120 days after receipt of this decision and at the time of reconsidering of decision to allow the enforcement. Of course, the executory title of 24 July 2008, still exists. Given the decision of the Ministry of Environment on 6 January 2009, we sent a new inquiry to the Inspectorate for Environment and Spatial Planning of the Republic of Slovenia.

The Ombudsman found some irregularities in the actions of the authorities, but the asphalt base is still in operation. This happened due to delays in the work of the authorities. In line with the provision of Article 256(1) of the Administrative Procedure Act, the second instance tribunal has to issue and serve the decision on the appeal as soon as possible, but not later than two months following the date when the tribunal received a complete appeal. Delays or exceeded time limits are not penalized, because they are indicative (recommended) time limits to speed up the work of the authorities giving them the possibility of control and action in the event of unjustified delays of the administrative body. Decision-making within the indicative time limits prescribed by law does not only imply legal work of the administrative authority, but also compliance with the equal protection of rights under Article 22 of the Constitution. As a rule, exceeded time limit in issuing a decision does not necessarily mean serious violation of the procedural rules. However, depending on the circumstances of a certain case, important delay may result in breaching the equal protection of rights provided by Article 22 of the Constitution of the Republic of Slovenia. The state should take all necessary measures to ensure appropriate conditions for regular and efficient work of state bodies. In the case of the asphalt plant, the Ministry did not make a decision within the statutory time limit, it did not act in line with the given promise, and it ignored the Ombudsman's proposal to issue a decision promptly. The proposal of the civil initiative was justified, but the Ombudsman's intervention did not bring the expected results.

5.7-29/2007

17. Enforcement suspended, executory title from 1992 remains

An initiator turned to the Ombudsman regarding long-lasting problems of pollution by the Ravne Ironworks and the alleged failing to enforce the decision of the then Republic Sanitary Inspectorate (RSI) of 24 September 1992.

With this decision, the Republic Sanitary Inspectorate imposed the Ravne Ironworks "to suspend the operation of the UPH-furnace and the accompanying dedusting device between 10 p.m. and 6 a.m. the following day until the provision of evidence on having reduced noise in the natural and living environment (the residence of the initiator) to the specified maximum allowed level IV (Decree on maximum allowed noise levels for individual areas of natural and living environment and residential objects - Official Gazette of the Republic of Slovenia, No. 29/80)." The deadline for implementing the decision was the day following the receipt of the said decision.

In line with the decision of 31 December 1992, the entity had to inform the Republic Sanitary Inspectorate of the measures to achieve the maximum allowed noise level IV near the residential building Stražišče 6 Ravne na Koroškem. On 8 September 1997, the Inspectorate issued an order suspending the administrative enforcement. The order suspended the administrative enforcement authorized by the Republic Sanitary Inspectorate decision of 9 July 1993, annulling the order authorizing the enforcement and all relevant actions carried out so far. The statement of grounds for the decision was quite unusual: "Results of the noise measurements showed that the noise of UHP-furnace and dedusting device Flakt 2 was reduced after installing the anti-noise protection and does not exceed the maximum allowed day-time and night-time noise levels near the homes of families XX and YY. However, the night-time noise levels around the house of the family ZZ (the initiator) are exceeded, but measurements for this house could not be performed directly in front of the house or inside the rooms." The noise inside and around the house of the family ZZ was therefore not measured at all. Based on the results of measurement and the agreements on compensation or resettlement of 8 out of 9 families at risk, the Health Inspectorate of the Republic of Slovenia noted that, with the RSI decision of 9 July 1993, the entity's liability which was allowed under the administrative enforcement has been fulfilled with regard to most families at risk. The administrative enforcement shall therefore be suspended; the decision authorizing the enforcement and the enforcement actions performed so far shall be withdrawn.

The operative part of the decision of 24 September 1992 refers to a particular location (the house of the ZZ party). It results from the grounds for the decision that the decision of 24 September 1992 has not been executed, so in the Ombudsman's view not all the conditions were fulfilled for a decision to suspend the enforcement in line with the decision of 24 September 1992. It should be noted that only the pronouncement of administrative act is binding, therefore the interpretations arising from the grounds for the decision ("Although the administrative enforcement is suspended, the entity is still obliged to meet all its obligations to the ZZ family, i.e. the compensation and resettlement to a suitable alternative location, as this can be an appropriate solution in this case. Only after having fulfilled all the obligations to the ZZ family (which have to be agreed and arranged between the ZZ family and the entity), the latter will fulfil all the obligations from the RSI decision of 24 September 1992") give rise to further doubt on the conditions for suspending the proceedings in this particular case, while confirming that the obligation under the enforceable title was not complied with, so the enforceable title still exists.

In light of these findings, the Health Inspectorate of the Republic of Slovenia asked for explanation about the grounds for suspending the enforcement based on the decision, which they themselves found was not enforced. We suggested that they take a position towards our findings and concerns and send us the answer in terms of resolving this case. The Health Inspectorate took more than two months to answer the Ombudsman. In its comprehensive reply it did not present its position towards the substance of the case; the enforcement - decision 24 September 1992 therefore still exists, because the decision only suspended the enforcement, while the conditions for suspending the enforcement are quite doubtful. **5.7-20/2008**

2.8 COMMERCIAL PUBLIC SERVICES

GENERAL

The number of initiatives decreased by about one-fifth in 2008 compared to 2007. Most initiatives covered the field of **communications**. The initiators approached the Ombudsman in connection with investments in the public telecommunications network associated with the sale of the state's share in Telekom Slovenia dd. They complained because of time differences between the investment payments and the procedures of calculating the amounts to be received by individuals; they claimed that municipalities and local communities committed several irregularities. In these cases, the Ombudsman concluded the treated initiatives by explanations and referred the initiators to obtain the answers from municipal administrations.

Several initiatives were related to the provision of **chimney-sweeping services**. Some had comments and critical remarks concerning the concessions for the provision of chimney-sweeping service, others complained about the price, the quality and the manner of providing these services. We also received the letter with questions about who is inspecting the providers and their professionalism. We explained the initiators that under the Environmental Protection Act, commercial public services carry out measurements, inspection and cleaning of ovens, smoke-pipes and air vents for reasons of environmental protection, energy efficiency, protection of human health and fire protection. This means that in the interest of the general public, the state needs to ensure a professional performance of these services. We informed the Ministry of Environment and Spatial Planning About this issue and dissatisfaction of the users of chimney-sweeping services.

In the last year's Ombudsman's report, we already highlighted the need of systematic regulation of the **Cemetery and Funeral Services**. We would like to reiterate that the legislation is inappropriate, since it allows random and incoherent arrangements in individual municipalities. The Ombudsman finds it completely unacceptable that already two years ago (in 2007) the government appointed the Ministry of Economy to prepare changes in cooperation with the Ministry of Environment and Physical Planning, but so far the ministries have not been able to prepare these changes.

The situation in the field of **energy** is very similar. Many initiators said that the new system of calculating electricity was unfair, as the more you spend, the higher the price per unit of energy. We explained the initiators that according to the Energy Act, electric supply is a market activity in which the supplier and the client agree on the quantity and price of the energy supplied. The supply of electricity is thus regulated as a commercial activity, subject to the rules of the free market. Clients are free to choose electric suppliers. The Ombudsman found the comments and complaints justified. In this situation we identified elements of discriminatory treatment of individuals (such as families with several children who consume more electricity and pay a higher price per unit of energy in the current system). We will therefore organise discussions on this issue with the Ministry of the Economy.

In the transport sector we discussed the initiatives concerning the problems that disabled people are faced with in trying to overcome traffic obstacles. The parking guards were reported to neglect the protection of places reserved for the disabled. Parking spaces are unduly occupied, and the disabled people are dissatisfied. We inquired the Maribor Municipality, since we found that it failed to respond to the citizen's complaint. The Ombudsman considers that the acquisition of parking tickets (car tags) which allows parking and stopping at places reserved for the disabled, is not adequately regulated. According to the Ombudsman, it should be determined anew who and with what degree of disability is truly entitled to parking permits, and to strengthen control over the use of these spaces.

OMBUDSMAN'S PROPOSALS AND RECOMMENDATIONS - SUMMARY

- ✚ The Ombudsman proposes that the Ministry of the Environment and Spatial Planning prepare amendments to the rules governing the chimney sweeping services in order to ensure their higher quality.
- ✚ The Ombudsman proposes that the Republic of Slovenia government ensure coordinated drafting (together with the Ministry of the Economy, the Ministry of the Environment and Spatial Planning, and the Ministry of the Interior) of amendments to the Cemetery and Funeral Services Act and harmonise regulations in individual municipalities.
- ✚ The Ombudsman recommends the Ministry of the Interior and the Ministry of Health to prepare more appropriate rules and establish clear and verifiable conditions for the acquisition of parking markings and permissions for parking and stopping in marked parking areas for the disabled and the assurance of intensified surveillance of the use of these parking spaces.
- ✚ The Ombudsman recommends that the state and the local government organise public debates and consultations and substantiate their answers to citizens' proposals and comments before adopting a decision to change traffic regulation in the local environment.

CASES

18. The Municipality arbitrarily interfered with the initiator's land

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18. The Municipality arbitrarily interfered with the initiator's land

Following additional requirements of the consent authority and the contractor Elektro Gorenjska, company for electric energy distribution d.d., Radovljica municipality built part of the construction of low-voltage grid and electric lighting on a different track than the one defined in the building permit. By doing this, it violated the property rights of some private land owners. After issuing the operating permit the Municipality Radovljica invited the owners to sign a statement that they agreed with the construction of communal facilities on their land. Not all the owners signed it, they decided to claim indemnification. Subsequently, they received compensation agreement, but the initiator did not accept the offered amount and proposed the payment of a much higher compensation, replacement of real estate or removal of communal infrastructure which violated her shared ownership property. The Municipality Radovljica was unable to accept these requests, because in their opinion, the amount was disproportionate, and the displacement of the communal infrastructure was no longer possible, according to the consent authority and the contractor.

The Ombudsman informed Radovljica municipality of its view that the municipality had unlawfully interfered with the property in question, as the works were performed to the detriment of the real estate without prior knowledge or consent of its owner (the owners were offered to sign the agreement only after the works have been completed). We proposed that Radovljica Municipality continues to search for a reasonable solution. It should also consider the illegality of its actions and take into account the possible consequences that may arise from legal redress for wrongful interference with the private property. Displacement of communal infrastructure is likely to be considered as an option in this procedure.

Radovljica Municipality responded to our opinion and proposal only after two urgent letters, and our warning that it is obstructing the Ombudsman's work. It eventually explained that it is aware of the problem and will further try to resolve it through mutual agreement with the initiator. At the time of the report, the case was still pending. **8.3-1/2008**

2.9 HOUSING MATTERS

GENERAL

Unfortunately, the Ombudsman had to establish again a series of deficient and vaguely defined systemic regulation of this area and the unwillingness of the state or government to make a radical and targeted intervention in the housing matters and in this way help to alleviate the distress of many persons who are faced with a hopeless situation, and many even literally without a shelter. The Ombudsman rightfully raises the question of whether and to what extent Slovenia still is a welfare state as the Constitution declares. Several initiatives prove inadequate regulation of the housing area as the Ombudsman has noted. In 2008, there were about 10% more initiatives than in 2007.

In 2008, the Housing Act was amended, but many Ombudsman's comments and recommendations have remained ignored and unimplemented. We noted in the Ombudsman's report for 2007 that municipalities, as self-governing local communities with the responsibility and authority to regulate the lives of people in their area, should assume an active role in finding the housing solutions for their residents. However, due to unclear and poorly defined laws, they often find excuse in scarce financial resources which prevent them to efficiently cope with the growing distress of the people. Therefore the Ombudsman warns again that the Housing Act should clearly define the responsibilities of individual institutions and that sufficient financial resources must be provided for the implementation of the planned housing policy. Based on the initiatives received, the Ombudsman calls on the state to adopt a clear strategy for tackling the housing issues, eventually by amending the tax legislation.

The Constitution states in Article 78 that the state shall create opportunities for citizens to obtain proper housing. Article 141 of the Housing Act defines the powers and tasks of the state in the housing field, which include the elaboration of the national housing programme and the provision of funds for its implementation. The Housing Act should identify systemic mechanisms to encourage and provide access to suitable accommodation, not just leave it to the chance or the creativity of the people.

Due to increasing poverty and difficult social situation of the people, the Ombudsman has been receiving numerous initiatives concerning eviction for many years. People with families often find themselves on the road, unless they are lucky enough to have relatives who offer assistance, or live in a municipality which has enough housing units to be able to deal with these cases. If, in addition, the evicted person is disabled, unemployed or otherwise vulnerable, the situation becomes almost hopeless. Since the provisions of the Housing Act relating to the housing units are rather vague and non-binding, the Ombudsman proposed amendments to the Ministry of Environment, which should set clear responsibility of the state or the local community in providing a certain number of *housing units*.

Public offer for granting non-profit rental apartments

As in previous annual reports, the Ombudsman considers that the Housing Act should clearly state the obligations of municipalities to publish a tender in certain time frames (e.g. once in a year) for granting the non-profit rental housing. In this context, the validity of the priority lists should also be defined.

As regards the provisions on subsidising rentals for the apartments hired at non-profit prices, and for those hired at market prices, the Ombudsman considers that the income census is absolutely too low and that the tenants of the two types of apartments are not in equal positions.

OMBUDSMAN'S PROPOSALS AND RECOMMENDATIONS - SUMMARY

- ✚ The Ombudsman recommends that the Ministry of the Environment and Spatial Planning adopt amendment to the rules in order to actually enforce the obligation of the state to create opportunities for citizens to obtain proper housing, as laid down in the Constitution of RS (Article 78). The Ombudsman also recommends the adoption of a new national housing programme, and a strategy for resolving housing issues.
- ✚ The Ombudsman proposes amendment to the Housing Act and a definition of mechanisms to encourage and provide accessibility to proper housing, definition of the responsibilities of the national and the local institutions and their role in providing help to nationals, definition of financial resources for implementing the housing policy, the obligation and responsibility of municipalities in providing housing units, and the obligation of publishing tenders to grant accommodation for non-profit rent in certain time periods, and, consequently, the duration of priority lists.
- ✚ The Ombudsman recommends amendments to the Rules for granting the housing for non-profit rent. The income census needs to be defined anew and a solution needs to be adopted in order to ensure that applicants who fulfil the income census conditions may be justified to a subsidised rent, irrespective of whether they applied to the municipal tender for housing for non-profit rent.
- ✚ The Ombudsman recommends a system and unified solution to the issue of apartments for janitors.

CASES

- 19.** Failure to resolve accommodation problems of persons evacuated from Bosnia and Herzegovina in 1992

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19. Failure to resolve accommodation problems of persons evacuated from Bosnia and Herzegovina in 1992

Following the initiatives we handled housing problems of the people who were evacuated from Bosnia and Herzegovina in 1992. Some of them were namely confronted with expulsion from housing.

The review of the case showed that based on the decision of the Slovenian government, around 320 Slovenes and the persons of Slovenian descent were evacuated to the Republic of Slovenia at the end of 1992 because of the war in Bosnia and Herzegovina. In June 1993, the state placed 95 evacuated persons who were not Slovenian citizens in a privately owned premise under a lease contract concluded for the period of their stay there, and covered the rental and other costs of their stay in this premise.

Taking care of the evacuated persons and solving their problems was quite intense immediately after the evacuation, and a little less after a while. Apart from covering the rental and other costs of living of the evacuated persons in the said house, the state became more actively involved in resolving their housing problems again when they faced difficulties related to housing in 2000. There was a three-year standstill until a new expulsion warning in 2003, when, according to the initiators, the state once again managed to postpone the impending eviction. Since then, the state was no longer actively involved in resolving the housing issues of the evacuated persons leaving the permanent resolution to be found either randomly or by the municipality.

From the available documentation it was not understood that the state should have formally guaranteed the evacuated persons a lasting solution of their accommodation problems. Although we believe that verbal assurances were made by some persons at the state level, these can not be regarded as a formal commitment of the state and its bodies. The state was, at least indirectly, aware of this morally binding duty when it prevented the impending eviction in the critical situation thus gaining time in which the evacuated persons themselves could find a lasting solution to their housing problems. Of the initial 95 evacuated persons, only 23 remained in the said facility. Most have already managed to find a permanent housing solution.

According to the Ombudsman, the state is partly responsible for the situation of the initiators. Despite its apparent efforts, it had provoked this situation by avoiding, for sixteen years, to make a decisive step towards resolving the housing problem of these persons. Thus the latter believed that the state would permanently resolve their housing problem and, as a result of these expectations, set their demands. We proposed to the government to find a definitive solution for the evacuated persons. The government replied that it had no commitment or legal basis for granting the accommodation to the evacuees from Bosnia and Herzegovina, now citizens of the Republic of Slovenia.

When these persons arrived to Slovenia, the state provided them with housing, shelter, education and the costs of living in Slovenia. It also prevented the eviction of such persons on two occasions. All this created an expectation that it will also provide them with the accommodation. The Ombudsman finds that obviously there is no formal commitment of the government, but its moral responsibility to these people still remains. **9.2-11/2008**

2.10 LABOUR RELATIONSHIPS

GENERAL

The number of initiatives in the field of labour affairs increased by 24 percent in comparison with 2007. The initiators reported harassment at the workplace, irregularities in determining and paying overtime work, problems of the disabled workers, termination of employment contracts, issues related to the delivery of employment booklet upon termination of service, they were asking questions about holiday allowances, the rights arising from education and similar. Several issues concerned the rights under the parental care and initiatives related either to the privacy of employees (above all the abuse of medical information and control of patients by private investigators), and the employment of foreign workers.

This year we also received a number of initiatives from persons employed at private employers and companies to which do not fall within the Ombudsman's mandate. In such cases, we could only provide clarification on the powers of the Ombudsman and advise the initiators where to find support. We told them that the body responsible for supervising the employers is the Labour Inspectorate of the Republic of Slovenia. It has the power to carry out inspection of the employer's business and take the necessary measures in the case of irregularities.

2.10.1 Recruitment of foreign workers

The issue of interim foreign workers in the Republic of Slovenia (mainly citizens of the former Yugoslavia and citizens from some Eastern European countries) which the Ombudsman was informed of in dealing with initiatives, is very topical both in terms of undeclared work and in terms of working and living conditions, social protection in the event of accident at work, payment, working hours, and other labour related rights. These initiatives were not many, because the workers are afraid that, as a result of investigation, they might lose their jobs, and, consequently, the right to stay in Slovenia.

2.10.2 The privacy of workers

We received several initiatives in which the workers reported that the employers controlled their sick leave through private investigators. They wrote about the abuse of medical data and wondered how it is possible that employers can exercise such control. In one of the cases, the employer requested a photocopy of referral for specialist examination, and in another case, a law firm was instructed by the employer to invite the employee on sick leave for a talk about her illness. We handled the initiative in which a private investigator, hired by the employer, set the money to the initiator so that it looked as if she had stolen it. The methods used by private investigators can not be exactly the same as methods of secret surveillance, tracking and recording with technical means used by the national Intelligence and Security Service and the Police in line with the applicable law. The Ombudsman was concerned about these findings and the relatively large number of initiatives related to the private investigators' supervision of employees. She proposed stricter control of private investigators by the competent authorities and eventual amendment of the Employment Relationship Act.

2.10.3 The problems of disabled workers

Several initiatives came from the disabled workers. They described the problems because they were not offered work in accordance with the Decision on the Recognition of the Rights on the Basis of Disability. We explained what rights they have under the current legislation and the possibility of bringing complaints to the competent authorities. We proposed more appropriate ways of informing the people with disabilities about their rights.

2.10.4 Cooperation with the Labour Inspectorate of the Republic of Slovenia

The cooperation of the Labour Inspectorate of the Republic of Slovenia with the Ombudsman was mostly correct, although we often had to urge them in order to obtain the requested clarification. In 2008, we established that the conditions for the work of the Inspectorate are not appropriate and that the number of inspectors is too small to provide efficient control. On the occasion of discussing the report, the National Assembly of the Republic of Slovenia adopted, on the Ombudsman's request, the recommendation that the government should strengthen labour inspection services to ensure better prevention and sanctioning of the employment law violations, particularly the increasing occurrences of harassment and violation of the rights of deriving from employment.

2.10.5 Harassment at work (mobbing)

The Ombudsman noted the increasing forms of ill-treatment at the workplace, particularly in the public sector. On the other side, the awareness of victims who are exposed to this ill-treatment is also increasing. According to the Penal Code of 2008, such conduct is qualified as crime. Victims who turn to the Ombudsman in writing or on the telephone are advised to keep a "diary" in which they record the date, the time, the manner and the type of acts they have suffered and experienced as ill-treatment, and the potential witnesses or other evidence. This will help them prove such illicit acts with certainty. We advised them to contact the employer who, under the Employment Relationships Act, has to provide a working environment in which no worker is exposed to sexual or other harassment or ill-treatment by the employer, the superiors or the colleagues.

2.10.6 Civil servants

The number of initiatives in this area increased in 2008. We processed initiatives related to the extraordinary termination of employment contracts where the initiators rejected the reasons for termination. We also handled initiatives of the social care workers employed in the centres for home assistance concerning subsequent extensions of fixed-term contracts, and the problems related to the introduction and the implementation of the new wage system. We also discussed the initiatives related to the appointment of senior management in the public institutions in the field of culture and temporary employment in public cultural institutes (notably artists), and the relationships among employees.

2.10.7 Working in the Slovenian Army

The Ombudsman visited one of the barracks. On this occasion, interviews were held with soldiers who raised the issue of admission to the officer basic school and claimed to have no possibility of appeal to the unfavourable opinion of the psychologist. They also mentioned non-compliance with the labour law regarding the mandatory rest periods between the working days and the working weeks. They further stated that they were not adequately informed of certain rights and that the procedures related to their personal affairs are unreasonably long.

We received correct answers to our request for explanation within the agreed time limits, and the promise that irregularities will be removed within the shortest time and extent possible. In 2008, a group of soldiers sent an initiative indicating their difficulties in the exercise of parental rights in relation to night-time and overtime, and the deployment to work abroad. The Ombudsman asked the Ministry of Defence for explanation to which it responded that within the planned amendments of the Defence Act, the Ministry will examine and regulate options for a better reconciliation of work and private life of the members of the Slovenian Armed Forces.

2.10.8 The issues of people employed in the Prison Administration of the Republic of Slovenia

In 2008, we discussed the initiative of employees in detention institutions. The initiatives showed that the staffing levels are not sufficient, which leads to violations of the employees' rights to daily and weekly rest periods. Due to staffing constraints, these institutions face serious difficulties in escorting the offenders and detainees to the court and to medical examinations in various health institutions). When considering these initiatives, in addition to the non-volume measure of overtime work we also found violations where overtime work was not paid to a full extent.

Despite the gravity of the situation, in the Ombudsman's opinion the remedial measures were not suitable and certainly not timely enough. We believe that the violation of the employees' right to adequate rest was inappropriate intervention in the freedom of employment defined in Article 49 of the Constitution of Republic of Slovenia, as this right also protects the use of free time outside the working hours. Interference with this right includes non-payment of the performed work. Employees of the Prison Administration were not paid for the work they performed in excess of the maximum legally allowed overtime work. We consider that it is inadmissible that the employees work in excess of the legally allowed overtime work, because such work is illegal. It is even more problematic if such work is not paid once it has been accomplished (the employer allows the employee to perform work in excess of the legally allowed but does not pay this work promptly, as this is not possible by the rules governing the remuneration of overtime work). Not paying for the accomplished work with the excuse that such work can not be paid as it is not allowed by the law, is unacceptable in the Ombudsman's opinion. The provisions limiting the working hours of employees are intended to protect workers' rights in relation to the employers. Once the work was actually performed for quite obvious reasons, even if this was against regulations, it should be paid in full. The rights of individuals were prejudiced already by the fact that employees are engaged in work above the maximum defined by law. The illegality of such an occurrence can not and should not be an excuse or a reason for further prejudice of the individual's rights by not paying for the accomplished work. We would like to add that our legal system does not provide for "the transfer of hours" which often occurs in other activities, where permanent presence of employees needs to be ensured, and the process of work cannot be adjusted to the staffing levels. At the same time, in accordance with the applicable rules, the remuneration for overtime work is proportionally higher than the payment for regular work, therefore the hours performed as overtime working hours can not have the same value as hours performed within the normal working time. The employer has the possibility of uneven distribution of the working time. However, if the job needs can not be met in this way, all additional hours of work should be considered as overtime work. The work performed must be paid, otherwise it means violation of the right to remuneration provided for in Article 49 of the Constitution.

The right to a daily and a weekly rest is the right which not only protects the employees in the Prison Administration, but also the persons serving their sentence in prison or in custody. If staff is exhausted and staffing levels are inappropriate, it is not possible to

ensure professional performance of the activities needed to provide safe living conditions and appropriate professional work of the employees. Consequently, this could prejudice the constitutionally protected rights of the persons deprived of personal liberty.

The issue of the lack of personnel was observed in the work of the police, as well. Understaffing may prejudice the rights deriving from individual's employment. Equally, this may prejudice the rights of the persons under various police procedures, the victims of criminal offenses, etc. Inadequate staffing levels can affect the extent and the efficiency of prevention, thus jeopardizing the rights of all persons in the territory of one country.

2.10.9 Scholarships

A large increase in the number of initiatives was observed in the field of study grants. The problems reported by initiators included: late and inefficient informing of grant-holders on the revised and stricter conditions regarding the required study results; too low income census per family member to obtain a scholarship and (too) strict observance of criteria in exceptional cases, failure to take into account additional family members with special needs (serious or severe mental or physical impairment), or a family member with disability in the applicant's family, worse position of single-parent families than under the old legislation, inadequate criteria for determining the allowance of students who travel to school more than 40 km every day.

We estimated that, in some parts, the established legal solutions are less favourable for students than they were in the past. We proposed to the Minister of Labour, Family and Social Affairs to re-consider the options of changing the rules in the parts that were most frequently referred to in complaints.

2.10.10 Unemployment






The number of initiatives related to unemployment has not changed significantly in 2008. There are no significant changes even in terms of substance. We still have to be critical towards the problem of students and the participants of adult education caused by removal from the register of unemployed persons. The problem that the Ombudsman pointed out in the 2007 report was taken seriously enough neither by the Employment Office nor by the Ministry of Labour, Family and Social Affairs. The result of the regulation we cautioned of was that resourceful persons who enrolled study programmes (likely to improve their employment opportunities) without the consent of the Employment Office were "punished" by the loss of the unemployed status, and therefore the rights resulting from this status.

Again we have to highlight the finding that the records of employment offices are inadequate, because they do not reflect the actual scope of unemployment. The records only show the number of registered job-seekers without highlighting the significantly poorer picture reflected in the extent of non-working population (persons who are deleted from the records on fault-based grounds, unemployable persons, persons with low employment prospects, persons who are included in public works or training within active labour market programs). In examining individual cases of deletion from records due to unavailability, some questions were raised concerning the request that unemployed persons have to be available for work and accessible at their permanent residence three hours a day. The time for "being available" is usually set in the morning hours. The obligation to be available on the address of residence may lead to the opposite effect than the one desired: almost complete passivity of those who could spend this time looking for a job and be really active. We understand the urge to prevent undeclared work, but more appropriate ways should be found in line with modern times and technologies to motivate people to seek work without inhibiting them, while at the same time preventing abuse.

We estimate that it should be analysed again if the amount of unemployment benefit received by the entitled persons for a certain period during unemployment is still suitable in the changed economic conditions. Equally, the question is whether the minimum cash allowance, determined as a percentage of minimum wage, can be sufficient for a decent living.

OMBUDSMAN'S PROPOSALS AND RECOMMENDATIONS - SUMMARY

- ✚ The Ombudsman recommends the respect of the ratified European Social Charter and the provision of conditions for the execution of rights from the charter, particularly the right to just conditions of work, the right to safe and healthy working conditions, and the right to a fair remuneration, allowing a decent standard of living.
- ✚ The Ombudsman recommends that competent authorities provide all employees with accessible and clear information on the possible means of appeal and other forms of legal safety in cases of labour law violations.
- ✚ The Ombudsman recommends consistent inspection over the implementation of the Personal Data Protection Act, and adoption of measures to prevent illegal and excessive interference of employers in the privacy of their employees and unauthorised handling of information on their health condition.
- ✚ The Ombudsman recommends that before the end of inspections which last several months, the Labour Inspectorate of the Republic of Slovenia inform the notifiers who want to be informed about the findings and measures of inspection control, in line with Article 24 of the Inspection Act, about the course of procedure or the phase of a specific procedure under consideration.
- ✚ The Ombudsman once more proposes the reinforcement of staff of the Labour Inspectorate of the Republic of Slovenia and the Inspection of the civil service system. Only a sufficient number of inspectors can perform their work in due time and efficiently prevent and sanction violations of the labour law.
- ✚ The Ombudsman recommends the provision of the necessary staff and financial resources for efficient exercise of the powers of the Prison Administration of the Republic of Slovenia, and the adoption of personnel norms, ensuring the exercise of the right to daily and weekly rest and remuneration for the work done.
- ✚ The Ombudsman recommends the alignment of provisions of the Employment Relationship Act, Service in the Slovenian Armed Forces Act and the Defence Act which, due to particularity of employment relationships in the Slovenian Armed Forces and the disparities between them, do not allow the employees in the Slovenian Armed Forces to fully exercise certain rights from the employment relationship (particularly the exercise of certain parenthood related rights).
- ✚ The Ombudsman proposes amendment to the Employment and Insurance against Unemployment Acts so that the students and of tertiary education students are not deleted from the records of unemployed persons simply because they have engaged in further education without the consent of the Employment Office.
- ✚ The Ombudsman proposes reconsideration of the amount of unemployment allowance, particularly the adequacy of minimum unemployment benefit based on the proportion from the minimum wage which does not allow a decent survival.
- ✚ The Ombudsman proposes the adoption of measures for creation of jobs, further possibilities for professional requalification and education, adjustment of working conditions, flexibility of working hours, additional motivation for the employers and the unemployed persons, and for recruitment of elderly workers.
- ✚ The Ombudsman recommends the adoption of systemic measures to encourage individuals who seek better employment opportunities through studying.

-  The Ombudsman proposes the adoption of measures for strict compliance with the Slovenian legislation in the field of employment of aliens, more appropriate working and living conditions for them, social security in the case of work accidents, fair remuneration for the fair work, abolishment of black market labour and consistent sanctioning of the working time above the permitted one, and all forms of discrimination.
-  The Ombudsman once more proposes that the Parental Protection and Family Benefit Act regulate that female workers receive salary compensation for the breast-feeding break during working hours which takes no less than one hour a day and is provided by Article 193 of the Employment Relationship Act. Female workers do have the right to a break but it is unpaid.
-  The Ombudsman recommends more co-operation between institutions responsible for the prevention of unacceptable acts of torture in the working environment, for more education and rising awareness of individuals and the society, and for consistency in sanctioning this phenomenon.
-  The Ombudsman proposes amendment to the rules in the field of scholarships, particularly in introducing the so-called positive discrimination in the cases of single-parent families and families with disabled members, increasing the census of earnings per family member, considering exceptional personal circumstances (disability in the family, children without parents etc.), a more just formulation of measures for distance allowance, and elimination of defining percentage shares for new Zois scholars.
-  The Ombudsman recommends that competent authorities have stricter control over the work of detective organisations and the exercise of their powers, and consistently prosecute all forms of illegal obtaining of information, contrary to the law and their professional duty to protect the privacy, personality rights, and the personal data of individuals.

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20. Lack of guards and specialist personnel in the Prison Administration

The Trade Union of the Prison Administration of the Republic of Slovenia has lodged an initiative where, among other deficiencies, it indicates a serious shortage of guards and specialist staff. The shortage would be partly resolved by transferring the persons who are not suitable to work as guards. In carrying out their duties, guards are expected to work overtime in the extent which exceeds the legally allowed one, while such work is not paid at all. Staff constraints also lead to other infringements of rights. Breaches of the statutory provisions related to overtime work, provision of breaks and rest have also been established by the Labour Inspectorate of the Republic of Slovenia.

The initiative was deemed as justified. During the processing of the initiative, further recruitment was approved, but not been fully realized yet, as the envisaged procedures are still underway. Various measures to reduce the workloads are being prepared. At the time of the report, no solution concerning the performed but not paid overtime work exceeding the allowed number of hours has been found. Before the submission of this report we were informed that the trend of leaving work has increased and that the number of new jobs is smaller than the number of persons who left work in the same period. For these reasons, the situation has further deteriorated.

Handling of the initiative was not terminated in 2008. The issues will continue to be monitored until finding a suitable final solution. **4.3-25/2008**

21. Lengthy procedure to decide on the proposal for taking a professional examination

On page 175 of the Ombudsman's Annual Report for 2007, we described the case of a complainant who has been teaching in a primary school for 13 years without having passed the proficiency exam. The Ministry of Education and Sports was insisting all these years that he was not allowed to take this exam, since he did not have the education required for the post of a technical teacher. The application for passing the proficiency exam was lodged at the Ministry of Education and Sports on 22 November 1995, but the Ministry of Education and Sports took a decision only on 14 November 2000. In the course of administrative dispute, the procedure was twice returned to the Ministry for reconsideration. The Ministry did not follow the instructions of the Administrative and the Supreme Court, and both times rejected the request. In the third ruling of the administrative dispute, which was still pending at the time of writing last year's annual report, the Administrative Court of Republic of Slovenia delivered a judgment on 17 June 2008. It ruled on the request in the full jurisdiction dispute, annulled the decision of the Ministry of Education and Sports, and ordered that it should allow the initiator to take the proficiency exam on the basis of his application of 22 November 1995 within three months after receipt of this ruling. The Ministry of Education and Sports executed the said decision and informed the initiator of his placement on the list to pass the proficiency exam. However, the latter did not appear at the exam, because he got retired on 3 November 2006. Even if he passed the examination now, he could not benefit from it.

Following the claim which had already been filed by his agent, we proposed the Ministry of Education and Sports to compensate the damage which the initiator incurred because without having passed the proficiency exam (by the fault of the Ministry of Education and Sports), his wage and promotion were being reduced for almost 11 years, as well as the right to a reduced work schedule in the last two years before retirement.

The Ministry of Education and Sports has rejected our proposal. They insisted on the argument that the initiator did not meet the statutory conditions for taking the proficiency exam. Although the Ministry executed the Administrative Court decision, it does not feel responsible or liable to pay compensation to the initiator, as requested by his agent. Furthermore, they stated that the initiator was always treated as adequate for the post of a technical education teacher and received a full wage, therefore he was not financially injured as regards his personal income.

The Ministry of Education and Sports did not persuade us with their arguments; on the contrary, they still insist on the argument that the initiator did not meet the statutory conditions for passing the proficiency exam. Since they did not accept reconciliation, the decision on the damage caused by the fact that the initiator did not have the possibility to pass the exam when applying in 1995, is now left to the competent court. We evaluated the initiative as grounded; the whole procedure was absolutely running too long and caused damage to the initiator. **4.3-36/2007**

22. Relocation of a policewoman closer to her home

Following the reorganization of the Police in line with the Schengen Implementation Plan II, the initiator was transferred from her job of assistant commander in PMP Karavanke (Gorenjska) on the border, to an equal job in the police station Ilirska Bistrica. She accepted the relocation, as she could not afford to lose a job. She is a single mother of two school-age daughters, the younger of them with health problems. She argued that she had to drive to work for 5 hours a day, leaving home at 3 a.m. and returning after 6 p.m., which was also physically very exhausting. She was not told why, after 20 years of working in the police, and in her social situation, was relocated, since the management (with few exceptions) was not transferred. She described the situation and asked the Minister of the Interior for assistance, but received no reply.

The Ministry of the Interior was asked about the specific reasons why the initiator was moved so far away from home, and if there is any possibility, for the benefit of her children, to transfer her closer to her home. They replied that after examining our letter and the application of the initiator, they decided to move the initiator to a post in the Police Headquarters Kranj. They did not specify the reasons for their decision, but we did not put further questions, because the matter was resolved in her favour.

We wrote about similar cases in the Ombudsman's annual report for 2007. Among the cases with a similar issue, this case was one of the few which ended successfully - by transfer to a post closer home. The initiative was founded, especially in terms of protecting the children's rights. The Ombudsman's intervention was successful. The initiator was convinced that her application would not have been accepted without our intervention. **4.3-55/2007**

2.11 PENSION AND DISABILITY INSURANCE

GENERAL

The number of cases related to pension insurance, processed in 2008, has slightly decreased compared to 2007, while almost 29 percent cases more were processed in the field of disability insurance.

2.11.1 New legislation in 2008

In 2008, the Minimum Pension Support Act and the One-off Pension Allowance Act came into force, and the Agreement on the social insurance between Slovenia and Bosnia and Herzegovina began to apply on 1 July 2008. These acts affect the rights of many people, especially those with low income.

Several initiators challenged the new regime in the Minimum Pension Support Act. Some initiators, beneficiaries of pension support, did not agree with the new ways of adjusting the support to the inflation. They argued that the support should continue to be adjusted as pensions and not under the Act Regulating Adjustments of Transfers to Individuals and Households in the Republic of Slovenia. Other initiators have questioned the right of income support to pension beneficiaries. They argued that the income support discriminates beneficiaries with higher pensions due to longer pensionable service and, consequently, longer periods of paying contributions for pension and disability insurance, contrary to beneficiaries of pension support with a typically lower pension, because they retired with a reduced retirement age. Thus, a pensioner with a lower retirement age and the right to pension support might have a higher total revenue than a beneficiary of a pension with a longer retirement age. All such initiatives were assessed by the Ombudsman primarily in terms of systemic effects of the regulation adopted with the aim to help part of the population which is already approaching poverty. The Ombudsman considers that the implementation of the new legislation on pension and disability insurance in 2008 did not cause any major problems in terms of protecting and securing the rights from pension and disability insurance.

2.11.2 Widows' pensions

In 2008, the Ombudsman handled several initiatives connected with the decision of the Pension and Disability Insurance Institute of Slovenia which dismissed the applications for the recognition of right to part of a widow's pension to all widows whose husbands were retired under special regulations on military insurees. These widows were therefore trying to change this legislative provision. A group of deputies submitted a legislative proposal to the National Assembly to amend the Pension and Disability Insurance Act. The proposal was not accepted, however.

Another group of widows informed the Ombudsman about the unacceptable situation, convinced that their rights were violated. These were widows who were entitled to widow's pension after a divorced spouse, and were receiving a complete pension (70% basis for the assessment of the survivor's pension) until the date on which the widow from the next marriage was granted the right to part of the widow's pension.

According to the Ombudsman, this problem would require special arrangements (sharing the widow's pension with part of a widow's pension), but not the same rules should apply to sharing these two rights as to sharing the widow's or survivor's pension.

2.11.3 Proposing new rights

Often, the Ombudsman comes across a situation where the distress of certain initiators is so big, that she seriously considers to propose the introduction of a new right into legislation. The situation is particularly sensitive when children are in trouble. In the description of the case "Financial assistance to children after the death of the parents", a solution is possible only through the appropriate legal regulation. The inclusion of these issues in the report, based on several initiatives under consideration, is intended only for consideration by those who are in favour of extending the rights for children.

2.11.4 Disability insurance

Several initiatives addressed the exercise of the rights arising from disability insurance. The initiators claim that the Pension and Disability Insurance Institute is rejecting applications for the recognition of the rights under disability insurance in an attempt to cut the costs. The criticism is especially directed to members of the institution's expert bodies who prefer to follow the instructions of the institution to maintain a sustainable pension fund than the medical reports of specialists which is part of medical documentation in these procedures. The Ombudsman can not assess the correctness of the expert opinion which the Pension and Disability Insurance Institution considers in deciding on the right claimed by an individual. In such cases we have therefore referred the initiators to take legal action before the Labour and Social Court.

2.11.5 The list of physical defects

One of the rights from the disability insurance is the right to disability allowance or compensation for physical impairment. Under the regulations governing disability insurance, only the defects from a specific list adopted 25 years ago count as physical impairment. Such an outdated list does not enable fair and equal treatment of all defects, and a new one should be adopted. All these years, the Ombudsman has been pointing out the unacceptable conduct of the Ministry of Labour, Family and Social Affairs and the Ministry of Health, which had not yet issued a new list of physical defects. The Ombudsman does not accept the excuses of the ministry that a new list has not yet been drawn up and approved due to the complexity of task.

The Ombudsman considers that such an indifference of the government, especially of the Ministry of Labour, Family and Social Affairs towards this problem is inadmissible, since the rights from the disability insurance and the right to disability benefits or compensation for physical impairment must not be violated.

OMBUDSMAN'S PROPOSALS AND RECOMMENDATIONS - SUMMARY

- ✚ The Ombudsman proposes that the Ministry of Labour, Family and Social Affairs prepare a better legislation concerning the widows' pensions, so that both widows, the divorced spouse's widow and the spouse's widow together receive the total widows' pension (now the sum of both widows' pensions is considerably smaller). The rules should stipulate that divorced spouse's widows are entitled to income support, to annual supplement and to a single pension supplement.
- ✚ The Ombudsman proposes that the Pension and Disability Insurance Institute of Slovenia issue administrative decisions on the right to income support stating the legal basis and the established actual situation regarding the eligibility to payment.
- ✚ The Ombudsman once more proposes that the Ministry of Labour, Family and Social Affairs and the Ministry of Health issue new Rules on the list of physical disabilities (Pension and Disability Insurance Act) with types of physical disabilities as soon as possible. Several years' delay in its elaboration is not justified.
- ✚ The Ombudsman proposes the Ministry of Labour, Family and Social Affairs to study the possibility of legal regulation providing material security for children in cases when one of the parents (or both) has died and the conditions for family / survivor's pension have not been fulfilled (the deceased parent has not yet reached the five-year insurance period or the ten-year pension period).
- ✚ The Ombudsman proposes that the Ministry of Labour, Family and Social Affairs consider the suitability of conditions for the exercise of the right to care allowance for psychiatric patients, because we believe that the present provision of the Decision on the Criteria for Psychiatric Patients aggravates the conditions for the exercise of this right.

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23. Financial aid is not guaranteed to a child after the death of his parent who did not have enough of pensionable service

The initiator informed the Ombudsman on the injustice, which is incurred, in her view, by children who cannot enforce a survivor's pension after a deceased parent. The child is not entitled to this right if the late parent had less than 5 years insurance period, or less than 10 years of pensionable service, unless his death resulted from industrial injury or occupational disease. The initiator was not able to exercise the right to a survivor's pension for her daughter, since her father died before completing the statutory pension or insurance period.

The right to a survivor's pension is governed by the Pension and Disability Insurance Act. This is one of the rights the beneficiaries are entitled to from a prior mandatory pension and disability insurance. Some general and special conditions have to be satisfied in order to obtain these rights. General terms and conditions refer to the deceased insured person or the beneficiary of certain rights from the pension and disability insurance; among other things, a family member is entitled to a pension after a deceased insured person if the latter had completed at least five years of insurance period, or at least ten years of pensionable service.

The Ombudsman studied a number of similar initiatives, but so far did not suggest any proposals to amend this regulation. It is true, however, that from the point of view of providing material protection to children, a particular group of children is not sufficiently taken care of at the systemic level. These are children whose one (or both) parents died, but the parents did not meet the conditions for the enforcement of a survivor's pension.

The Ombudsman considers that in these cases children should also be provided with income in line with appropriate regulation. This issue can be resolved through the Guarantee and Maintenance Fund of the Republic of Slovenia Act. This Act is based on different principles than the Pension and Disability Insurance Act, therefore the Ombudsman proposes that the competent ministry initiate activities for a suitable regulation of this sphere. **3.1-3/2008**

24. Attendance allowance for a serious psychiatric patient

The initiator was retired in 1998 on the grounds of disability, as his mental illness made it completely impossible for him to make a living. He did not claim other rights from disability insurance at that time. In 2008, his personal physician submitted a proposal to the Pension and Disability Insurance Institute of the Republic of Slovenia to assess his entitlement to attendance allowance. The Institute rejected the claim based on the opinion of the expert body. The initiator believed that the rejection was completely unfounded, so he proposed the Human Rights Ombudsman to caution the Institute of its improper treatment of claim for the entitlement to attendance allowance.

The expert opinion, issued by the Invalidity Committee of the first instance, indicated that the initiator did not need attendance allowance, because he performs all his vital tasks independently. Perhaps he is only a little slow and unhandy, but still completely capable of movement. Although the president of the senate was a specialist in psychiatry, the expert opinion did not indicate if the initiator, a psychiatric patient in home care, needs constant supervision or not.

The Pension and Disability Insurance Act stipulates that help and attendance are indispensable for the pension beneficiaries in order to meet most vital needs, when as a result of permanent changes in their health condition, they become incapable to perform most basic daily activities (independent movement inside and outside the house, independent nutrition, dressing and undressing, putting on and taking off shoes, care for personal hygiene, inability of performing other basic daily activities absolutely necessary for the preservation of life), **or when, as serious psychiatric patients in home care, they need constant supervision.** The definition of permanent supervision is regulated in the Decision on the criteria when the Psychiatric Patients need Constant Supervision (Decision). It contains similar expressions (cannot satisfy most or all vital needs), beside the condition that "due to mental, physical or social consequences of illness, they are incapable of fulfilling most or all of their vital needs", they also need to fulfil the condition that "they are a chronic patient who has lost all control over reality (dg. code on the ICD-9 from 290 to 298)". This definition of constant supervision, at least in our opinion, aggravates the conditions the psychiatric patients have to meet in order to

be entitled to attendance allowance. The opinion of the Ombudsman, submitted to the Pension and Disability Insurance Institute of Slovenia was that if psychiatric patients are in a less favourable position in the acquisition of the right to attendance allowance than other beneficiaries, the regulation is inappropriate and should be amended. However, if the only problem is incorrect application of the regulation in the procedure of issuing an expert opinion, the practice of expert bodies needs to be changed accordingly.

In its answer to our inquiry, the Pension and Disability Insurance Institute of Slovenia explained that the doubt of the Ombudsman concerning equal treatment of psychiatric patients in the exercise of their right to attendance allowance is unfounded and that no stricter conditions are prescribed for them. With regard to these patients, the reason for issuing the assessment on the need for attendance allowance or their inability of performing their basic daily activities is their psychiatric illness, and for other insured persons the reason for inability of performing their basic daily activities is a somatic disease or injury. In the Institute's opinion, the definition of constant supervision is clear enough, since it is defined as a circumstance in which the insured persons are not functionally impaired (they are able to walk, dress, eat), they only do not know how to this and thus need to be constantly instructed how to perform these basic daily activities, and supervised so that they actually perform them.

In the appeal procedure, the decision of the first instance was changed to the benefit of the initiator, because the expert opinion of the Invalidity Committee was based primarily on the finding that the initiator has a need for constant supervision. The complainant's initiative was justified. The proof that the Pension and Disability Insurance Institute of the Republic of Slovenia respects regulations on the right to attendance allowance in the ways as explained to the Ombudsman, is evident in the fact that the second instance authority changed the decision on rejecting the right to attendance allowance, issued by the first instance authority following the above mentioned expert opinion of the Invalidity Committee, and decided to recognise the initiator's right to attendance allowance. **3.2-51/2008**

2.12 HEALTH PROTECTION AND HEALTH INSURANCE

GENERAL

The number of initiatives in the field of health has increased in line with the expectations (growth index: 112.5). The content of the initiatives has not changed because the majority related to poor information of patients, the possibility of access to health documents, and the inappropriate attitudes of health professionals and co-workers.

The number of initiatives in the health sector has increased in line with the expectations (growth index: 112.5). The content of initiatives is not changed because the majority related to poorly informed patients are able to access health records, and inappropriate attitudes of health professionals and colleagues.

2.12.1 Patients' rights

In January 2008, the National Assembly of the RS adopted the Patient Rights Act (the ZPacP Act, Official Gazette of the Republic of Slovenia, No. 15/08), defining in detail after more than 16 years the substance of individual rights and how they are exercised. The Act entered into force on 26 February 2008, but started to apply only six months after its enforcement, namely on 26 August 2008. Certain provisions apply until 26 February 2009, the transmission of data on health services Institute of Public Health and the conduct of the national waiting list and on the publication of waiting periods statistics. By the end of 2008, not all the conditions were in place for efficient implementation of the Act, as the representatives of the patients' rights have not been designated, and the commission for handling complaints has not been fully appointed yet.

The ZPacP Act established a very significant innovation in the field of health care for children, because children have the right to be permanently accompanied by parents or guardians. The payment for this service was introduced by the amended Health Care and Health Insurance Act (ZZVZZ), by recognising the hospital accommodation of one parent of a child aged up to five years inclusive, as a right to sick pay under the compulsory health insurance. We believe that the legislative provision is too narrow because the guardians and foster parents of children do not enjoy this right, although they have the same duties concerning the care of children. For this reason, we proposed the Ministry of the Interior to extend this child's right upon the next amendment of the act, and thus guarantee their equal position.

2.12.2 The Mental Health Act

In the middle of the year (12 August 2008), the Mental Health Act came into force (ZDZdr) which should eventually regulate the field that the Ombudsman has been constantly cautioning of. Unfortunately, the act shall start to apply only one year after its entry into force on 12 August 2009. We certainly expect that all the competent authorities will take the opportunity to use the period until the application of the act for preparing all the implementing regulations, particularly the national mental health programme, and for resolving certain outstanding issues that some NGOs are also pointing to. Upon the adoption of the ZDZdr Act, the Ombudsman expressed concern regarding its implementation, because some provisions are poorly formulated, and other provisions might lead to human rights violations.

OMBUDSMAN'S PROPOSALS AND RECOMMENDATIONS - SUMMARY

- ✎ The Ombudsman recommends that the government of the Republic of Slovenia prepare all statutory instruments provided by the Mental Health Act and the national mental health programme as soon as possible.
- ✎ The Ombudsman recommends the preparation and adoption of amendments to the Health Services Act which should better regulate the granting of concessions. Until the adoption of the act, the Ombudsman recommends the decision-making about the applications for granting concessions pursuant to the General Administrative Procedure Act based on a public tender.
- ✎ The Ombudsman recommends that the Health Insurance Institute of Slovenia assure proper informing of the insured persons on the novelties, in each event of changes of the rights stemming from the compulsory health insurance.

CASES

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25. The health centre found medical records only after the Ombudsman's intervention

The Human Rights Ombudsman of Republic of Slovenia (Ombudsman) received an initiative in which the initiator claimed that the Health Institute (HI) has lost his medical records. In spite of the initiator's numerous requests to find it, the HI has not done it. The initiator was particularly affected, because his selected physician could not prepare a complete medical document to be enclosed to the proposal for initiating the procedure for the exercise of the rights from disability insurance.

We asked the HI for explanation whether the medical record was actually carried out of their premises and where, and what they did in order to retrieve it. The HI has not responded to the Ombudsman's inquiry for a long time; we received the explanation only after the second intervention. Only after a long period, the HI has found that the medical record had been forwarded to the court regarding a procedure involving the initiator. After the court procedure, the court failed to return the medical record; it remained in the file which has already been archived. They returned the medical record only on the request of the HI, and the initiator was informed accordingly.

The case shows how many unnecessary procedures have to be started and how many people have to be engaged in solving a problem which would have never occurred, if the responsible persons had done their job. The responsible persons at the HI should have kept correct records and mark appropriately where the medical record was sent and when. The responsible person at the court, when archiving the file, should have seen that it contains the documents that need to be returned. Therefore, this conduct cannot be considered as user-friendly administrative performance. **3.4-5/2008**

26. Discrimination of a parent concerning the child's right to the highest attainable standard of health

The Human Rights Ombudsman received several complaints from parents responsible for upbringing and education of their children, but whose permanent residence is registered at different addresses, while the child is registered (by agreement or decision) at the address of one of the parents. The Health Care and Health Insurance Act of 1992 stipulates that, in the event of a child's illness, only the parent with whom the child shares the household is entitled to a paid absence from work. The competent physicians and the health insurance bodies who apply the act established common household by checking if the child is registered at the same address as the parent who requested a paid absence. On this basis, they rejected the requests for absence from work and the right to payment from the funds of the compulsory health insurance to all parents who in their request could not prove the same address of residence as their children. In so doing, these bodies did not consider who actually cares for the child or who is legally bound to do so.

Some parents made an appeal against such decisions and initiated legal procedures, but were not successful, so they proposed the Ombudsman to initiate a procedure to review the constitutionality of the Act which discriminates one of the parents in the exercise of rights, thus violating the child's right to health care.

Individuals have a right to file an appeal against a concrete decision at the Constitutional Court, but the law also provides a condition that before this, they have to use all available legal means. Such a procedure would be completed in a few years, and in the Ombudsman's opinion would have no meaning and effect for a sick child or his parents. Therefore we decided to use the possibility, provided by the Constitutional Court Act and proposed the review of the constitutionality of the Stated Act. According to the law, the Ombudsman can initiate a procedure for the review of the constitutionality of a regulation, if it deems that this regulation constitutes prejudice of the human rights and fundamental freedoms.

In the appeal to the Constitutional Court, we particularly highlighted the following: children's rights are provided and implemented primarily through the parents' parental right, where the parental right is considered as a legal institute consisting of a number of legal relationships with a common essential element – duty entitlement. Duty entitlement includes both a right and a duty, so closely connected that they create an indivisible whole. The rights of the child and his parents make up a set of different relationships which can be characterized as family relationships. These relationships include the relationships between one parent and child (maternity and paternity). The parental right is defined as one and cannot be divided between the parents. Parental right can be exercised by both parents by agreement, in the manner defined by the court. If agreement between the parents is not possible,

one of the parents can exercise full parental right independently (a single-parent family), if the other parent is excluded from the parental right based on legal or factual reasons.

The family life is specially protected by the provisions of the Constitution of Republic of Slovenia. The state is only obliged to provide the conditions that enable each family member, or the family as a whole, to exercise their rights. The state must also refrain from any intervention in these relationships that is not strictly necessary. The state can interfere in these relationships solely in cases defined by the Constitution, in line with the procedures and the reasons provided by law and in a way that could prejudice the rights of the persons involved to the minimum necessary extent. The state must also protect the family from interventions of third parties. The state can prejudice family relationship only if the rights of an individual are so endangered that the duty to intervene outweighs the duty to refrain from intervention, further provided that the state has appropriate legal basis for such intervention. The state receives the right to interfere only in case where the duty arises, and vice versa.

According to Article 18 of the UN Convention on the Rights of the Child, the states Parties are bound to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child, and to this end, the states shall render appropriate assistance to parents in the performance of their child-rearing responsibilities (second paragraph). Such principles are defined also in Articles 53 and 54 of the Constitution.

Legal regulation which leaves the right to care for the sick child only to the parent who lives with them in the same household, does not recognize different life situations in which the other parent could exercise the parental right (which is also a duty) just as they would do it in the same household. Only formally registered common address cannot and should not be an obstacle for the exercise of parental care and thus the exercise of child's rights. Legal regulation unnecessarily requires an additional condition for the exercise of the child's right to health care, since it imposes the burden of care for the sick child only on the parent who shares the household with the child, putting the other parent, without any founded reasons, in an unequal (subjectively considered, perhaps even privileged) position. A child's right to health care, which certainly includes care during illness, should not be subject to formal registration of residence of one of their parents. The fear of possible abuse (paid absence of both parents); with the technological development of information systems certainly cannot be a serious argument against the proposal that parents be equal in their rights and duties.

The challenged provisions do not ensure parents the same right and duty to maintain and raise their children, since the paid absence from public funds is provided only to one of them, unless they live in the same household. The other parent is thus over-burdened, if they still try to exercise their right and duty provided by the Constitution. Namely, the parents who do not share the household with their sick child while taking care of it have to take unpaid absence, a holiday, or hire a health care provider and pay them from their own resources. Such burdening of only one parent constitutes inequality and is contrary to Article 18 of the Convention on the Rights of the Child.

On the basis of this, we concluded that the contested provisions unacceptably interfere with the human rights by creating inequalities between the parents when during the time of caring for a sick child they wish to exercise the right to a sick leave. A common household (as legally undetermined status) cannot be a reason for unequal treatment of parents exercising their parental right, therefore, in our opinion, the contested provisions unacceptably interfere with the parent's and the children's right.

We also proposed the Constitutional Court to suspend the implementation of the contested provisions of the Act until the final decision, since irreversible harmful consequences for parents and their children can arise from their implementation. The parents whose request to exercise the rights from the compulsory health insurance was rejected for reasons of the contested provisions, cannot exercise this right any longer, since by the course of time, its implementation has no sense or reason anymore. The rejection also violates the children's rights to health care which certainly includes parental care during illness, and which cannot be easily replaced by other possible forms of care.

In our opinion, by suspending the contested provisions, the health insurance company as the provider of compulsory health insurance, would incur no damage in terms of increased costs, since in any case it has to pay the sick leave for child care to one of the parents.

As the last argument in support of our proposal, we recalled the Constitutional Court that we were cautioning of this issue already in the annual report for 2004. Furthermore, the National Assembly also adopted a decision that “the government of the Republic of Slovenia shall take all appropriate steps that the sick leave for care of a close family member shall not depend solely on common household or common residence, but the condition for the exercise of the right should be the care for the child.” On this occasion, the Ministry of Health assured that they will amend the Act accordingly in the next amendments. The Act has since been amended twice, however, but this change has never been included.

The Constitutional Court followed our proposal and temporarily suspended the implementation of the contested provisions, since they found that the effects of further implementation of the Act would cause more severe consequences for individuals, than they to the health insurance company if suspended.

Directly after the decision of the Constitutional Court, the government of the Republic of Slovenia filed the amendments to the Health Care and Health Insurance Act to a legislative procedure, which among other changes removed the provisions we challenged before the Constitutional Court. At the end of July 2008, the National Assembly adopted the amendment to Health Care and Health Insurance Act and from 1 January 2009 the discrimination of parents is eliminated. Therefore the Ombudsman refrained from further procedures before the Constitutional Court. **3.4-31/2008**

2.13 SOCIAL AFFAIRS

GENERAL

2.13.1 Social care

In 2008, the number of initiatives in the field of poverty and social distress decreased (index 84.1), but the content of the appeals shows an increasingly alarming situation. Distresses last longer and are therefore deeper. The Ombudsman cautions and demands that the state or the policy adopts such measures that will ensure a decent life to people. However, our effort is in vain, until persons responsible in the government and the parliament believe that EUR 221.70 is sufficient for the survival of one person, that two adults can survive with EUR 377.60, and that it is well provided for families with children because a child is entitled to EUR 66.51 of monthly financial social assistance, although they still receive child allowance and subsidized nutrition or reduced payment for child care in kindergarten and more. In the field of social security, the Ombudsman demands that the standards of social security services and benefits are raised to a higher level, and that the minimum income increases and thus also the level of all of the rights arising thereof. Social transfers must be so high as to ensure dignity to individuals, enable their social inclusion and a decent life.

Poverty - major challenge in the field of social protection

In May 2008 we organized, in cooperation with the National Council of the Republic of Slovenia, a one-day consultation on Poverty and Human Rights. We found that the Slovenian society is more and more stratified, some are becoming enormously rich, while others become ever poorer. Information on the dimensions of poverty, resulting from the actual situation is rather different from the information from official statistics and some research.

We found the following: there are more and more poor elderly people living alone, with low pensions; there are more and more young people growing up in materially deprived, poor and socially excluded environments, the number of sick and disabled people, who do not have equal chances of survival, is also increasing, there are more single households and single-parent families, living on the edge of poverty or below. The housing policy is not appropriate. There is a shortage of housing, particularly those for non-profit rent. The threshold to obtain the subsidy is too low, there are too many expulsions from housing, while there are almost no temporary housing units, and so the number of homeless people is growing. Employment services keep separate records of unemployed individuals, and their number is not summed. Due to various reasons, unemployed persons also cease to be kept in records. Financial social assistance is so low that it does not ensure minimum survival, and the path to exceptional financial social assistance is very difficult. The privatization of health and school system is, despite the different assurances, a weakness for those categories of residents who have no money.

We adopted recommendations for the policy makers of different policies, inter alia, that it would be reasonable to consider establishing a national strategy for eradicating poverty.

Long decision process for granting or rejecting financial social assistance

Besides the too low financial social assistance, we must also note the long decision process on appeals against rejection of financial social assistance. We find that the Ministry of Labour, Family and Social Affairs is not issuing decisions on appeals in statutory and reasonable time limits. The opinion of the Ministry that, if the decision is not issued within the prescribed period, a client has the right to file an appeal against an implied decision is unacceptable. We find their reference to the possibility of exercising the right to judicial protection completely inappropriate. Namely, the focus is not only the principle of good administration, but rather the right to efficient legal remedy (Article 25 of the Constitution). The Ombudsman also finds that the ministry “solves” certain appeals only after repeated warnings from the Ombudsman.

Determining the entitlement to financial social assistance

In accordance with the provisions of the Social Security Act, a Social Work Centre can, of its own motion, initiate a procedure for establishing entitlement to financial social assistance, with no defined procedure for this establishing. The issue how a professional worker enters the home of an applicant, and if they may at all (although with the beneficiary’s consent), or if they may “examine” the premises and seek evidence for a different decision, remains controversial. Professional workers may thus unintentionally assume the role of “policemen” or violate the provisions on protection of privacy and personal data. In one of such cases, we even found that the professional worker informally asked the police to monitor the movement of a particular person (establishing the actual or common residence of former partners) which is contrary to the provisions of the Criminal Procedure Act, under which a person can be monitored or followed only under a court order. We proposed the Ministry of Labour, Family and Social Affairs to prepare detailed instructions (protocol) for professional workers in Social Work Centres to be used in establishing facts, i.e. how they can explore the circumstances in which an applicant lives.

The right to exceptional financial assistance

In the Ombudsman’s opinion the provision of the Social Security Act, under which the person entitled to exceptional financial social assistance is obligated to submit proof of how the funds were used to the competent social work centre within 15 days of receiving financial social assistance, represents a special problem. If the person does not carry this procedure out or if it is established that the funds were not used appropriately, they shall not be entitled to it for 18 months. The Ombudsman believes that this period is too long and that people, for whom it may reasonably be expected that they will not understand instructions, should be equally and above all efficiently reminded of the duty to submit proof. They could use the possibility to receive assistance in a manner that will not require additional demonstration of its intended use.

2.13.2 Institutional care

We found that standards and norms for the performance of individual types of care in the field of institutional care in elderly homes no longer correspond to the actual needs of their residents. There are more residents with signs of dementia who need special treatment and increased supervision, and the number of residents, who need more care and more advanced services of health care, is also increasing. The elderly homes also architecturally do not meet present needs of their residents (homes with hundreds of residents, rooms with several beds, etc.). Lack of housing facilities in institutional care of the elderly (particularly in the area of Ljubljana) makes the exercise of the basic human right to social security impossible. The issues of ensuring health and social security treatment in cases of dismissal

from hospital are still not adequately solved. For this reason, the adoption of the Long-Term Care and Long-Term Care Insurance Act is urgent, and the establishment of other forms of help for the elderly, such as domestic help, distance assistance, home nursing, day care, sheltered housing, assistance in another family, home care assistant, social service, etc. that would enable the elderly to stay at home as long as possible.

Inadequate forms of institutional care for young disabled persons

We handled several initiatives where the young and disabled complained of the situation in institutional care, especially in elderly homes because the housing does not meet their needs. We found that in Slovenia we lack appropriate forms of institutional care of young and disabled. Elderly homes are intended for the third generation and the living environment is not adjusted to the needs of young and disabled. Placing them in elderly homes is not appropriate, therefore, the Ombudsman insists on the provision of more suitable institutional forms of care for young people with disabilities.

Constitutional decisions are not taken into account

The Ombudsman again notes the disrespect of decisions of the Constitutional Court of the Republic of Slovenia which found that Rules on standards and norms of social security services are in contravention of the Constitution and ordered the competent ministry to eliminate non-conformity within three months of publication in the Official Gazette of the Republic of Slovenia. Soon, three years will pass from the expiry of the period to eliminate non-conformity, but the decision of the Constitutional Court has still not been enforced. The decision of the Constitutional Court, which found that the Act Concerning Social Care of Mentally and Physically Handicapped Persons is in contravention of the Constitution, has also not been enforced. The National Assembly should have eliminated this non-conformity within one year after the publication of the decision, but this deadline expired on 28 December 2008.

2.13.3 The rights of patients suffering from dementia

Due to significantly longer life expectancy, the number of patients, suffer from dementia in their old age, is also growing (according to the data from two years ago, in Slovenia there are approximately 25 thousand such patients). In elderly homes there are more patients with advanced Alzheimer's disease who need a lot of care, social security and health care. Older people with these diseases should be enabled 'normal' involvement in life, strengthening and maintaining their physical and social functions (networks) for as long as possible.

2.13.4 In an ageing society, special care must be devoted to elderly people

Ombudsman pays special attention to elderly people, and in 2008 particularly to the issues of all forms of abuse of older people, their protection and self-protection. The Ombudsman insists on the implementation of the system of advocacy for the elderly and the statutory regulation of this issue. Among the rights that have not yet been exercised, we can consider the request of the elderly for the Ministry of Labour, Family and Social Affairs to finally prepare a strategy for active ageing.

After retirement, one is not deprived of one's education or occupation

After the retirement, the personal status changes. From the status employed, unemployed they enter a new status - retired. The change of status should not create the impression that the retired person was overnight deprived of profession, education, and knowledge.

We find that in all records and marks the retired persons appear in the undefined status “retired”. The Ombudsman agrees with the findings that this constitutes prejudice of the human right to the acquired title and occupation and that forced concealment of acquired rights from knowledge and experience is interference into human dignity.

2.13.5 Persons with mental disorders

Statements in numerous initiatives which the Ombudsman handles as personal problems generally do not have a basis in reality, and the initiators’ expectations are unrealistic. They expect the Ombudsman to prohibit the pursuit, find out who is poisoning their food, stealing objects, documents or even thoughts. They want the Ombudsman to investigate the effects of unknown radiation that they feel, or rays, that they see. The Ombudsman should achieve that foreign bodies (chips), through which someone is controlling them, be removed from their body, etc. In conversation with these initiators, it can be noted that they are in distress and in need of assistance, although a different kind than the one they seek.

In this respect, we refer to the long-awaited adoption of the Mental Health Act, which represents a new milestone in the legal regulation of mental health. The Ombudsman considers that the company should endeavour more for destigmatising mental disorders, so that the stigma of mental illness would not be a serious impediment to quality life.

2.13.6 Violence in society

The Ombudsman is regularly involved in numerous efforts to reduce violence in our society. To this end, he actively participates at professional and other meetings, particularly in the efforts to reduce violence against the weak, including children, women, patients, disabled persons and the elderly. Two elderly homes also cautioned us about cases of more or less concealed violence against the elderly by their relatives. Economic violence is occurring, when children are in full possession of their elderly parents’ pension, while they do not even have pocket money, and also psychological pressure on them to hand over their property or donate their immovable property.

OMBUDSMAN'S PROPOSALS AND RECOMMENDATIONS - SUMMARY

- ✚ The Ombudsman recommends that Slovenia respects the ratified international treaties, particularly the European Social Charter which binds the Republic of Slovenia to create the conditions for a efficient execution of rights and principles under the charter.
- ✚ The Ombudsman recommends more connected and coordinated activities of the state, government and other institutions also on a regional and local level to be able to offer overall, timely, intersectorally coordinated and professionally substantiated help to each individual who needs or seeks help.
- ✚ The Ombudsman proposes the adoption of measures to provide conditions for keeping and upgrading the standards of social security services and thereby improving the quality of work of public institutions in the field of social security.
- ✚ The Ombudsman recommends the rationalization of the tasks of social work centres, providing sufficient financial resources and an immediate solution of the shortage of personnel. The Ombudsman also recommends the adoption of measures for improved professional competence of the employed persons, with more precise knowledge of the legislation particularly in the field of administrative procedures.
- ✚ The Ombudsman recommends the adoption of measures to provide quality and timely control over the exercise of state authority in the field of social security services, also by enlarging the number of inspectors.
- ✚ The Ombudsman recommends the reconsideration of the minimum living expenses, collection of data on the real poverty rate in Slovenia, and the establishment and adoption of a national strategy of eradicating poverty and its manifestations.
- ✚ The Ombudsman recommends the augmentation of the amount of minimum income and consequently the amount of all social transfers based on it, which have to be sufficient to ensure decent life, social inclusion and dignity to individuals.
- ✚ The Ombudsman recommends the establishment of more uniform and transparent records of the actual number of unemployed persons in Slovenia and not only the records of registered unemployed which does not comprise groups in other records (difficult-to-employ, unemployable, deleted from the records, involved in education at the Employment Service etc.).
- ✚ The Ombudsman recommends the earliest possible adoption of the Long-Term Care and Long-Term Care Insurance Act to also define a new form of compulsory and supplementary social insurance.
- ✚ The Ombudsman recommends that the state provide enough nursing units in hospitals and respect the Guidelines for providing medical and social treatment upon discharge from a hospital.
- ✚ The Ombudsman recommends that the state provide decent and satisfactory possibilities for the young disabled to stay in suitable environments which are adjusted to their personal circumstances; and to provide more forms of institutional care for them.
- ✚ The Ombudsman recommends that the Ministry of Labour, Family and Social Affairs decide upon complaints within statutory terms and thereby ensures the exercise of right to efficient legal protection.

-  The Ombudsman proposes a simplification of procedures to obtain exceptional financial social assistance, to eliminate the humiliating forms of proving the intended use of the resources granted and the reduction of the present 18-monthths period in which the applicant is not entitled to exceptional financial social assistance because they did not submit evidence for the usage.
-  The Ombudsman proposes the use of such forms of establishing the circumstances in which the social support applicants live, which do not infringe fundamental human rights and fundamental freedoms. The Ombudsman also proposes the preparation of protocols for the professional workers in all social work centres to be used in establishing the facts, and in preparing and making decisions.
-  The Ombudsman proposes that all records, status descriptions, messages and other do not only contain the entry retired person but that education or profession that an individual has performed before retirement is consistently entered.
-  The Ombudsman proposes that the state provide enough beds in elderly homes all over the country and at the same time to support all measures that will enable the elderly (along with suitable forms of help) to stay in their home environment as long as possible.
-  The Ombudsman proposes that persons in institutional care are provided with appropriate standards for health, sanitary, orthopaedic and other instruments essential for good care and treatment which the state needs to assure to residents in public institutes.
-  The Ombudsman once more proposes immediate implementation of two Constitutional Court decisions and the elimination of the established inconsistency: the amendment to the Rules on social security services standards and norms, and the regulation of personnel norms for those performing care for adults with mental disorders and the regulation of state's obligations regarding social security of disabled, for whom the law has cancelled the obligation of parents to maintain their adult disabled children, but has not simultaneously regulated the obligations of the state.
-  The Ombudsman recommends that competent ministries prepare statutory instruments and protocols necessary for the implementation of provisions of the Family Violence Act.

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27. Long deciding on the appeal concerning the acquisition of financial social assistance

We will describe only one of a number of cases concerning the right to financial social assistance and the long decisions of the Ministry of Labour, Family and Social Affairs in the appeal procedure.

A lady addressed her initiative to the Ombudsman and stated that on 1 December 2007 she filed an appeal to the body of second instance that is the Ministry of Labour, Family and Social Affairs, against the decision of the Social Work Centre.

Since all deadlines for solving the complaint were overdue, both legal and humanly still acceptable and understandable, we requested a report from the Ministry which we received only after two urgings. They informed us that the delay in resolving the complaint occurred due to continuous increase of cases and staff problems.

Although the Ombudsman usually does not handle cases on which a court or other legal procedure is underway, in this case (which unfortunately is not isolated), we must express strong criticism of the unacceptably long decisions on the appeal. We demand that the Ministry adopts all necessary measures in order that appeals on issues so important to a person as the right to financial social assistance, are resolved within the legal deadline (60 days) or at least within a reasonable or acceptable time which in our opinion cannot be longer than three to four months. **3.5-38/2008, 3.5-7/2008, 3.5-16/2008**

28. Difficulties with providing evidence on the use of resources from exceptional financial assistance

The Ombudsman received an appeal for information, 80-year-old gentleman who lives alone and has no relatives who could help him. Is invalid I. category, sees and hears poorly and needs help in meeting the time each application. The material distress was a year ago turned to social service with a request for emergency financial social assistance. Instructions to professional services that, within 15 days after the receipt of aid dedicated to bring proof of spending, then, is not understood and because evidence has failed to deliver, he was this year refused an application because it has not yet expired 18-month period in which the aid is not justified. The decision to his extraordinary financial assistance is denied, it feels light of the ongoing situation in which they live, unfair and can not understand that the procedure is so rigid and unsuitable to the needs of the individual and his capacity to understand. **3.5-70/2007, 3.5-13/2008, 3.5-23/2008, 3.6-21/2008 and other**

29. Difficulty in establishing the common residence of former partners

The female initiator found herself in severe financial and personal distress, when in June 2008 the Social Work Centre issued a decision that she is no longer entitled to a part of financial social assistance in the amount of EUR 103.74. When she separated from her husband two years ago, she sought professional help at a Social Work Centre due to a number of health problems and dismantling of the family. It was through her adviser, that she managed to improve the relation with her former partner who initially did not pay the child support, and later accepted this responsibility and also re-established contacts with the children. The children agreed to contacts only in their apartment, so the father was visiting them there. He also helped the initiator when her health condition deteriorated and she was not able to take care of the children alone. However, the Social Work Centre supposedly received a notification that the "husband is staying with them," which the professional workers of the Centre verified by visiting her home. The initiator was convinced that her relatives, who live in the same house, and with whom she has problems for many years, wanted to harm her. The initiator was affected by the conduct of the Centre, and felt humiliated by the professional workers' "home visit". For this reason and the feeling of physical threat by her relative, she sought help from an informal advocate in a non-governmental organization.

In June 2008, the initiator filed an appeal with the authority of second instance (Ministry of Labour, Family and Social Affairs) against the decision of the Social Work Centre on the termination of the right to a part of financial social assistance. The Ombudsman immediately (in July 2008) requested a report due to the finding that the Ministry still had not decided on the appeals filed in May or December 2007, and neither of the last one. We received an explanation of the Ministry that they considered our request and resolved the appeals from 2007 by "priority", but the fact remains that

they were resolved only after 14 or 8 months. The Ministry complied with the appeal from June 2008, eliminated the decision of the Social Work Centre, and returned the case to the authority of first instance for reconsideration. Our inquiry at the Social Affairs Inspection Service has shown that, in this case, the inspection was not carried out because the initiator had the possibility of appeal. They also wrote that they were informed of the fact that the complaint was upheld, and that the Social Work Centre is already conducting the procedure which will take into account the deficiencies identified in the decision of the Ministry.

The initiator kept informing us of the allegedly contestable manner of conducting the preliminary investigation for the repeated deciding on her right. However, we also received a letter from her advocate in which she precisely described her perception of handling the problem at the Social Work Centre. In the mean time, the Centre already conducted a new procedure and again decided that the initiator is not entitled to the right to a part of the social assistance. We also received the decision, for information, and we found that the reasons for the decision are not transparent and very poorly founded.

Due to doubts about the propriety and professionalism of procedure, we made a personal visit to the Social Work Centre in December 2008. We accessed the file, had a personal conversation with the director and the professional workers who treated the lady, and visited the initiator at her home. We found that the procedure was conducted extremely deficiently the first and the second time. The decision of the body was based on many assumptions and unverified statements, some alleged witnesses did not want to give a written statement. Confrontation was not carried out by prescribed procedure. We cautioned the Social Work Centre about the danger of interfering with the privacy of the client, and reiterated the importance of objective evidence, indicating the present situation. The actual situation needs to be determined by the authority in the manner provided by the General Administrative Procedure Act and the decision of the Ministry of Labour, Family and Social Affairs. The decision must originate in the operative part of the decision, and the justification of the decision must explain, justify and support the operative part with relevant evidence. The allegations that nobody wants to or cannot confirm just cannot serve as evidence. We wrote more about the method of gathering information and the investigations in the content part.

During the visit to the initiator, we found that she intends to make an appeal against the decision, which we also advised her. According to our information, the appeal still has not been solved, although the two-month period had already passed. We will propose the Ministry to decide on the appeal immediately, since the whole procedure lasts already from June 2008.

In order to illustrate the overall developments, we would like to note also that the lady submitted the application for financial assistance again in November 2008, but in December it was still not decided on her right due to gathering some more information. The initiator also applied for the exceptional financial social assistance. It was resolved with a negative result because the 18-month period, within which she is not entitled to it because she did not prove the intended use of the resources, had not expired yet.

The case is very complex, so we are not stating all the details. We particularly want to caution about the fact how possible irregularities in the procedure can considerably affect the rights of the individual and their family, especially if it turns out that the decisions were unfounded, and the durability of the decision-making unnecessary. The consequences could be fatal, assuming that it concerns a really poor family. **3.5-21/2008**

2.14 PROTECTION OF CHILDREN'S RIGHTS

GENERAL

The number of initiatives in the field of children's rights increased also in 2008 but their content did not change significantly. At the systemic level, the number of violations that would result from incomplete legislation was not particularly great. We noted, however, that the adopted normative solutions often are not fully implemented. We believe that the sensitivity to violations of children's rights is increasing in the society; however, we cannot and must not be satisfied with the current situation. We still note too lengthy decisions of the competent authorities in individual procedures of handling children's rights, and often poor coordination and cooperation of various bodies which should take care that the child's best interests are the primary goal in all their decisions. Since the competent authorities often ignore the principle of child's best interests as required by the Convention on the Rights of the Child (CRC), a child can involuntarily fall in a trap of unresolved relations between the parents and the authorities. The Human Rights Ombudsman of Republic of Slovenia (Ombudsman) expects that the new Family Code will solve certain problems, which we are constantly cautioning of, and provide adequate basis for the work of all state bodies deciding on the rights of the child.

The Ombudsman deals with different fields of the exercise of children's rights in this year's report; here we present only some of them.

2.14.1 Violence in schools

Initiatives related to the problem of peer violence were more frequent than in the previous years. Many times, pupils turned to us complaining that the school is indifferent to peer violence, and that teachers and principals take no steps but think that the only thing that can be done is to expel the violent pupil from school. Regrettably, the practice of filming violent acts of individual pupils and displaying peer violence on the World Wide Web continued last year, which the Human Rights Ombudsman of Republic of Slovenia strongly condemns.

The Ombudsman also estimates that there is too much inappropriate behaviour and the related violence. It can not be excused. Only a tolerant and cultural communication and peaceful resolution of conflicts, which may occur in any community, are the key to peace and personal happiness of each one of us. Even in conflicts we should not forget that all people have equal rights and that human rights are limited by the rights of others. The Ombudsman considers that the school management and teachers should adopt zero tolerance to all forms of violence, hostility and hatred among people, and clearly communicate this to both the students and their parents.

Considering the difficulty and the complexity of teaching in secondary vocational and professional schools, the standards and norms can be quite a hindrance to the educational work that the students need. The Ombudsman considers that the disciplinary expulsion of students from school is not a good solution. It would be more reasonable to introduce system solutions for different conditions of working, educating and resolving the problems of students. We should promote further professional training of employees in the field of

prevention in order to identify and prevent violence it when it occurs, and ensure a correct response.

Being aware of the issue of violence in schools, the Ombudsman has prompted competent institutions to join the project *Taking into account emotional aspects in the diagnosis, treatment and prevention of violence in schools*. The project, financed by the European Social Fund and the Ministry of Education and Sports, is led by the Institute of Criminology at the Law Faculty in Ljubljana. The research should provide an empirical basis to elaborate an efficient model of identifying, treating and preventing violent behaviour and violent practices of all the persons involved in the educational process.

2.14.2 Family relationships

In the area of family relationships, nothing new can be said, unfortunately: the family code still has not been adopted, the court proceedings are still too long, the work of the centres for social work (CSD) should be improved. As we announced in last year's annual report, we analysed certain cases and the findings will be very useful in evaluating the new legislation. In the context of the CSD work, we would like to highlight the shortcomings in determining the trustees appointed in line with the General Administrative Procedure Act (APC). We discussed the situation where a specific case trustee was appointed to a child, but the CSD has not received any guidelines for the work, nor professional assistance it requested. It was even never invited to inter-institutional team meetings, and the court did not include it in the procedure of adoption of this child. It seems as if the CSD only transferred the responsibility for resolving this problem to other institutions, but was not interested in the children in need.

2.14.3 The position of children in court proceedings

Some examples which the Ombudsman has been dealing with for a long time, in which the courts take inadmissibly long time, were analyzed with special attention. We tried to determine the reasons for lengthy procedures. The findings were presented to the public, to individual courts, and to judges. As we are aware of the risk that any assessment of human rights violations in open judicial proceedings may constitute inadmissible pressure on the court, we were very cautious in such interventions, but we do expect appropriate response after the publication of anonymous cases and the problems in the Ombudsman's reports.

The Ombudsman supports the efforts to set up special courts for treating family problems only, since this could help in resolving some issues we were pointing to.

2.14.4 Media reporting on children

Media abuse of children, which we have already pointed out, continued in 2008, as well. We publicly urged the media that children's distress should not be used for sensational reporting. Unfortunately, some journalists and editors do not respect the Journalists Code of Ethics, so we consistently reported breaches to the Journalists' Honorary Tribunal (NCR), which confirmed that they occurred. Since the code does not provide penalties for violations, the findings of the NCR are only morally binding and do not discourage repeated violations. The Ombudsman therefore welcomes the provisions of the new Penal Code, where the publication of personal data of children involved in procedures is defined as a specific offense (Breach of confidentiality of proceedings - Article 287). We have already sent the first notices to the public prosecutor, and we expect that the case law will set appropriate standards of journalistic reporting which could not be established only on the basis of the Code of Ethics.

We also expect that the new Family Code will limit the right of parents to publish their children's personal data.

OMBUDSMAN'S PROPOSALS AND RECOMMENDATIONS - SUMMARY

- ✚ The Ombudsman recommends the earliest possible adoption of family Code which shall regulate issues that the Ombudsman recalls in this and in the former annual report. The Ombudsman particularly recalls that the law should prohibit all forms of physical punishment of children.
- ✚ The Ombudsman proposes a legal regulation of the advocacy on behalf of children which shall enable, by the establishment of an independent institute with a network of trained advocates throughout Slovenia, the access to advocacy for each child who would want to express their requests, needs, wishes, and to strengthen their voice in this manner.
- ✚ The Ombudsman proposes the adoption of measures for the elimination of unacceptable practice of long lasting court proceedings on awarding custody. In this context the Ombudsman recommends a consideration of organising specialised family courts.
- ✚ The Ombudsman is taking part in the proposals to establish special teams of experts (expert witnesses) who would comprehensively consider the child and their position in the family prevent multiple hearings of children and shorten the procedure. The Ombudsman also recommends that expert witnesses be appointed immediately when an actual need for them arises, without delays in appointing, solely on the basis of material reasons.
- ✚ The Ombudsman proposes the adoption of measures to improve the quality of expert witnesses' work, eliminate undue delays in preparing expert opinion, eliminate undue delays in making decisions (with requirements for new expert opinions) and establish an efficient control over their work, which should be the responsibility of various professional organisations and the Ministry of Justice.
- ✚ The Ombudsman proposes a more efficient organisation of the work of commissions for directing children with special needs which shall enable timely and quality treatment of children.
- ✚ The Ombudsman recommends local and national authorities to adopt and implement efficient programmes for the promotion of culture of non-violence, peaceful and tolerant settlement of disputes, to prevent peer violence and to adopt measures in order to increase safety and security of children and juveniles and to help the persons affected by violence.
- ✚ The Ombudsman proposes a preparation of an overall analysis and evaluation of the whole system of foster care, efficient debate with the expert public and all the interested, and on this basis prepare the necessary amendments to the legislation.

CASES

- 30.** Children are choosing the names for the Slovenian Army's armoured vehicles **130**
- 31.** Unscrupulous abuse of a child for sensational reporting **130**

30. Children are choosing the names for the Slovenian Army's armoured vehicles

The Ombudsman read in the media that the Ministry of Defence (MORS) intends to choose the names for the Slovenian army's armoured vehicles and the corresponding weapons through an open competition involving the primary and the secondary school students. Shortly after the public announcement, we received a protest note from two non-governmental organizations which disagreed with the intention of the Ministry of Defence and asked the Ombudsman to intervene.

We immediately asked MORS for further clarification of the published information and the arguments for their decision. In its reply, MORS explained that they intended to choose a name for the armoured vehicles, and not the weapon systems that the vehicles will be equipped with. They intended to carry out open competition among the students of secondary schools final classes (high schools and vocational colleges). They also indicated that they received a positive opinion of the Ministry of Education and Sport (MES). The objective of such a public competition, according to the Ministry of Defence, was to obtain Slovenian names for vehicles and encourage patriotism, disseminate information on military skills, and promote the Slovenian Army and the military profession in general.

We could not agree with these objectives, because we found that this was a strange and controversial moral conduct of public authorities which involved minors and set questions of possible prejudice of their rights. The Ministry of Education was therefore asked for a copy of the reply sent to MORS. It was evident that the Ministry of Education did not see any obstacles, and was happy to assist in finding a new name of armoured vehicles by sending the open competition to all relevant schools by a circular note. We were not satisfied with the answer, so in the additional inquiry we asked a more detailed presentation of their views. We wanted an explanation of the role of parents of the underage students and the parents of mature students in the tender, as according to the provisions of the applicable Rules on the school order in secondary schools, the students' rights and obligations arise from their status regardless of their age. After a month, we received a reply from the MES that they will not be involved in the open competition. They wrote that they had changed their decision, that they will not send circular notes to schools to find the names of armoured vehicles, and that MORS has already been informed thereof. Although we know that the promotion of the Slovenian Armed Forces is going on in the secondary schools, we were satisfied with the MES decision and hope that MORS will find other, more appropriate ways of selecting the names of armoured vehicles. **11.0-66/2007**

31. Unscrupulous abuse of a child for sensational reporting

Some newspapers, web portals and TV stations published all the details and the names in the article stating that due to the failure to comply with final judgments on the custody of one of the parents of a 14-years old girl, a second enforcement of the judgment has been carried out. The procedure which shows the whole family tragic, was equipped, *inter alia*, with the titles like: *Attachment of a Minor*. Articles quoted that, as a result of these events, she was admitted to one of the Slovenian mental hospitals. In their reports, some journalists and editors published pictures of the girl and her letter.

The Ombudsman took the position that the publication of these reports constitutes an extremely grave and unscrupulous encroachment on the privacy and personal rights of the child. In the present case, one of the parents intentionally provided information to journalists, while the other parent who has a custody entrusted to her/him by a final judgment, tried to prevent its publication. One of the media even received the interim court order banning the publication of the child's personal data in the forthcoming TV programme. Other media, however, published this information. It can not be overlooked, however, that immediately before the publication, the Ombudsman warned about the need to protect the girl's benefit in planning the (non) publication of the contents which might harm her. The Press Release 'Unacceptable disclosure of the privacy of children' has been published on our website and enjoyed immediate attention, as the next day it was resumed in many media, with the exception of those stated above. We therefore concluded that this was a case of conscious and intentional conduct of journalists and editors.

Pursuant to Articles 2, 16 and 19 of the UN Convention on the Rights of the Child, we judged that the case was important in terms of protecting specific rights and benefits of the disabled children and also from a wider perspective. Beside being concerned about the increasingly frequent abuse of children for these purposes, we found that the legal system does not entitle children in similar positions to an

immediate support from the suitably qualified lawyers. We sent the Journalists' Honorary Tribunal (NCR) the initiative to assess the ethical conduct of the media, and asked them to consider the use of other available actions against the persons responsible.

We estimated that the publication is manifestly contrary to the interests of the child, and absolutely did not involve any public interest. The dispute between the parents, which put at risk the mental health of the minor, notably the enforcement and its effects, certainly represent a real family tragedy. Anyone with at least a minimum insight into the content of the legal order should understand that the (court) procedures related to the protection of the children's interests are usually closed to the public in order to protect them. Therefore, the media reporting on forcible seizure of the child from one of the parents and its mental state requiring hospitalisation, are obviously particularly sensitive themes. At the same time, the journalists' Code of Ethics also requires special care and sensitivity in publishing the information and the ways of informing the public. In the light of all the circumstances, we therefore expressed our belief that, in those articles, the child was blatantly abused as an object of sensational reporting. Although reporters and editors should feel a particularly strong responsibility before the publication under these circumstances, and show a particular professional care to protect the interests of children, they deliberately overlooked even the clearly defined boundaries, which the Ombudsman warned about directly before the publication. We regret to see that economic motives were the dominant purpose of publishing the shocking news. Therefore, these reports can be qualified as ruthless exploitation and even open violence against the child, and the case of a severe, conscious, and even deliberate breach of point 22 of the Slovenian Journalists' Code.

The Journalists' Honorary Tribunal affirmed our statements on the violations of the Code, but did not follow our proposal to adopt stricter measures and other sanctions whose general preventive effect could stop the spreading of similar violations in the Slovenian media. We believe that the intervention of the Ombudsman in this case was urgent and probably even meant a turning point in terms of our lasting efforts to bring this to the problem attention of the government and the legislator. This example clearly presents the reasons for amending the Penal Code which imposes severe penalties for such conduct since 2008. **1.2-15/2008**

2.15 OPTIONAL PROTOCOL

Full Ombudsman's report in this area is available in English on the Ombudsman's website www.varuh-rs.si in a special publication entitled 'Report on the National Preventive Mechanism under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment'.



Information on the
Ombudsman's Work



3. INFORMATION ON THE OMBUDSMAN'S WORK

3.1 Legal framework

The basic legal acts for the work of the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) are **the Constitution of the Republic of Slovenia** (Article 159) and the **Human Rights Ombudsman Law**. The Ombudsman performs the tasks within the national prevention mechanism against torture and other cruel, inhuman or degrading treatment or punishment pursuant to the Act ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in 2006. She has been performing these tasks since spring 2008 in co-operation with non-governmental organizations selected on the basis of a public tender.

The Human Rights Ombudsman Law stipulates in the second paragraph that the Ombudsman regulates the organization and work by the Rules of Procedure and other general acts. The Rules of Procedure, adopted by the Ombudsman having previously obtained the opinion by the competent working group at the Parliament, specifies in particular the division of fields of work, the organisation of work, and the method of dealing with petitions.

The legal framework for the Ombudsman's work includes several other acts:

The **Constitutional Court Act** stipulates that the Ombudsman can, if he deems that a regulation or general act issued for the exercise of public authority inadmissibly interferes with human rights or fundamental freedoms, initiate the procedure for the review of the constitutionality or legality of regulations or general acts.

Article 50(2) specifies that the Ombudsman can, under the conditions defined by law, lodge a constitutional appeal with the Constitutional Court concerning a particular issue which it is discussing.

The **Patients Rights Act** stipulates in Article 55 that the Ombudsman monitors, within the terms of reference provided by law, the exercising of patients' rights and, on this basis, demands that the competent national and local authorities, and holders of public authorisations provide the possibilities and conditions for efficient application of this law. The Ombudsman appoints one of his deputies to this end.

Article 52(1) of the **Defence Act** governs the protection of human rights and states that enlisted men may send initiative for proceedings at the Ombudsman of human rights and fundamental freedoms, if they think that their rights or fundamental freedoms were restricted or violated during the military service.

Article 65 of the **Consumer Protection Act** provides that in the area of consumer rights protection, the Ombudsman shall also carry out tasks in regard to state bodies, local self-government bodies and public authorities.

Article 14(2) of the **Environment Protection Act** provides that the protection of the right to a healthy living environment shall, in accordance with the law, also fall within the responsibility of the Human Rights Ombudsman. Article 59(1) of the **Personal Data Protection Act** provides that the Ombudsman shall perform his tasks in the area of personal data protection in relation to state bodies, self-governing local community bodies and holders of public powers in accordance with the statute regulating the Human Rights Ombudsman. Article 59(2) provides that personal data protection shall be a special area of the Ombudsman or which one of the Deputy Ombudsmen shall be responsible. Article 65 of this Act provides that the Ombudsman shall report in his Annual Report to the National Assembly on conclusions, proposals and recommendations, and on the situation in the area of personal data protection.

The Criminal Procedure Act stipulates that the Human Rights Ombudsman or his deputy may visit detainees and may correspond with them without prior notification and without supervision of the investigating judge and without supervision by the investigating judge or someone appointed by him. The letters which detainees send to the Office of the Human Rights Ombudsman may not be examined. Article 213c (3) of this Act provides that a prohibition or restrictions on visits and correspondence may be imposed for disciplinary breaches. Restrictions or prohibition of visits shall not apply to visits by the defence counsel, doctors, the Human Rights Ombudsman and diplomatic and consular representatives of the country of which the detainee is a citizen.

Article 5 of the **Act ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment** provides that, in line with this protocol, the Human Rights Ombudsman performs the tasks and holds the powers of the national preventive mechanism. In line with this protocol the Ombudsman may, in performing his tasks and exercising his powers, when performing control at places of deprivation of liberty and examining the treatment of the persons deprived of their liberty in places of detention, cooperate with the NGOs registered in the Republic of Slovenia, and organisations which have acquired the status of a humanitarian organisation in the Republic of Slovenia, dealing with the protection of human rights or fundamental freedoms, especially in the field of preventing torture and other cruel, inhuman or degrading punishment or treatment.

The **Infertility Treatment and Procedures of Biomedically-assisted Procreation Act** has envisaged a representative of the Human Rights Ombudsman in the National Commission for biomedically assisted procreation.

3.2 The role of the Human Rights Ombudsman

The Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) protects human rights and fundamental freedoms of individuals and groups in relation to state authorities, local self-government authorities and bearers of public authority. He investigates cases of illegal or poor administration and in performing his function he acts according to the provisions of the Constitution and international legal acts on human rights and fundamental freedoms. While intervening he may invoke the principles of equity and good administration. That gives him the basis to recommend exceptional solutions in individual substantiated cases, not foreseen by the rules. If such a situation applies to multiple individuals, modification of the regulations in force is in order; however, proposals by the Ombudsman must never jeopardise the principle of legality and non-discrimination (equality before the law).

In line with the Constitution and the law, the Ombudsman does not handle the cases where a private natural or legal person interferes with the rights or freedoms. As a rule, the Ombudsman is not the first instance of appeal, but intervenes when competent authorities fail to do their work properly. In cases in which judicial or other legal proceedings are underway, the Ombudsman may, in principle, interfere only in cases of undue delay in the proceedings, or evident abuse of power.

The Ombudsman does not have a mandate to make legally binding decisions that could be sanctioned by means of legal restraint. He is an additional instrument outside the judicial protection of the rights of individuals. Within the classical separation of power, the (parliamentary) Ombudsman may be viewed as an institution assisting the representative body (National Assembly) in supervising the executive and the administrative branches of power.

The Ombudsman primarily deals with petitions of individuals and, through proceedings and investigations of individual cases, also establishes maladministration of the system. This involves in particular non-compliance with regulations, legal voids, absence of efficient means of complaint, cases of poor, careless and inefficient work of public authorities, etc. The Ombudsman may start a proceeding on his own initiative or deal with more general issues which are important for the protection of human rights and fundamental freedoms. By resolving petitions he influences the elimination of concrete violations, and by exercising others he helps in preventing future violations.

3.3 Public relations

3.3.1 Forms and methods of work

The Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) may strengthen his informal influence through different forms of cooperation with the public depending on the set goals.

The employees at the Office of the Human Rights Ombudsman engage in public relations in different ways: we daily communicate in writing and verbally in the procedures of handling petitions; we meet in person with the representatives of the public relevant for the work of the Ombudsman; we actively participate in conferences, seminars and round tables, where our participation is a sign of support with a symbolic message. We also disseminate information through the website www.varuh-rs.si; media (press conferences, answering the questions by journalists, press releases etc.); we try to reach the groups who lack information through our free newsletter and other messages. We inform the public on our work through publications (regular annual or special reports and special publications), information material (brochures, bookmarks, posters, promotional videos, etc.), projects and various events. We have established an increased use of Ombudsman's information, findings and proposals, we receive more requests for subscription to our free newsletter, and the number of our online newsletter subscribers is still rising.

In 2008 we made a promotional video intended to potential users of the Ombudsman services which provides basic information on the work of the institution. The video may be found at the Ombudsman's new web site www.varuh-rs.si.

As mentors or co-mentors, we advise the students in writing seminars, thesis and master's thesis, or help them with information on the Ombudsman's work.

3.3.2 Key emphases in the Ombudsman's work

In 2008, the Ombudsman continued to pursue the commitment she assumed upon taking over her six-year mandate to give special attention to the rights of children and other groups of citizens who have difficulties in taking care of themselves, like the disabled, the handicapped, or the elderly. The focus which has been given much attention also in 2008 is violence in all the areas of our society (in the family, on the streets, in institutions, etc.), and in all its forms (against the elderly, children, women, disabled persons, among children, against members of vulnerable groups, in the workplace etc.). She intensely continued with efforts to support the right to a healthy living environment. She highlighted some topics in the media and supported many others with her active contribution or presence at events.

On World Day of the Sick, 11 February 2008, the Ombudsman noted that we need an overall analysis and assessment of health care in order to make appropriate amendments to the statutory regulations, and above all, that equal access to health care services needs to be provided.

On the International Safer Internet Day, 12 February 2008, the Ombudsman, though aware of many benefits of the worldwide web, still warned about possible risks (abuse of personal data, addiction). She called on all relevant players to ensure the best possible control and prevention of child abuse on the world web.

At the press conference on 13 May 2008, the Ombudsman noted that the decision of the Ministry of the Interior to refuse to execute at will the court decision **in the case of Gazvoda** was disrespect of the rule of law, and caused unnecessary expenses to the state budget. The opinion of the ministry that it needs not respect even the final decisions of the state bodies if it disagrees with their contents gives a bad example to the Slovenian citizens.

At the press conference on July 2008 the Ombudsman, based on data collected up to that date, expressed her opinion that the **case of Penko** involved excessive use of police powers, which, along with unproportional media coverage, interfered with the privacy, and consequently, human rights. She assessed as inadmissible the conduct of the Ministers of the Interior and Justice who commented, as representatives of the executive branch of power on concrete decisions of the judge. The Ombudsman did not interfere with the independence of the courts with her statements, as she was reproached - on the contrary, she protected the independence of the judicial branch from inadmissible pressure of the executive branch of power.

Before the parliamentary elections, the Ombudsman **publicly called on all political parties** to refrain from using children for the promotion of their political goals and activities but to include children's welfare into their programmes, and fulfil their promises.

On the **World Deaf Day**, 26 September 2008, the Ombudsman publicly noted that the national television did not consider Ombudsman's recommendations, as it did not make possible for the deaf and the hard-of-hearing equal access to pre-election broadcasts. This involves discriminatory conduct, and the management of Televizija Slovenija did not respond to the Ombudsman's notes.

On the **World Mental Health Day, 10 October**, the Ombudsman proclaimed the year 2008 as "the Slovenian year of mental health" since three acts related to mental health were adopted: the Mental Health Act, the Patients Rights Act, and the Family Violence Act.

At the press conference on 4 November 2008 the Ombudsman, among other things, mentioned that the new **rules on religious spiritual care** in hospitals and health care institutions "show signs of discriminatory treatment of minor religious groups". In her opinion, the possibility for religious spiritual care needs to be provided for all, and it is completely inadmissible to condition this with the type of disease, or the number of members of a certain religious community.

The Ombudsman opened another issue in her **statement on the World Hospice and Palliative Care Day, 11 October**, namely the person's right to take part in deciding on the time, the place and the form of one's death. She decided to engage in the preparation of a consultation on the "Human rights of the dying", where the issues of palliative care will be additionally highlighted, and thus to contribute to a better understanding of the process of dying and mourning.

On the **World Poverty Day, 17 October**, the Ombudsman again warned, in her press release, about the topicality of the increasing occurrence of poverty. The poverty is happening here and now and brings about social deviations which may encourage violence in families, work place or society as a whole. The Ombudsman again called on the state to provide the conditions that will allow equal possibilities and opportunities for everyone and change the thinking that everyone is responsible alone for their material situation and their future.

The Ombudsman labelled as **cultural racism** the statements of the representatives of the company Vegrad, d. d., in which they addressed their alien workers in a manner that is totally intollerable for a member state of the European Union in the 21st century.

In December, before the holidays, the Ombudsman called on parents and children to celebrate the forthcoming holidays without using **fireworks**, and to spend this money for other needs of children.

On the **anniversary of the Convention on the Rights of the Child**, 20 November, the Ombudsman expressed in the press release her expectation that the government will promptly draft a new Family Code to ensure efficient exercise of the rights of children's to express their own views and that their views are considered.

Events and topics which the Ombudsman supported with her presence at events or through active participation

The Human Rights Ombudsman and her colleagues actively participate in events organised by various institutions, organisations and individuals, particularly those related to human rights and to the priorities set at the beginning of her mandate. These activities of the Ombudsman are a good source of information on human rights violations, the situation in individual fields and new possibilities for the Ombudsman's work. With their presence, the Ombudsman and her colleagues focused on the issues of violence and torture in all areas of society (traffic, working relationships, schools, families,...), protection of children's rights (prohibition of physical punishment of children, rights of same-sex partners to have children, foster care, children at court...), health (gambling and the issue of human genome), right to a healthy environment, the issue of seniors (abuse and violence against the elderly, quality ageing of the population, institutional care of the elderly ...). She also supported the idea of mediation as a path to a more just and people-friendly social system. The Ombudsman participated in the 6th conference of the Labour Inspectorate with the working title ***Workplace Bullying and Harassment***.

Upon the 5th anniversary of the safe house Gorenjska she welcomed successful co-operation between the Ministry of Labour, Family and Social Affairs, the municipalities of Gorenjska, and non-governmental organisations in this sphere, and noted that the assistance to victims of violence, which is not legally regulated, continues to be unsatisfactory.

At the conference ***Violence against women through awareness raising***, the Ombudsman raised the question when is Slovenia planning to make a research on violence. She expressed her belief that the Family Violence Act is a good starting-point which can also serve as a basis for the Ombudsman to monitor this type of efforts.

At the 17th Medicine and Law Conference with the title ***Stem Cells and Human Genome*** which took place at the University of Maribor, the Ombudsman spoke about privacy protection in the disclosure of the genome and the right to treatment with the help of stem cells. She noted that the disclosure of a person's genome can have similar disastrous consequences as a disclosure of confidential medical data. She also spoke about the right to treatment with the help of stem cells and warned about the possibility of discriminating the poor at birth (conservation of cells for a charge), and the possibility of abuse (e.g. stem cells hunters).

In March 2008, within the framework of intercultural dialogue, the Ombudsman in her press release welcomed the efforts of the **Association of Slovenian societies for fight against cancer**. She believes that thousands of cancer patients are a special group with its own culture, needs and ways of communication, and we need to understand them and help them in a way they want to be helped.

In February, the Ombudsman participated in the **round table on gambling**. At that occasion she presented the effect of gambling on individuals, their families, local environment and the state. She highlighted the importance of civil society and the individuals who need to warn the authorities constantly about the negative effects of the spreading gambling industry.

The Ombudsman participated in the consultation ***How to react in the crisis situation in a community?*** In her opening speech she stated that the rights of persons with mental disorders or diseases are undoubtedly violated in Slovenia due to unequal access to psychiatric and psychosocial help for all patients, and expressed regret that not even the Mental Health Act will eliminate these violations.

The Ombudsman took part at the festival ***Merry-go-round of culture***, where she spoke to the participants as patron of honour asking herself how is human dignity of persons with mental disorders respected in the process of psychosocial rehabilitation, and who are the those who should express, foster and pass forward this respect.

In the context of promoting the exercise of the right to life in a healthy environment, the Ombudsman spoke in April at Zagorje ob Savi at the round table: ***“From a more detailed analysis of the environment and health in the Zasavje region to eliminating differences in health”***. She expressed her concern about unpleasant findings of the research and emphasized that the state could do much more to improve the health situation in Zasavje with appropriate legislation which could serve as a basis for further action.

In Goričko, the Ombudsman spoke to the participants of the round table in July “Settlement of the Roma in the Panonian region”. The purpose of the round table was to **deal with space issues of Roma settlements in the regional park Goričko**. She noted that open issues need to be solved with the Roma as equal partners, and that their formal inclusion is not enough to solve their problems.

Director of the Ombudsman's Expert Service, mag. Bojana Cvahte, noted at the National Assembly consultation in June ***‘What shall we do together to prevent violence and abuse of the elderly?’*** that different forms of violence against the elderly are too frequent, they happen within a family, and the elderly usually do not speak about it. She emphasized the urge for zero tolerance of such violence.

On the International Day for the Elderly in October the Ombudsman noted that, as a state of social welfare and the rule of law, Slovenia should do more to protect the rights of the elderly, quality ageing of the population, and to set new programmes for the elderly. She highlighted the problem of poverty of the elderly people, low pensions which do not allow decent survival, and called for the development of the forms of advocacy for the elderly.

In January, the Ombudsman and her colleagues attended the **meeting with the representatives of the Association of Social Welfare Institutions**. They discussed draft act on long-term care, ways of determining prices for the homes, possibilities to develop new forms of work, new investments, and the diversity of the offer. Representatives of the social welfare institutions highlighted the problem of the beneficiaries' participation in the decision-making process, insufficient personnel norms, and the accessibility of the system.

In October, Mag. Bojana Cvahte, Director of the Expert Service of the Ombudsman, participated in the consultation ***“System change in the field of institutional care of the elderly”***, and presented the Ombudsman's views on how to ensure permanent respect of human rights and decent life in the old age.

Also in 2008, the Ombudsman continued with her usual practice of personal meetings with children and young people at the Office and on other occasions.

In March, the Deputy Ombudsman Tone Dolčič attended the 18th session of the national Children's Parliament in the National Assembly of the Republic of Slovenia, where young members of Parliament spoke about entertainment and leisure time.

In March, the Ombudsman held opening speech at Brdo at the meeting of intergovernmental group L'Europe de l'Enfance, where she wondered if Slovenia is a child-friendly state. She considered that more than a child, our system protects numerous adults involved in a particular case, while children bear the burden of irregularities which are contrary to the child's interest. She indicated the need to establish an Office for Children within the government of the Republic of Slovenia, which would guarantee the exercise of children's rights in a responsible, co-ordinated and efficient way.

At the public presentation in the official launch of the **Council of Europe's campaign against physical punishment of children** in June, the Ombudsman expressed her concern that Slovenia cannot be found among the countries which banned physical punishment.

In June, the Ombudsman spoke to the participants of the **6th consultation of the Slovenian kindergarten principals** and expressed her belief that the introduction of a special, children's rights ombudsman with the same powers as the Human Rights Ombudsman, would not be a sensible decision, because one of the Ombudsman's Deputies is already in charge of children's rights. The countries where these two functions were separated, are merging them again.

At the **meeting of foster families** at Žalec in August with approximately 750 participants, Deputy Ombudsman Tone Dolčič was familiarised with unresolved issues in the field of foster care. He presented the the Ombudsman's findings in this field at the press conference after the meeting.

In October, within the joint campaign for the **child week**, the Ombudsman and the representative of the NGO Zveza prijateljev mladine Slovenije (the Slovenian Association of Friends of Youth) mag. Franc Hočevar invited everyone to listen to children and do more for the dignity and positive self-esteem of each child. They called for the prevention of violence and physical punishment of children, and for promoting the voice of children in the Slovenian society.

In October, Deputy Ombudsman Tone Dolčič attended the conference **Child at Court**, prepared by the Supreme Court. Together with Ombudsman's advisors, he participated at the discussion on the issue of the children's status at court from different points of view.

In November, the Slovenian Association of Friends of Youth marked the **18th anniversary of the telephone for children and teenagers (TOM-telefon)** with a celebration at Narodni dom Maribor. In her opening speech, the Ombudsman emphasized the meaning of free counselling for children and young people and cautioned of the issue of violence against children.

In December, the Deputy Ombudsman Tone Dolčič held a speech for the participants of the **10th meeting of Unesco schools**. He invited approximately 300 elementary and secondary school pupils and their mentors and teachers to cooperate in the respect and protection of the children's rights.

On Human Rights Day, 10 December, the Ombudsman attended the **opening of the exhibition Children first!** at the National Assembly. President of the National Assembly Dr. Pavel Gantar declared that we will not accept trade between freedom and safety, and

signed the Council of Europe's electronic petition against physical punishment of children. On this occasion, the Ombudsman re-emphasized the need to adopt the Family Code, according to her words, will be an important milestone in the campaign against physical punishment of children and the efforts to reduce and prohibit physical punishment of children. She believes that the voice of children should be made clear and heard, and expressed hope that the advocacy of children bill will be prepared shortly.

In June, the Ombudsman addressed the participants of the ***meeting in memory of the victims of fascism and Nazism and a reminder to the living*** in Ljubelj. At the memorial ceremony of the 63rd liberation of the Mauthausen and other concentration camps, she emphasized that this ceremony should be used as "a reflection on what each of us can do to make sure that these stories will not repeat and that individuals with power and authority will not use it against the weaker".

In June, Deputy Ombudsman mag. Kornelija Marzel attended the 3rd International Conference in Maribor ***Social responsibility and the challenges of time***, where 31 lecturers from Slovenia, Austria and Germany participated and whose patron of honour was President of the Republic Dr. Danilo Türk.

In the year celebrating the 60th anniversary of the adoption of the Universal Declaration of Human Rights, after the all-day consultation at the Faculty of Law, the Ombudsman organised a **traditional reception**. In her speech she expressed the wish that the protection of rights will become a guideline of the new government's activities and warned about vaguely defined legislation and procedures, the violations of the rights of children, the elderly, the disabled, and the handicapped, the state's insufficient care for environmental issues, the growing social distress and the attempts to degrade the authority and independence of inspectors. She emphasized the meaning of certain social powers, without which it seems impossible to imagine good performance of the Ombudsman. "These include, on the one side, civil society, NGOs and the people of good will, and on the other side the media", she declared.

3.3.3 Projects

The project work of the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) is intended to the overall insight of a certain issue, in cooperation with government and non-governmental organisations and the representatives of civil society. The projects are to bring a different and more efficient dealing with human rights violations or their prevention. Some projects are the result of independent endeavours of the Ombudsman, and in others he actively cooperates.

In cooperation with the Faculty of Law, University of Ljubljana, the Ombudsman has already for the seventh year carried out, as a mentor organisation, the project **Legal Counselling for Refugees and Aliens**. The project is carried out by students of the Faculty of Law, who enhance their university knowledge with practical work – processing of applications, which are brought to the Ombudsman.

On 20 May, the Ombudsman prepared, in cooperation with the National Council of the Republic of Slovenia, a one day consultation **Poverty and Human Rights**. The patron of honour was the president of the Republic of Slovenia Dr. Danilo Türk. The consultation dealt with present issues, related to poverty. Poverty is seen also as a violation of human rights and human dignity therefore we became acquainted with the foreseen measures on how to lower it, and the theoretical presentations were accompanied by some examples of good practice in dealing with poverty. The purpose of the consultation was to note that this occurrence needs to be dealt with interdisciplinary.

The pilot project **Advocacy – Child's Voice**, which begun in 2007, was carried out also in 2008. Its final goal is to develop a model of a Children's Rights Advocate, who could be, in terms of ideas about its content and organisation, included in the formal legal system and thus ensure its implementation on the state level. This would be possible by placing the Advocate into the emerging Family Code. The Advocate would provide for the children, as required by the Convention on the Rights of the Child, access (a network of advocates) and sufficient active cooperation in decision-making processes.

In March, the Ombudsman was hosting, within the project *Advocacy – Child's Voice* at the Faculty of Law in Ljubljana, **the founder of first safe houses in the world Mrs. Erin Pizzey**. She estimated that Slovenia does not have enough safe houses.

The Ombudsman carried out, together with the organisation Save the Children Norway, regional office for South-Eastern Europe, the **third conference of Human Rights Ombudsmen for South-Eastern Europe Children's Health Care**. The conference took place at the congress centre Brdo pri Kranju, from 13 to 14 October 2008. It was attended by representatives of Ombudsmen from the Republic of Croatia, the Republic of Serbia, the Autonomous region Vojvodina, the Republic of BiH (BiH, BiH Federation in the Republic of Srpska), the Republic of Montenegro, the Hellenic Republic, the Republic of Slovenia, and the representatives of Save the Children Norway, regional office from Sarajevo.

On the occasion of the 15th anniversary of the adoption of the Human Rights Ombudsman Law and the 60th anniversary of the adoption of the UNO Universal Declaration of Human Rights, 10 December, the Human Rights Ombudsman of the Republic of Slovenia prepared a **consultation** at the Faculty of Law in Ljubljana. The participants of the day-long conference were addressed by the president of the Republic of Slovenia Dr. Danilo Türk. At the conference, national experts in the field of law and human rights spoke about the beginnings of institutionalised protection of human rights in Slovenia and about issues, related to that field.

The Ombudsman participated in the project **HR PRESS POINT** which was prepared and carried out during the presidency by the Peace Institute - Mirovni inštitut. The HR Press Point was a virtual info point for foreign journalists and a round table on human rights, where the interested could get different information from the official one, on certain human rights related topics of (e.g. the erased etc.). The Ombudsman cooperated with the Peace Institute - Mirovni inštitut also in the preparation of the **round table on the reporting of media in the cases involving children**.

The Ombudsman also participated in making the film with **the working title "Contributions to Slovenian Intolerance"** which treated different forms of intolerance among the Slovenians. The production of the film was done by TV Slovenija, documentary films editorial.

Relations with some key publics for the Ombudsman

The Ombudsman's basic activity is solving petitions, that is why the initiators are one of the most important target public. With this purpose the Ombudsman solves complaints of the initiators, and through initiatives he establishes the situation in the field of human rights in Slovenia. The initiators are individuals or groups addressing the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) with their problems, through written petitions, or directly through conversations at the Ombudsman office in Ljubljana or outside.

The employees of the Ombudsman talk to the initiators at the seat of the institution, on average, with 10 persons a day. The informer, at the free phone number 080 15 30 receives, on average, 80 calls a day. Compared with previous years, the calls are longer and their content is more demanding. At the phone number 01 475 00 50 we receive, on average, 70 calls a day.

The Ombudsman continues also her regular weekly talks with the initiators over the phone. On average, she speaks with six initiators each Tuesday between 13 and 14 p.m. The consistent and well accepted practice of conversations outside the seat in various places in Slovenia continued, as planned, also in 2008. We carried out activities in 9 places and spoke to 124 persons.

Beside dealing with petitions and solving system problems, that occur in the process, the Ombudsman has relations with state bodies, self-governing local communities, and holders of public powers. The Ombudsman meets with representatives of self-governing local communities primarily during activities outside the office, organised at the seats of individual municipalities, and also at other occasions, within the scope of her tasks (round tables, celebrations, conferences, meetings). The mayors inform us also in writing of individual unresolved issues, if they consider that they need to be dealt with by the Ombudsman, or they ask for our standpoint on the matter they are considering. The Ombudsman met also with some Ministers of the former government and talked with them about unresolved issues in the field of human rights protection.

The civil society can be a source of information for the Ombudsman on violations and/or a partner in proactive actions. Some initiators also originate from the civil society, and therefore actions for raising awareness and empowerment are also directed towards it. The Ombudsman cooperated with the civil society on some projects, and at occasional meetings she tried to establish the needs of certain groups and the situation regarding the respect of their rights. Within the open door meetings for non-governmental organisations, societies and associations, she met with representatives of organisations, societies and associations for disabled (the field of mental health, the deaf and hard of hearing, civil initiatives for environment protection, a meeting with representatives of the Community of Social Welfare Institutions of Slovenia on the issue of homes for the elderly, with representatives of religious communities she spoke about the right to freedom of thought, conscience, and religion, a meeting with representatives of the Serbian Diaspora in Slovenia, with the deputy of the Hungarian national community on the rights of the Hungarian community). She also met the president of the National Council, visited the school for police officers at Police Academy and Police College (Higher Police School), where she presented the activities of the Ombudsman and the manner of solving petitions to the students. She spoke with the representatives of employees in Slovenian prisons and the Youth Re-education Centre about urgent issues; she spoke with representatives of the Constitutional Court about the efficiency of human rights protection, and handed over the annual report to the president of the National Assembly and the president of the Republic of Slovenia. She signed the book of condolences on the death of former president Dr. Janez Drnovšek.

The media is also a source of information for initiatives that the Ombudsman starts on his own initiative, and they share the supervision of the performance of state bodies. Media can also be a mirror to the Ombudsman, but also a potential violator of the rights of individuals, primarily the right to privacy. The change in the manner of cooperation with the media, that was indicated in 2007, at the press conference on the 100th day of operation, was most visibly seen in 2008, in the form of decentralisation of press conferences. The Ombudsman prepared five press conferences at the seat of the institution, and nine outside the seat. The direction of attention to local media turned out to be efficient and to have reached its goal, that is a higher number of detected violations in the field and to increase direct contact with the local people.

The Ombudsman and her co-workers react quickly and promptly to questions by journalists, and the Ombudsman consistently exercises the right to correction. We are establishing that the Media Act in its provisions allows the possibility of a delay (time lag) of the exercise of the right to correction, the publication with delay not being always as efficient as the timely publication would have been.

On Ombudsman's webpage there is a media centre where we try to facilitate the work of journalists by providing special and quick access to key information that they need for their work. Voice information, published in full, enable summarizing the content of Ombudsman's work without necessary presence at press conferences. Journalists can also check, archive and summarize information, precisely and when it suits them. Journalists are included also among the recipients of our electronic newsletter, through which we inform them about projects, public tenders, activities outside the seat, visits or controls in institutions, international relations of the Ombudsman, new material, in short with all forms of Ombudsman's work.

The Ombudsman has, also in 2008, continued warning about special caution, when reporting on issues, where children are involved. In this context, she participated also at the round table on ways of media reporting without interfering with the rights of the subjects of reporting. She once again drew attention to excessive media exposure of suspects, deprived of liberty, which can interfere with the constitutional human rights to the presumption of innocence and personal dignity.

On World Television Day and immediately after World Children's Day, 20 November, she expressed dissatisfaction with the conduct of RTV Slovenija management, who changed the traditional evening time of the children's cartoon due to a soap opera. She directed to professional opinions in such interventions, which affect the development of children. She also gave a statement on the reality show Big brother and, among other things, warned about the dignity of the people involved.

The Ombudsman, in cooperation with related institutions abroad, international and inter-governmental organisations, acquires information and knowledge in the field of human rights and freedoms protection and by that, transfers their knowledge and experience to others.

3.4 International relations

International cooperation between the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) with related institutions abroad was, in 2008, as intensive as the year before. At international conferences, and in cooperation with international networks (ENOC, Peer to Peer, CRONSEE etc.), the Ombudsman refers his experience and knowledge and becomes acquainted with good practices of related institutions. Following, is a presentation of a part of activities in this field.

In 2008, the Ombudsman visited several ambassadresses and ambassadors and representatives of international organisations, who thereby acquire additional information on individual issues on the exercise of human rights in Slovenia.

In January, the Ombudsman, together with Deputy Ombudsmen, Tone Dolčič and mag. Kornelija Marzel, received **the head of department for human rights at Swiss Ministry of Foreign Affairs, Ralf Hekner and the ambassador of the Swiss Confederation, Stefan Speck**. She presented the activities of the Human Rights Ombudsman of the Republic of Slovenia to the guests and spoke about some unresolved topics. The Swiss representatives informed the hosts that Switzerland has neither the institution of Ombudsman nor a national institution for human rights protection, but will be, in 2008, reviewed by the Human Rights Council of the United Nations (HRC UN). Ralf Hekner drew attention to gender inequality,

racism and multicultural tolerance as the main problems in the field of respect of human rights in the Swiss Confederation.

On 31 January 2008, the Ombudsman met with **the High Commissioner for Human Rights, Louise Arbour** at working lunch. They discussed various topics in the field of human rights protection, also on the situation of the erased. The Ombudsman also presented the work in the field of monitoring the conditions in prisons and other closed type institutions to the Commissioner and informed her of the (changed) conditions of the Human Rights Ombudsman of the Republic of Slovenia.

In the end of February, the Ombudsman and her co-workers met **Pirkko Kourula, Director of the UNHCR Europe Office, and Lloyd Dakin, UNHCR Regional Representative for Slovenia based in Budapest**. The visit was intended for the UNHCR preparations for the visit of the UN High Commissioner for Refugees, António Guterres in Slovenia, in March 2008. The director presented the strategic goals of the UNHCR regarding issues, related to refugees. The Ombudsman informed the director of the current affairs in the field of international protection of asylum seekers in Slovenia and the issue of regulating the situation of the erased, which particularly interested the director.

In February, the Human Rights Ombudsman of the Republic of Slovenia **hosted colleagues of the Austrian Ombudsman (in Austria they have three Ombudsmen and a group body (ombudsman board))**. The purpose of the meeting was to inform each other with the forms of work and the powers of both institutions. They established that the Ombudsman in Slovenia has more statutory powers to deal with broader issues of human rights protection and legal security, which they declared to be a great power and also responsibility.

The Ombudsman's adviser, Ivan Šelih, director of the group, exercising powers from the so called **Option Protocol** presented, on 9 and 10 April, at a seminar in Padova, the experience of the Slovenian Ombudsman in exercising powers of the state prevention mechanism against torture and other cruel, inhuman or degrading treatment or punishment. During the discussion on the implementation of OPCAT in Slovenia, questions regarding the independence of non-governmental organisations, cooperating in the exercise of control, appeared. The adviser to the Ombudsman presented the activities of the group also in October, in Ukraine and in November, in Prague.

On 18 January, the Ombudsman's advisers, Ivan Šelih and Nataša Bratož participated in the workshop on the topic of deprivation of personal liberty and human rights protection, organised by Le Mediateur de la Republique and the Council of Europe Commissioner for Human Rights, in Paris.

The deputy of the Secretary General, Jernej Rovšek attended the **first meeting of the EU Human Rights Agency and national institutions for human rights**, on 16 May, in Vienna, where he participated in the debate on the programme and the forms of the Agency's cooperation with ombudsmen and other national institutions for human rights in the EU.

In May, the Ombudsman had a conversation over the phone with her Croatian counterpart Malčić regarding **the case of Joško Joras** (see case 168. *Joško Joras on hunger strike*). She informed the "Pučki pravobranitelj Republike Hrvatske" with the case and asked him to try to informally encourage inter-state discussions for a temporary solution to the problems of the Joras family. During their conversation they both emphasized that the meaning of their interventions is the protection of human rights, above all the right to freedom of movement and that they shall not take a stand on other aspects of dealing with this situation. The Ombudsman also informed Joško Joras about the mentioned agreement, before he ended his hunger strike.

In April and in June, the Deputy, Tone Dolčič attended topic meetings of the Ombudsmen network for SE Europe in Novi Sad, where they assessed the work done to date and agreed on future work. In June they decided that the conference in October shall be in Slovenia.

In May, at a meeting in Belgrade on mechanisms of the protection of children's rights in Serbia, the Deputy Ombudsman, Tone Dolčič presented the standpoint of the Ombudsman on Special Ombudsmen and the good practice of the Children's Rights Ombudsman.

On 27 June, in Budapest, Jernej Rovšek **actively participated at the International Conference on the Functioning of Ombudsmen in Fragile Democracies**, prepared by the ICDT – International Centre for Democratic Transition. It is a non-governmental organisation, carrying out various projects, among them also the project of helping the ombudsmen in the Western Balkans, primarily in Kosovo and Montenegro.

Jernej Rovšek attended the **seminar for contact persons of Ombudsmen** at the European Ombudsman (EHRO), which took place from 1 to 3 June, at the seat of the European Ombudsman, in Strasbourg. At these seminars numerous practical issues regarding daily work of Ombudsmen are being discussed. This time two topics were included in the agenda on our proposal, namely, the protection of maladministration notifiers and the transparency of the work of Ombudsmen. In the second part, headed and guided by Jernej Rovšek, great differences appeared among Ombudsmen regarding the relation between transparency and confidentiality of proceedings.

The Deputy Ombudsman, Tone Dolčič attended the Annual Children's Rights Conference, on 3 September, in Dublin, where he presented the Ombudsman's work regarding the change of statutory regulation which discriminates parents in respect of the place of residence.

The public relations adviser of the Ombudsman, Nataša Kuzmič, presented in September at the 5th Roundtable of European National Human Rights Institutions and the Council of Europe Commissioner for Human Rights **in Dublin**, within examples of good practice, a model of public relations contacts with media and the role of public relations in the Human Rights Ombudsman Office of the Republic of Slovenia.

On 30 September, the Ombudsman and her co-workers received **representatives of the Serbian Ombudsman** for a working meeting. The meeting was intended for strengthening the Ombudsman's institution in Serbia and further development of its capacities in line with the European standards. The Human Rights Ombudsman of the Republic of Slovenia, as the institution with one of the longest service in the region, has been carrying on, for many years, its experience and knowledge to relevant institutions.

In October, the Ombudsman presented the work of the Ombudsman to young officials from the Netherlands.

In October, Jernej Rovšek attended a workshop of the Council of Europe Commissioner for Human Rights **on freedom of expression and the right to information**, in Padova, intended primarily to the transfer of experience in this field to the representatives of Ombudsmen in countries of Eastern and Southern Europe and the former Soviet Union.

The Deputy Ombudsman, Kornelija Marzel, MSc, participated, in November, in Stockholm, at **the international conference** Systematic work for Human Right Implementation, within the Swedish presidency to the Council of Europe. Through practical workshops the participants of the conference discussed overcoming the gulf between the standards or the written human rights and their exercise in practice.

In December, the Ombudsman and the Deputy Ombudsman, competent for the protection of children's rights, Tone Dolčič, received the **Croatian Children's Rights Ombudsman, Mila Jelavič**, and her adviser, Tanja Opačak. They discussed the competences of the Croatian Children's Rights Ombudsman, the organisation, the number of employees and their education, the manners of work and the number of initiatives per year. The Ombudsman and the Deputy Ombudsman informed their Croatian counterparts of the activities of the Human Rights Ombudsman, and they also spoke about the functioning of both institutions in the Children's Rights Ombudspersons' Network CRONSEE and the European Network of Ombudspersons for Children (ENOC).

The Deputy Ombudsman, Tone Dolčič and the Deputy to the Secretary General, Jernej Rovšek attended the **conference "Ombudsmen Independence and Autonomy"**, in November, in Novi Sad, where Jernej Rovšek presented the forms of discussing the Ombudsman's annual report in the Parliament and the acquisition of recommendations, and Dolčič moderated the part of the conference on the financing of Ombudsmen. In December, Tone Dolčič, Deputy Ombudsman, attended the Second Meeting of the Mediterranean Ombudsmen in Marseille, France, where they founded the Mediterranean Ombudsmen Network.

3.5 Employees

On 31 December 2008, the Ombudsman's office employed 41 people. They include 5 officials (the Ombudsman, three Deputy Ombudsmen and the Secretaries-General), 23 civil servants, 9 professional-technical staff members, and 4 members of temporary staff (including two Doctors of Science, five Masters of Science and three Specialists). On 7 November 2008, the National Assembly appointed Jernej Rovšek as the third Deputy Ombudsman, and confirmed Tone Dolčič in this position.

In the last three years, the Ombudsman's office assumed new tasks under certain laws, and in 2008 also started performing the tasks of the national prevention mechanism pursuant to the Act ratifying the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, therefore additional employments were necessary.

Already in the Ombudsman's report for the year 2007, we stated some problems the Ombudsman was facing following the adoption of the Salary System in the Public Sector Act. The problem remains unchanged and was even worsened by additional payroll cuts for Ombudsman's officials, respectively. The Ombudsman initiated a procedure for the review of the constitutionality of the Salary System in the Public Sector Act before the Constitutional Court. In its request she stated the allegation that individual offices were classified into wage classes arbitrarily, for the contested Act does not specify measures for their classification into wage classes, and that measures for entitlement to various allowances were not defined. The Constitutional Court accepted the request and decided that its consideration will be given priority, but has not yet made any decision at the time of writing this report.

3.6 Finance 2008

The Slovenian Ombudsman is an independent budgetary user and, as such, sovereignly proposes resources required for its operation. This position makes part of its independence and sovereignty which has to be respected by the executive branch. On the Ombudsman's proposal, the National Assembly earmarked EUR 1,951,480 from the state budget for the work of this institution in 2008.

We received funds in the amount of EUR 15,344 based on the contract signed with 'Save the Children' Norway. They were aimed at the organization and implementation of the conference of the network of Children's Rights Ombudsman for the South-Eastern Europe held at Brdo pri Kranju between 12 and 14 October 2008.

Funds were divided into three sub programmes, namely:

- **the sub programme Protection of human rights and fundamental freedoms:**

financial resources were allocated in the total amount of EUR 1,801,260, of which the funds for the salaries were fixed in the total amount of EUR 1,441,000 (salaries, contributions and other personal income with the payroll tax), for material costs EUR 303,260, and EUR 57,000 for investment expenditure

- **the sub programme Implementation of the Optional Protocol:**

financial resources were fixed in the total amount of EUR 75,110, of which the funds for salaries equalled EUR 55,448, for material costs EUR 11,316 and for the co-operation with non-governmental organizations EUR 8,346;

- **the sub programme of Children's Rights Ombudsman:**

financial resources were fixed to the total amount of EUR 75,110.

Actual expenditure by individual budgetary items and sub programmes is presented below:

- **Expenditure under the sub programme Protection of human rights and fundamental freedoms:**

In 2008 we spent EUR 1,393,991 for salaries and other expenditures of the employees including the payroll tax.

Together with reallocated funds from other Ombudsman's budgetary items we spent the total of EUR 360,380 for material costs in 2008. The amount of EUR 28,333 was spent for investment expenditure, while resources in the total amount of EUR 28,203 were reallocated to the material costs item.

Based on a contract signed with Save the Children Norway we received resources in the total amount of EUR 15,344 aimed at the organization and implementation of the conference of the network of Children's Rights Ombudsmen for the South-Eastern Europe in Slovenia. The total amount of funds spent was EUR 12,623. The rest was transferred to the budgetary funds of the Human Rights Ombudsman for 2009 and will be returned to the donator's account.

- **Expenditure under the sub programme Implementation of the Optional Protocol**

For the salaries and other expenditures of the employees, we spent EUR 94,713 in 2008 including reallocated funds from other budgetary items and the payroll tax.

EUR 9,527 was spent for the material costs of the Optional Protocol, and for the co-operation with the non-governmental organizations we spent EUR 2,984.

- **Expenditure under the sub programme Children's Rights Ombudsman**

We spent EUR 56,812 on the item Children's Rights Ombudsman's Office in 2008.

3.7 Statistics

This subchapter presents statistical data about the Ombudsman's treatment of cases in the period between 1 January and 31 December, 2008.

1. **Open cases in 2008:** Open cases are initiatives received by the Ombudsman between 1 January and 31 December 2008.

2. **Cases being handled in 2008:** In addition to *open cases* in **2008**, these include:
- cases carried over – outstanding cases from 2007 handled in 2008,
 - reopened cases – cases where the handling procedure at the Ombudsman was concluded as of
 - 31 December, 2007 but owing to new substantive facts and circumstances, their handling was continued in 2008. Since this involved new procedures regarding the same cases, new files were not opened in such cases. In view of this, reopened cases were not counted as open cases in 2007, but classified as cases being handled in 2008.

3. **Closed cases:** This includes all cases considered in 2008 and closed by 31 December, 2008.

Open cases

In the period between 1 January and 31 December 2008, there were **2,878 open cases**, meaning a 3.9 % increase relative to 2007. Most new initiatives came directly from initiators, the majority in writing (2,641 or 91.7 percent), from operation outside the seat 60, by telephone 24, through official records 34, and as cases transferred from other bodies 15. On her own initiative, the Ombudsman opened 76 cases (2.6 percent), and 8 as broader issues. The Ombudsman also received 20 anonymous initiatives.

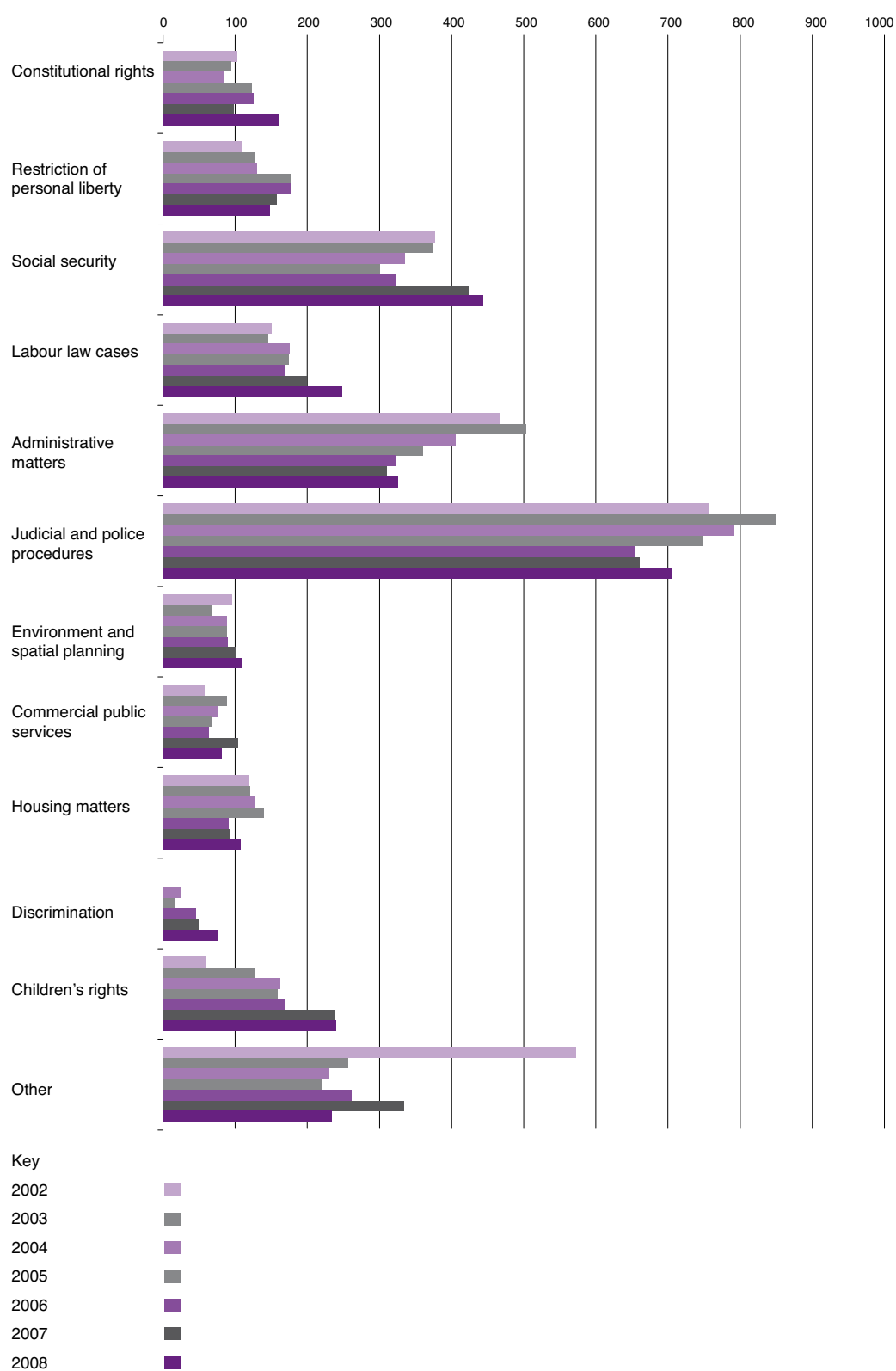
Table 3.7.1: The number of open cases by individual fields of work in the period 2002–2008

AREA OF WORK	OPEN CASES														
	2002		2003		2004		2005		2006		2007		2008		Index (08/07)
	N _e	%	N _e	%	N _e	%	N _e	%	N _e	%	N _e	%	N _e	%	
1. Constitutional rights	103	3.6	94	3.4	85	3.2	123	4.8	125	5.02	98	3.54	160	5.56	163.3
2. Restrictions of personal liberty	110	3.8	127	4.6	130	4.9	177	6.9	176	7.06	157	5.67	148	5.14	94.3
3. Social security	377	13.1	375	13.6	335	12.7	300	11.7	324	13.00	424	15.31	444	15.43	104.7
4. Labour law cases	150	5.2	146	5.3	175	6.7	174	6.8	170	6.82	200	7.22	248	8.62	124.0
5. Administrative matters	468	16.3	503	18.3	406	15.4	360	14.0	322	12.92	310	11.20	326	11.33	105.2
6. Judicial and police procedures	757	26.4	849	30.8	792	30.1	749	29.1	654	26.24	661	23.87	705	24.50	106.7
7. Environment and Spatial planning	96	3.3	67	2.4	89	3.4	88	3.4	90	3.61	102	3.68	109	3.79	106.9
8. Commercial public services	58	2.0	88	3.2	75	2.9	67	2.6	64	2.57	104	3.76	81	2.81	77.9
9. Housing matters	119	4.1	121	4.4	127	4.8	140	5.4	91	3.65	92	3.32	107	3.72	116.3
10. Discrimination					25	1.0	17	0.7	46	1.85	49	1.77	76	2.64	155.1
11. Children's rights	60	2.1	127	4.6	162	6.2	159	6.2	168	6.74	238	8.60	240	8.34	100.8
12. Other	572	19.9	257	9.3	230	8.7	220	8.5	262	10.51	334	12.06	234	8.13	70.1
TOTAL	2.870	100	2.754	100	2.631	100	2.574	100	2.492	100	2.769	100	2.878	100	103.9

Equally in 2008, the majority of open cases were related to judicial and police procedures (705 or 24.5 percent), social security (444 or 15.4 percent), and administrative matters (326 or 11.3 percent of all open cases).

Table 3.7.1 and Fig. 3.7.1 show that compared to 2007, the number of open cases most increased in the field of the Constitutional rights in 2008 (from 98 to 160, or 63.3 percent), discrimination (from 49 to 76 or 55.1 percent), and *labour law* cases (from 200 to 248 or 24 percent). The highest reduction of open cases in 2008 relative to 2007 is found in “other” (by 29.9 percent) and in commercial public services (by 22.1 percent).

Figure 3.7.1: Comparisons of the number of open cases by individual area of work of the Human Rights Ombudsman in the period 2002–2008



Cases being handled

Table 3.7.2: The number of cases being handled by the Human Rights Ombudsman in 2008

AREA OF WORK	NUMBER OF CASES BEING HANDLED				Percentage by area of work
	Open cases in 2008	Cases carried over from 2007	Cases reopened in 2008	Total cases being handled	
1. Constitutional rights	160	20	3	183	5.40 %
2. Restrictions of personal liberty	148	23	4	175	5.17 %
3. Social security	444	59	20	523	15.45 %
4. Labour law cases	248	38	6	292	8.62 %
5. Administrative matters	326	60	2	388	11.46 %
6. Judicial and police procedures	705	98	7	810	23.92 %
7. Environment and spatial planning	109	22	1	132	3.90 %
8. Commercial public services	81	13	6	100	2.95 %
9. Housing matters	107	9	9	125	3.69 %
10. Discrimination	76	27	1	104	3.07 %
11. Children's rights	240	33	6	279	8.24 %
12. Other	234	31	10	275	8.12 %
TOTAL	2.878	433	75	3.386	100.00 %

The table shows that in 2008 the number of cases **being handled was 3,386 cases**, of which 2,878 cases were open in 2008 (85 percent), 433 cases carried over from 2007 (12.8 percent), and 75 reopened cases in 2008 (2.2 percent). Table 4.3 shows that **9.8 percent more cases were being handled** in 2008 relative to 2007.

The largest number of cases handled in 2008 concerned the judicial and police procedures (810 cases or 23.9 percent), social security (523 cases or 15.4 percent) and administrative cases (388 cases or 11.5 percent). The number of cases being handled, compared to 2007, has most increased in the field of discrimination (from 57 to 104 cases or 82.5 percent increase), constitutional rights (from 105 to 183 cases or 74.3 percent increase) and labour law cases (from 220 to 292 cases or 32.7 percent increase).

Table 3.7.3: Comparison of the number of cases being handled by the Human Rights Ombudsman of the Republic of Slovenia by individual areas of work in the period 2002–2008

AREA OF WORK	CASES BEING HANDLED															Index (08/07)
	2002		2003		2004		2005		2006		2007		2008			
	N _e	%	N _e	%	N _e .	%	N _e	%	N _e	%	N _e .	%	N _e .	%		
1. Constitutional rights	128	3.7	105	3.3	91	3.0	141	4.8	139	5.0	105	3.4	183	5.4	174.3	
2. Restrictions of personal liberty	134	3.8	145	4.5	143	4.8	194	6.5	201	7.3	180	5.8	175	5.2	97.2	
3. Social security	468	13.4	451	14.1	393	13.1	339	11.4	354	12.9	472	15.3	523	15.4	110.8	
4. Labour law cases	174	5.0	166	5.2	199	6.7	197	6.6	184	6.7	220	7.1	292	8.6	132.7	
5. Administrative matters	632	18.1	613	19.1	488	16.3	435	14.7	367	13.3	353	11.4	388	11.5	109.9	
6. Judicial and police procedures	925	26.5	929	29.0	893	29.8	862	29.1	719	26.1	734	23.8	810	23.9	110.4	
7. Environment and spatial planning	118	3.4	83	2.6	98	3.3	101	3.4	102	3.7	123	4.0	132	3.9	107.3	
8. Commercial public services	69	2.0	97	3.0	82	2.7	73	2.5	69	2.5	107	3.5	100	3.0	93.5	
9. Housing matters	134	3.8	133	4.1	136	4.5	149	5.0	108	3.9	100	3.2	125	3.7	125.0	
10. Discrimination					27	0.9	24	0.8	49	1.8	57	1.8	104	3.1	182.5	
11. Children's rights	60	1.7	150	4.7	179	6.0	207	7.0	191	6.9	274	8.9	279	8.2	101.8	
12. Other	648	18.6	335	10.4	263	8.8	241	8.1	271	9.8	360	11.7	275	8.1	76.4	
TOTAL	3,490	100	3,207	100	2,992	100	2,963	100	2,754	100	3,085	100	3,386	100	109.8	

Status of cases being handled

Closed cases: Cases whose treatment was concluded on 31 December 2008.

Cases being handled: Cases undergoing treatment on 31 December 2008.

Pending cases: Cases on 31 December 2008 for which a response to an inquiry or other action was expected.

In 2008, a total of 3,085 cases were being handled, of which **2,938 or 86.8 percent of all cases handled in 2008 were concluded** by 31 December 2008. 448 cases (13.2 percent) remained open, of which 232 are pending and 216 under resolution.

Table 3.7.4: Comparison of the number of cases being handled by the Human Rights Ombudsman relative to the handling situation between 2002 and 2008 (at the end of calendar year)

HANDLING STATUS	2002 (status on 31.12.2002)		2003 (status on 31. 12. 2003)		2004 (status on 31. 12. 2004)		2005 (status on 31. 12. 2005)		2006 (status on 31. 12. 2006)		2007 (status on 31. 12. 2007)		2008 (status on 31. 12. 2008)		Index (08/07)
	N ₂	%	N ₂	%	N ₂	%	N ₂ .	%	N ₂	%	N ₂	%	N ₂	%	
Closed	3.087	88.5	2.827	91.9	2.665	89.1	2.766	93.4	2.521	91.5	2.652	86.0	2.938	86.8	110.8
Under resolution	141	4.0	51	1.6	109	3.6	57	1.9	115	4.2	220	7.1	216	6.4	98.2
Pending	262	7.5	209	6.5	218	7.3	140	4.7	118	4.3	213	6.9	232	6.9	108.9
TOTAL	3,490	100	3,087	100	2,992	100	2,963	100	2,754	100	3,085	100	3,386	100	109.8

Closed cases

In 2008, the number of **closed cases** was **2,938**, which is a **10.8 percent increase of the number of closed cases** relative to 2007. **After comparing the number of these cases (2,938) with the number of open cases in 2008 (2,878), we find that 2 percent more cases were closed in 2008 than the number of open cases.**

Table 3.7.5: Comparison of the number of closed cases being handled by areas of work in the period 2002–2008

AREA OF WORK	NUMBER OF CLOSED CASES							Index (08/07)
	2002	2003	2004	2005	2006	2007	2008	
1. Constitutional rights	115	99	73	131	136	85	151	177.6
2. Restrictions of personal liberty	116	133	130	175	181	157	150	95.5
3. Social security	413	410	369	325	329	413	468	113.3
4. Labour law cases	156	140	177	187	168	182	259	142.3
5. Administrative matters	520	505	416	399	329	293	319	108.9
6. Judicial and police procedures	863	821	786	803	665	636	714	112.3
7. Environment and spatial planning	102	77	85	91	82	101	105	104.0
8. Commercial public services	59	84	79	70	68	94	88	93.6
9. Housing matters	123	123	129	140	107	91	114	125.3
10. Discrimination			20	21	42	30	89	296.7
11. Children's rights	40	124	147	190	160	241	234	97.1
12. Other	580	311	254	234	254	329	247	75.1
TOTAL	3,132	3,087	2,827	2,665	2,766	2,652	2,938	110.8

A detailed review of handling cases by areas of work is shown in table 3.7.6.

Under item **1. Constitutional rights**, 183 cases were handled in 2008, which is 74.3 percent more compared to 2007. The Constitutional rights cases include 5.4 percent of all cases handled. By the number of cases being handled, most were related to the ethics of public expression with 57 cases (or 147.8 percent increase), and personal data protection with 45 cases in 2008 (with a 21.6 percent increase).

The number of cases being handled under item **2. Restrictions of personal liberty** decreased in 2008 by 2.8 percent relative to 2007 (from 180 to 175). The number of detainees' cases decreased (from 39 to 26). A high, 71.4 percent increase are the cases of illegal immigrants and asylum seekers, and a 29.4 percent increase in the number of handled cases of psychiatric patients (from 17 to 22).

In item **3. Social security**, the number of cases being handled in 2008 relative to 2007 increased by 10.8 percent (from 472 to 523). The largest share among them are cases related to disability insurance (99 cases or 18.5 percent), and health care (81 cases or 15.5 percent). The increase in the number of handled cases compared to the previous period is observed in disability insurance (from 77 to 99), and a reduction in the pension insurance (from 98 to 69).

Under item **4. Labour law cases**, the number of cases being handled in 2008 (292) increased by 32.7 percent relative to 2007 (220). Compared to the previous period, there

was an increase of cases concerning scholarships (from 9 to 29) and civil servants (from 73 to 92). However, we received 10 percent less initiatives from the unemployed (before 30, and 27 in 2008).

Area 5. Administrative matters, with 388 cases handled (with a 9.9-percent increase compared to 2007), is the third largest scope of cases handled by the Ombudsman in 2008. The increased number of cases is observed in the property law cases (from 29 to 43), administrative procedures (from 89 to 108) and social activities (from 63 to 82), but reduced in the area of aliens, citizenship and denationalization.

The majority of cases handled by the Ombudsman in 2008 again fell under **6. Judicial and police procedures** (810 cases or 23.9 percent), which comprise cases related to police, pre-judicial, criminal and civil procedures, procedures in labour and social disputes, procedures on offences, administrative judicial procedures, cases related to attorneyship, notariat, etc. The index showing the trend in the number of cases being handled in 2008 compared to 2007 (110.4) shows that compared to 2007, the number of cases in this field increased from 734 to 810. Among the sub-areas with increased number of cases handled we have to highlight criminal procedures (from 69 to 102 – a 47.8 percent increase), and offence procedures (from 62 to 82 – a 32.3 percent increase). It is also worthwhile mentioning the procedures before the labour and social tribunals with 34.3 percent reduction, and pre-judicial procedures with a 33.3 percent reduction. The largest share of all cases handled compared to the previous period (from 341 to 356), taking into account a 4.4 percent growth, was observed in civil procedures.

In the area **7. Environment and spatial planning**, the number of cases being handled in 2008 increased by 7.3 percent compared to 2008. Despite a smaller number of cases handled in the sub-area interventions in the environment (from 44 to 38), there was a great increase of the number of cases handled in the sub-area spatial planning - from 36 to 54 (a 50 percent increase).

The number of cases being handled in 2008 reduced from 107 to 100 (by 6.5 percent) compared to 2007 in the area of **8. Commercial public services**. Substantial increase was observed in the field of energy (from 9 to 16).

Under item **9. Housing matters**, the number of cases being handled in 2008 increased by 25 % (from 100 to 125) compared to 2007. Increased number of cases was observed both in the accommodation tenure status (from 60 to 83) and in housing services (from 20 to 25).

The number of cases handled under item **10. Discrimination** almost doubled in 2008 compared to 2007 (from 57 to 104).

Since 2004, the area under item **11, Children's rights**, is an independent classification area. In 2005 it was subdivided for better transparency to sub-areas defined on the basis of experience. The number of children-related cases slightly increased between the handled periods (from 274 in 2007 to 279 in 2008). The largest share in this field include cases related to contacts with parents: in 2008 we handled 71 cases (a 14.5 percent decrease), but there was an increase in the number of cases related to family violence against children (from 9 to 12).

The area under item **12, Other** includes cases not falling under any of the areas defined. In 2008, we handled 275 such cases, or 23.6 percent less than the year before. In terms of numbers, this is the area with the largest decrease of cases handled, which may be attributed to a better categorisation of initiatives relative to their contents.

Table 3.7.6: Review of cases handled by the Human Rights Ombudsman in 2008 by areas of work

AREA OF WORK	Cases handled in		Index (08/07)
	2007	2008	
1. Constitutional rights	105	183	174.3
1.1 Freedom of conscience	10	16	160.0
1.2 Ethics of public expression	23	57	247.8
1.3 Assembly and association	6	9	150.0
1.4 Security services	2	1	50.0
1.5 Voting rights	3	11	366.7
1.6 Personal data protection	37	45	121.6
1.7 Access to public information	1	7	700.0
1.8 Other	23	37	160.9
2. Restrictions of personal liberty	180	175	97.2
2.1 Remand prisoners	39	26	66.7
2.2 Prisoners	102	97	95.1
2.3 Psychiatric patients	17	22	129.4
2.4 Persons in social care institutions	7	5	71.4
2.5 Youth homes	1	6	600.0
2.6 Illegal immigrants and asylum seekers	7	12	171.4
2.7 Detainees	0	2	–
2.8 Other	7	5	71.4
3. Social security	472	523	110.8
3.1 Pension insurance	98	69	70.4
3.2 Disability insurance	77	99	128.6
3.3 Health insurance	56	62	110.7
3.4 Health care	72	81	112.5
3.5 Social benefits and support	69	58	84.1
3.6 Social services	28	25	89.3
3.7 Institutional care	26	34	130.8
3.8 Poverty – general	–	13	–
3.9 Violence – anywhere	–	25	–
3.10 Other	46	57	123.9
4. Labour law cases	220	292	132.7
4.1 Labour relationship	86	112	130.2
4.2 Unemployment	30	27	90.0
4.3 Civil servants	73	92	126.0
4.4 Scholarships	9	29	322.2
4.5 Other	22	32	145.5
5. Administrative matters	353	388	109.9
5.1 Citizenship	28	20	71.4
5.2 Aliens	38	26	68.4
5.3 Denationalisation	21	18	85.7
5.4 Property claim cases	29	43	148.3
5.5 Taxes	63	58	92.1
5.6 Customs	2	0	0.0
5.7 Administrative procedures	89	108	121.3
5.8 Social activities	63	82	130.2
5.9 Other	20	33	165.0
6. Judicial and police procedures	734	810	110.4
6.1 Police procedures	116	125	107.8
6.2 Pre-judicial procedures	24	16	66.7
6.3 Criminal procedures	69	102	147.8
6.4 Civil procedures and relationships	341	356	104.4
6.5 Procedures before the Labour and Social Tribunals	35	23	65.7
6.6 Offence procedures	62	82	132.3
6.7 Administrative judicial procedures	11	11	100.0
6.8 Attorneyship and notariat	19	23	121.1
6.9 Other	57	72	126.3
7. Environment and spatial planning	123	132	107.3
7.1 Interventions in the environment	44	38	86.4
7.2 Spatial planning	36	54	150.0
7.3 Other	43	40	93.0
8. Commercial public services	107	100	93.5
8.1 Communal economy	30	31	103.3
8.2 Communications	32	22	68.8
8.3 Energy	9	16	177.8
8.4 Transport	28	24	85.7
8.5 Concessions	0	1	-
8.6 Other	8	6	75.0
9. Housing matters	100	125	125.0
9.1 Tenure status of dwelling	60	83	138.3
9.2 Housing economy	20	25	125.0
9.3 Other	20	17	85.0
10. Discrimination	57	104	182.5
10.1 National and ethnic minorities	10	27	270.0
10.2 Equal possibilities by gender	1	2	200.0
10.3 Equal possibilities in employment	3	12	-
10.4 Other	43	63	146.5
11. Children's rights	274	279	101.8
11.1 Contacts with parents	83	71	85.5
11.2 Child support, child allowances, child's property management	26	26	100.0
11.3 Foster care and guardianship, institutional care	35	28	80.0
11.4 Children with special needs	22	16	72.7
11.5 Children of minorities and of the most threatened population groups	6	2	33.3
11.6 Family violence against children	9	12	133.3
11.7 Violence against children outside family	21	11	52.4
11.8 Other	72	113	156.9
12. Other	360	275	76.4
12.1 Legislative initiatives	18	15	83.3
12.2 Remedy of injustice	16	9	56.3
12.3 Personal problems	60	51	85.0
12.4 Explanation	109	111	101.8
12.5 For information	141	65	46.1
12.6 Anonymous complaints	16	23	143.8
12.7 Ombudsman	0	1	-
TOTAL	3,085	3,386	109.8

Closed cases by validity

Justified case: The case concerns violation of rights or other irregularity in all the statements of the initiative.

Partly justified case: Certain Stated and non-stated elements in the procedure reveal infringements and irregularities, and other statements do not.

Non-justified case: In all the statements of the initiative we find no infringements or irregularities.

No conditions for handling the case: A certain legal procedure concerning the case is underway with no delays or major irregularities observed. We provide the initiator with information, explanation and instructions to execute rights in an open procedure. This category includes unaccepted (late, anonymous, offensive) initiatives and terminated procedures if the initiator failed to cooperate or withdrew the initiative.

Non-competence of the Ombudsman: The subject matter of the initiative does not fall within the framework of the institution. We explain what other possibilities the initiators have to enforce their rights.

Table 3.7.8: Classification of closed cases by validity

STATUS OF CASES	CLOSED CASES				Index (08/07)
	2007		2008		
	Number	%	Number	%	
1. Justified cases	318	12.0	410	14.0	128.9
2. Partly justified	240	9.0	350	11.9	145.8
3. Unjustified cases	397	15.0	427	14.5	107.6
4. No conditions for handling cases	1.281	48.3	1.331	45.3	103.9
5. Non-competence of the Ombudsman	416	15.7	420	14.3	101.0
TOTAL	2,652	100.0	2,938	100.0	110.8

The share of justified and partly justified cases in 2008 (25.9 percent) increased compared to 2007 (by 21 percent), which can be attributed to the fact that initiators are more familiar with the Ombudsman's competences. **We also established that the share of justified cases compared to similar institutions is rather high.**

Closed cases by areas

Table 3.7.9 presents categorisation of the cases closed in 2008 by areas. The areas are categorised in groups as handled by state authorities and are not identical with the areas of the Ombudsman. Individual cases are categorised in the corresponding areas according to the issue of concern to the initiator.

The table shows that the majority of closed cases in 2008 referred to:

- labour, family and social affairs (755 cases or 25.7 percent),
- justice (733 cases or 24.9 percent),
- environment and spatial planning (290 cases or 9.9 percent), and
- internal affairs (251 cases or 8.5 percent).

The number of open cases in 2008 mostly increased in the field of public administration (from 24 to 44) compared to 2007, and decreased in the field of finance (from 78 to 59).

Table 3.7.9: Closed cases being handled by the Ombudsman in 2007 and 2008 by areas of work:

AREA	CLOSED CASES				Index (08/07)
	2007		2008		
	Number	%	Number	%	
1. Labour, family and social affairs	712	26.85	755	25.70	106.04
2. Finance	78	2.94	59	2.01	75.64
3. Business	62	2.34	72	2.45	116.13
4. Public administration	24	0.90	44	1.50	183.33
5. Agriculture, forestry and food	12	0.45	23	0.78	191.67
6. Culture	55	2.07	76	2.59	138.18
7. Home affairs	251	9.46	251	8.54	100.00
8. Defence	8	0.30	9	0.31	112.50
9. Environment and spatial planning	253	9.54	290	9.87	114.62
10. Judiciary	691	26.06	733	24.95	106.08
11. Transport	29	1.09	24	0.82	82.76
12. Education and sport	89	3.36	147	5.00	165.17
13. Higher education, science and technology	17	0.64	27	0.92	158.82
14. Healthcare	165	6.22	177	6.02	107.27
15. External affairs	5	0.19	16	0.54	320.00
16. Government services	7	0.26	9	0.31	128.57
17. Local government	16	0.60	26	0.88	162.50
18. Other	178	6.71	200	6.81	112.36
TOTAL	2,652	100.00	2,938	100.00	110.78

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The following authors collaborated in the preparation of this report:

Zdenka Čebašek – Travnik, MD DSc, Human Rights Ombudsman

Tone Dolčič, Deputy Ombudsman

Kornelija Marzel, MSc, Deputy Ombudsman

Jernej Rovšek, Deputy Ombudsman

Ivan Šelih, Deputy Ombudsman

Bojana Kvas, MSc, Secretary General

Bojana Cvahte, MSc, Director of Expert Services

and

Co-workers: Polona Bobič; Bojan Brank; Irena Burkeljca; Nataša Bratož; Zlata Debevec; Ana Fröhlich; Miha Horvat; Robert Gačnik; Mojca Hribar; Martina Jenkole, MSc; Irena Kavčnik; Renata Kotar; Uroš Kovačič, Nataša Kuzmič; Kristijan Lovrak; Branka Markelj; Jure Markič, MSc; Andreja Novak; Martina Ocepek; Matevž Pavčnik; Živan Rejc; Ingrid Russi – Zagožen, DSc; Barbara Samaluk; Marjana Simčič; Nada Skubic; Andreja Srebotnik; Simona Šemen, MSc; Manca Šetinc; Neva Šturm; Jasna Turk; Brigita Urh; Boštjan Vernik; Lan Vošnjak; Jože Vrh.

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**Human Rights Ombudsman
of the Republic of Slovenia**
Dunajska cesta 56, 1109 Ljubljana
Slovenia

Telephone number: + 386 1475 00 50

Free phone number: 080 15 30

Fax: + 386 1475 00 40

E-mail: info@varuh-rs.si