REPUBLIC OF SLOVENIA

HUMAN RIGHTS OMBUDSMAN

Annual report 1999

The Fifth Annual Report
Abbreviated version

Ljubljana, May 2000

Republic of Slovenia
Human Rights Ombudsman

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CONTENTS

1950-2000
Fifty Years of the Convention for the Protection of Human Rights and Fundamental Freedoms

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

(First Paragraph of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms)

Introduction

One of the purposes of annual reports is to encourage responsible conduct from the elected holders of authority towards the people who, via them, indirectly implement their authority. The numerous problems we cite in our reports show that awareness of this responsibility is still quite weak, and thus even systemic problems are being tackled to slowly. As a result, attention needs to be repeatedly drawn to some of these problems before serious measures begin to be taken to eliminate them. For the sake of the people affected by the irresponsible conduct of the authorities in the exercising of their acknowledged rights, we expect this report to be a new step towards more responsible work by the highest functionaries in the execution of the functions entrusted to them.

The Annual Report of the ombudsman for 1999 is the fifth report from this institution and the last in the term of office of the first Human Rights Ombudsman. Although the format is similar to previous reports it draws attention to several new problems and additional proposals and justifications for the resolution of those which we have already presented. The abridged annual report in English contains the majority of cases from the original version in Slovenian. We have omitted only certain detailed points of argumentation and specific cases from chapter three, and the descriptions of certain cases dealt with. In the assessment of the state of human rights and legal security in the country, contained in the first chapter, we present a review of identified shortcomings by individual branches of authority and by areas of operation of the state and local communities. Here we proceed from the concept of a state based on the rule of law and within this framework the need for integral and executable regulations and efficient implementation of the same. Dependent on these are the position of the individual, the possibility of exercising his rights, and the protection of these rights. Chapter Two aims to shed light on certain aspects of problems encountered by the more vulnerable groups of the population. We summarise certain findings relating to the position of the elderly, the disabled, children and women, and the exercising of their rights. In Chapter Three we describe, as is now customary, problems dealt with, by individual sectors. In Chapter Four we provide information on the method and scope of the work of the institution itself, including statistical data. Some people lamented the omission from last year's report of the description of some of the more interesting cases dealt with; they will be pleased to see that this method of reviewing our work has been reintroduced this year (Chapter Five).

We expect the ombudsman's report to encourage all those responsible for ensuring an appropriate relationship between bodies of authority and individuals - from the public servants in direct contact with the public, to the highest functionaries - to improve their work and rectify the shortcomings to which attention is drawn in the report.

1. Assessment of the respecting of human rights and legal security in the country

This year, 1999, some positive progress has been made regarding the problems to which we have been drawing attention since the ombudsman began work. Of course it needs to be stressed at the same time that such progress is arrived at late and too slowly. Above all it is a question of passing certain laws important for the respecting and protection of human rights, of more intensive activity in the area of removing backlogs in the courts and important steps in the final solution of so-called independence problems. We are still facing a series of problems relating to all three branches of authority which still have a poor influence on the position of the individual in relation to the state.

We have already stated several times that the majority of violations of rights, and other irregularities, are the consequence of state maladministration. In this report we have therefore planned the assessment of the situation by presenting a review of established inadequacies by individual branches of authority and by areas of work of the state and local communities. In this we proceed from the concept of a state governed by the rule of law and in this framework the need for integral and executable regulations and efficient implement of the same. On this depend the position of the individual, the possibility of exercising his rights and their protection.

Legislation

Legal order is still unstable, since regulations are changing considerably. Because of these changes is also incomplete in numerous areas. **Inconsistencies occurring within legal order are being rectified too slowly.** One example: it took almost a year before it was once again possible to rule on the writing-off of liabilities arising from pension insurance contributions - something which was rendered impossible by a inadequate change in legislation. Because the adaptation of Slovenian legislation to the legal system of the European Union will lead to the passing of many new regulations in the future, it is vital that a great deal more attention is devoted to the rectifying of identified inconsistencies, inadequacies and legal vacuums as they occur.

Some laws important for the protection of human rights have still not been passed.
We need mention only a few: the law on the fund for the payment of war compensation, the labour relations act, a law governing the protection of rights in the area of mental health, a law on the supervision of intelligence and security activities, and a law on free legal aid. The passing of the

latter is even more important in the conditions which have arisen since the entering into force of the new Civil Procedure Act - which in certain proceedings requires compulsory representation by a lawyer. At the same time we find that some important laws were nevertheless passed over the past year, in particular the Asylum Act, a law on the regulation of the status of the citizens of the other successor states of the former Yugoslavia, the general administrative and civil procedure act, and the legal regulation of the maintenance fund.

We find that the government is too slow in proposing some of the important laws, and thus bills are being presented to parliament which do not include all the aspects of a problem in a given sector. We find such a situation the case of the mental health act and free legal aid.

The harmonisation with the Constitution of laws which are found to be unconstitutional is too slow, and this is a serious problem. From the point of view of exercising the rights of the individual it is a matter for concern that the unconstitutionality identified by the Constitutional Court in relation to the victims of war violence act and the rectification of wrongs act (which would be rectified by passing a law on the fund for the payment of war compensation) has still not been removed. A similar situation applies in the case of the harmonisation of the Income Tax Act with the Constitution, where the deadline set by the Constitutional Court has already expired.

In order to avoid frequent unconstitutional solutions, incomplete solutions and non-conformity of regulations, more attention will need to be devoted to the quality preparation of regulations. These must be based on thorough professional analysis. In the preparation of regulations suitable attention must also be devoted to uniformity and the internal conformity of the law, the uniform regulation of comparable positions and the rational organisation of various sectors of the state.

The slowness in passing executive regulations is also a cause for concern, although only these can define in more detail the method of exercising individual rights specified by laws, or stipulate in more detail the implementation of limitations defined in laws. As a rule, and more often than to date, it is worth preparing and passing executive regulations simultaneously with the law, while in exceptional cases a suitably short legal deadline must not be exceeded.

In addition to the laws mentioned above, which are at different phases of the legislative procedure, we repeat our proposal for the passing of a law on access to information of a public nature, which should also enable citizens to be better informed about government intentions.

The Executive

A large part of the problems caused to individuals by the state administration are related to its inappropriate, inefficient and even unlawful work. We often note inconsistency in the implementation of regulations. Inconsistency creates an impression of inefficiency and arbitrary treatment.

Since reform of state administration has receded to an undefined point in the future, the hope that the administration will resolve the greater part of the existing problems is deceptive and increasingly unjustified. While calling once again for radical measures to transform the state administration as soon as possible, we point out that reform processes must take place in a way which does not threaten and weaken those parts of the administration which function well, or bring new deadlocks and other problems.

Regulations which are sufficiently clear must be implemented consistently, while the administrative must encourage the changing of those which are unfeasible or impractical. **When regulations are unclear or inadequate, their interpretation to the detriment of the individual is not admissible.** Equally inadmissible is the restrictive implementation of laws through the introduction of additional restrictive conditions not envisaged by the legislature. Such action cannot be a way of reducing the financial consequences of a law.

The role of the administration inspectorate has grown stronger recently. A further increase in its role can lead to important shifts towards better quality work by the state administration at all levels.

We repeat our proposal for the passing of a code of conduct in the state administration which will enable more transparent examination of the correctness of the work of the administration. We note in places important changes in the work of state bodies towards better information, friendlier and simpler operation and the use of modern technological solutions. It is worth encouraging the copying of such good examples. Attention will also need to be devoted towards comparable

rewarding of administrative employees so that a poor level of expertise and lack of staff will not further threaten the work of this important sector of the state.

Procedures for processing complaints arising from unsuitability in contacts between public servants and individuals need to be established in all bodies. The goals of the consistent processing of these complaints are the improvement of the position of the individual, improvement in the work of the body in question and the removal of all unnecessary obstacles.

Central state administration

Among the administrative functions carried out by the ministries, is worth drawing attention to the still present backlogs in the processing of complaints at ministries which rule as bodies of second instance. Such backlogs are present at the Ministry of the Environment and Physical Planning, the Ministry of Labour, the Family and Social Affairs and at the Ministry of the Interior. We also draw attention to the length of certain procedures at those ministries which are not conspicuously burdened by numerous administrative procedures.

There is also a need to strengthen the role of the ministries in providing technical guidance to first-instance bodies of the state administration, since their instructions are often too late or inadequate. As second-instance bodies ministries often fail to meet expectations in the case of no response from the body of first instance, while in appeal proceedings they too rarely use the possibility of ruling on a matter, instead overturning the rulings of first-instance bodies and returning cases to these bodies for readjudication, which sometimes unnecessarily extends the total duration of proceedings.

We note a need for clearer regulations on conditions and procedures for obtaining various forms of state assistance and concessions. **Existing regulations do not allow a simple assessment of what pertains to whom, while unclear procedures make it even harder to understand decisions which in such conditions can also be arbitrary.**

In the **tax administration** there is still the **unresolved problem of unreasonably lengthy procedures for ruling on appeals against a ruling on the assessment of tax liabilities.** Despite the resolution of the National Assembly this unlawful state of affairs is improving too slowly. Ruling on writing off, partially writing off or payment in instalments of tax debt takes longer than is prescribed at some tax bodies. Because of exceptionally high late payment interest the inconsistent and usually very late introduction of the forcible collection of a tax debt places taxpayers in a worse position than they would be in if taxes were collected regularly. Informing taxpayers of the state and structure of their tax debt is also unclear and unsuitable.

In the case of **inspectorates,** the most disturbing phenomenon is **inconsistency in the forcible implementation of rulings, which on the one hand creates the impression that the inspectorates are inefficient, and on the other, because the criteria for deferring implementation are not uniform, raises the question of respecting equality before the law.**

Particularly in the implementation of regulations in the sector of environmental protection and physical planning we find cases of hesitation and avoidance of consistent use of the powers of the inspectorates. Too much slowness in taking measures additionally complicates the tackling of a problem. The area of the responsibilities and powers of certain inspectorates will need to be defined in more detail.

The efficiency of inspectorates is also reduced by the excessive workload of administrative offences judges, since many of the proposals by inspectors to initiate administrative offence procedures fall under the statute of limitations.

Administrative units

Administrative units carry out the greatest number of administrative proceedings. In the light of the ratio between the number of proceedings and the number of appeals we estimate that the majority of proceedings run in accordance with regulations. Backlogs do however appear in certain proceedings, as do individual though nevertheless too frequent serious mistakes. We also note frequent occurrences of non-uniform practice.

Denationalisation procedures are a special problem. A substantial proportion of these procedures are carried out at administrative units. These are faced by a serious of objective difficulties most common of which are staffing problems. The financial difficulties cited by some administrative

units cannot be considered objective difficulties since, at least in denationalisation procedures the range of tasks involved is sufficiently well known. Those responsible should therefore provide a corresponding amount of funds to ensure that procedures can be carried out without problems.

Municipal administration

In some municipalities the municipal administration is still not functioning properly. A few municipalities, usually smaller ones, do not even respond to our inquiries within the set deadline. **There is also a clear need for an improvement in communication with the citizens of the municipality, since many problems which are resolved following our intervention could also be quickly resolved without our intervention if they were more processed more attentively.**

Even regulations issued by municipalities are often inadequate, which in some cases has led their lawfulness being tested, or even to annulment. The question is seriously being raised as to whether assessment of all unlawful regulations has been initiated, and with it the question of the equality of citizens before the law. Particularly in the preparation of regulations which impose obligations on citizens (contributions and taxes), greater thoroughness and expertise would prevent numerous difficulties, reluctance and unnecessary upset. We also find an enormous lack of uniformity of municipal regulations. This is not in itself is inadmissible, but the present state of affairs is already seriously affecting the transparency of the law. Particularly questionable are those differences in the burdens placed on citizens which do not have an incentive function. For all these reasons **we propose a systematic review of all municipal regulations with expert consultation to improve the situation.**

The judiciary

Despite the resolution of the National Assembly there is still no all-embracing programme to remove backlogs. The problem is a complex one which cannot be solved overnight. For this reason it is all the more important that those responsible in the executive and judicial branches of authority prepare a plan of all measures of a legislative, organisational, personnel and financial nature which will ensure the normalisation of the situation in due time. In the area of legislation it will be necessary to continue modifying material, procedural and organisational legislation. The introduction of arbitration and conciliation are a vital element of seeking solutions here.

Once again in 1999 we found that proceedings in many courts are lasting an unreasonable length of time. At some courts the situation has improved slightly, but we came across one case (Radovljica County Court) where staffing problems have meant that the backlog situation has noticeably worsened. Below are some figures on the duration of proceedings deriving from inquiries made and relating to cases not designated as priority cases.

At the administrative department of the **Supreme Court** cases came onto the schedule which are five years old or four years old in the case of denationalisation. Appeals against rulings of the administrative court came onto the schedule after a year and a half. In the criminal department it was necessary to wait two or more years for the hearing of a request for protection of legality.

The envisaged time frame for decisions also lengthened at some **superior courts** which to date had made rulings in some months. At the Ljubljana Superior Court it was necessary to wait more than a year for a decision.

At the **Superior Labour and Social Court** it was necessary to wait more than two years, and not much less than two years even in priority cases. At the **Labour and Social Court in Ljubljana** we noted a five-year backlog (three years for priority cases). The wait for decisions at the labour courts in Koper and Maribor was also very long (two years for priority cases at Koper).

At the departments of the **administrative court** in Ljubljana, Nova Gorica and Celje it was necessary to wait two years for a decision.

As regards **circuit courts,** there were backlogs of two or more years at the courts in Murska Sobota, Nova Gorica, Ljubljana and Kranj. We identified backlogs in criminal cases at the circuit courts in Celje, Koper and Ptuj.

As regards **county courts** we noted backlogs of more than three years in civil suits in Ljubljana, Slovenska Bistrica, Celje, Ptuj, Koper, Piran and Radovljica. Only slightly better, according to our figures, was the situation at the courts in Domžale, Ljutomer, Brežice, Grosuplje and Jesenice. Some county courts also have backlogs in criminal proceedings or in non-contentious proceedings.

Backlogs are also occurring in enforcement proceedings (four to five years in Ljubljana, and also in Maribor and Nova Gorica). Here it is worth stressing that in proceedings where enforcement is necessary, the proceedings are only concluded for the individual when the debtor's liability is actually met.

On the other hand it is nevertheless worth mentioning that there a quite a few courts which process cases on a regular and up-to-date basis. Activities aimed at removing backlogs should therefore be oriented towards ensuring that the situation at such courts does not get worsen and that at the same time improvements are made where the situation is unsatisfactory. Some courts are already predicting an improvement because of newly-filled or systematised judges' positions.

As well as cases where there is a long wait for the hearing in accordance with the case schedule because of the unmanageable intake of new cases or the accumulation of arrears, we are also finding deadlocks and unreasonable lengths of time in numerous cases which have already come onto the schedule. Only after our intervention do hearings which have sometimes been at a standstill for several years continue.

The situation with **administrative offence judges** is a special problem. Because of the extremely high intake of cases, many proposals fall under the statute of limitations, which particularly among injured parties creates the impression that the state does not concern itself with respecting the law. Meanwhile there is of course a serious risk to the implementation of the law, which is a cause for concern in itself.

Procedures of bodies responsible for law and order

With regard to the work of the police and authorised personnel in prisons, we continue to stress the need for clear rules and continuous and constant education and training for the lawful wielding of powers while taking into account the rights and dignity of the individual. The regulations on the exercising of the powers of the police, which despite the expired deadline have still to be passed, must together with the valid Police Act set clear and generally comprehensible frameworks for the sensitive relationship between the individual and the police. **The individual must find in these regulations clear information as to what to expect from the police and in what cases.** The regulations must give police officers strong support for correct conduct even in the most complex cases. There are for example many unnecessary misunderstandings which in individual cases even lead to violations of fundamental human rights.

The new implementation of criminal sanctions act must also play an important role. We frequently note in the relationship between convicted prisoners and prison administrations the introduction of unnecessary and questionable limitations which affect the position of the individual in these special circumstances. The tendency for additional restriction is a very stubborn one, since it is not uncommon to see cases where such measures return even after we have managed to get rid of them. **Thus in the long term unnecessary problems for individuals can only be rectified by clear regulations which do not permit arbitrariness over important questions of the position of persons deprived of their liberty.**

Social security

Poverty and social crisis are clearly a too common phenomenon. Various forms of 'black economy' mean that the social image of Slovenia is distorted. **The mechanisms of social assistance need to be built up so as to include all who cannot provide for themselves the means for a decent life.** We therefore welcome the formulation of a programme for the prevention of poverty and social exclusion and look forward to its implementation.

In the sphere of employment there is still a need to introduce and implement incentive measures, particularly in order to enable the employment of persons who are difficult to employ - young first-time job seekers and the elderly.

Some procedures in the social sphere, particularly those regarding the exercising of rights deriving from health insurance and pensions and disability insurance, are not defined clearly enough. There are frequent inconsistencies in the application of the General Administrative Procedure Act and a lack of clarity with regard to the role of expert opinions. We are still receiving warnings about humiliating treatment by certain members of medical commissions and invalidity commissions. Certain social services procedures regarding children are too lengthy and not suitably effective. Part of the problem are a number of unsuitable solutions in family legislation.

Social activities

The constitutional provision on free primary education needs to be implemented consistently. Requirements to co-finance certain activities, e.g. 'school in the countryside' are an unacceptable form of torment for children from families that are less well off.

In noting the various forms of abuse, torment and neglect of children, teachers and counselling staff in nursery schools and schools have an irreplaceable role. However effective measures in such cases require them to work in harmony with social services, and sometimes with the police and the prosecution service too. In some notorious cases we have encountered far too much shifting of responsibility instead of responsible action for the good of the child.

In health care the gradual reducing of rights deriving from constitutionally guaranteed compulsory health insurance is a cause for concern. The health insurance company must insure that all services covered by health insurance are accessible within a time frame and in a manner which does not mean a risk to health or unnecessary unpleasantness. There are still numerous cases where insured persons are forced to pay for these services themselves because of the length of the wait involved.

We repeat our demand for the establishment of clear and accessible possibilities for the hearing of appeals against alleged irregularities in access to health services, the implementation of these services and the exercising of rights deriving from health insurance. Despite some positive changes at individual health care institutions, the problem has not yet been satisfactorily addressed.

Public services

In this sector we note the **lack of suitable regulation and good quality implementation of procedures in the exercising of statutory authority or the monopoly provision of services.** The method of processing complaints from users at many public services is still not suitable. Even in the sensitive sector of granting concessions there are complications because of unclear regulations or inadequately conducted procedures.

The work of chambers

The chambers of statutory authorities (doctors, lawyers, notaries) which exist to ensure professionally correct work by their members, do not work thoroughly enough. When irregularities are alleged there is a need for rapid and clear judgement which explains the whole situation to the individual or clears members of unfounded accusations, or is the basis for suitable sanctions when complaints are found to be justified. Only if authority is exercised in this way is it possible to create confidence among the clients of the members of chambers and prevent the negative phenomena which should not exist in these sectors.

2. Findings and analysis

In this chapter we once again devote more thorough attention to some issues which are especially important from the point of view of the respecting of human rights. In our work we pay special attention to the more sensitive categories of the population. We have therefore decided this year to summarise some of our findings relating to the position of the elderly, the disabled, children and women, and to the exercising of their rights. Additionally, though still in relation to these specific issues, we analyse the initiatives that have been made to date for the establishing of special mechanisms for the protection of the rights of specific categories of the population or of specific sets of rights.

2.1. Institutional protection of the elderly

Introduction

1. In recent decades the world has increasingly been facing the phenomenon of an ageing population. Demographic trends also show an increase in the number of elderly people in Slovenia. At the end of 1995 there were 249,046 people aged 65 or over living in Slovenia, accounting for 12.5 per cent of the total population. **Such important changes in the age structure of the population demand appropriate programmes in the planning of public care for the elderly, at both the national and local level, and an immediate start on preparing, in particular, the current middle generation for their own old age.**

2. Resolution 47/5 of the General Assembly of the United Nations, dated 16 October 1992, proclaimed 1999 the International Year of the Elderly with the intention of drawing attention to the fact that the elderly are entitled to the highest level of health care and social care, including self-help programmes for the elderly.

The demographic changes which are the result of the ever increasing number of elderly people are also noted by the Council of Europe in Recommendation No. R (94) 9 of the Committee of Ministers. There is a need to raise awareness among the general public about the ageing population and related issues. The elderly must not be perceived as a burden to society. Longer life expectancy should be understood as a positive trend which also opens new perspectives for

younger people. The majority of the elderly are capable of living their life in an autonomous way and are in principle no more dependent than younger people are.

The position of the elderly in society

3. The general principle of equality before the law also guarantees human rights and fundamental freedoms to elderly people, who have the same entitlement to respect of their human dignity as other members of society. They have the same right to privacy, their own life style and respect for their decisions, taking into account the various stages of the ageing process. Most of all, every elderly person has the right to social care. In this connection, the European Social Charter binds Slovenia, either directly or in cooperation with public and private organisations, to adopt or encourage suitable measures whose main purpose is:

- **to enable elderly persons to remain full members of society for as long as possible, by means of:**

a) adequate resources enabling them to lead a decent life and play and active part in public, social and cultural life;
b) provision of information about services and facilities available for elderly persons and their opportunities to make use of them;

- **to enable elderly persons to choose their lifestyle freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:**

a) provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;
b) the health care and the services necessitated by their state.

4. Although elderly persons share the majority of problems and needs of the rest of the population, their special characteristics and needs are reflected in certain areas such as health, nutrition, family life, accommodation, social care, material security, and also employment and education.

An important part of socio-economic development is the inclusion of people of all ages into a society in which age-based discrimination and involuntary isolation will be eliminated. The right to protection from poverty and social inclusion is especially important for their elderly. It is therefore necessary to stimulate solidarity and mutual help between the generations. The preparation of the entire population for a later period in their life must be a constituent part of social policy and must include psychological, religious, spiritual, economic, health and other aspects. All reasonable measures need to be taken to ensure that old age will be a materially and spiritually rich period of life for all people. Quality of life is no less important than a long life expectancy. **The elderly must be enabled to the greatest possible extent to live a full, healthy, safe and satisfying life as an inseparable constituent element of the social community.**

5. Elderly people, wherever they are, must be provided with care and protection and nursing whenever they need it. This stimulates their feeling of security and an improved quality of life. The various activities designed for the elderly, especially those who live in institutions, must be strengthened and universally supplemented. Access to information is important for the elderly, as are possibilities of social, cultural and individual activity in a manner which preserves self-determination and free choice. The maximum possible inclusion in society will enable the elderly to avoid an aimless old age and prevent them from being pushed to the edge of the life of society.

A longer life must not be allowed to mean less comfort in life. Older people in health care and social care institutions should be enabled to live as independently as possible, taking into account their state of health and their capacity for an independent life. It is necessary to respect their privacy and include them in decisions relating to living conditions in institutions.

The autonomy of the elderly must also be respected in a decision in favour of institutional care. If possible the elderly person must make this decision himself, and must be given a choice. A decision made on their behalf by relatives or third parties to place them in a social care institution, perhaps even against their will, cannot contribute to the individual's sense of well-being and denies him the right to live his life as an independent person with all rights and freedoms.

(Over)crowded homes still the only possibility for the elderly

6. Among the social care services designed to remove social pressure and difficulties the Social Welfare Act (ZSV) also stipulates institutional care. Institutional care of the elderly in Slovenia is mainly provided by old people's homes. The ZSV states that old people's homes also carry out functions extending to the preparation of the environment, the family and individuals for old age.

In practice the activity of the homes is almost exclusively oriented towards the area of institutional care. Other forms of care for the elderly, including those regulated by Slovenian legislation such as home help for families, social service, etc., are rarer than could be wished.

Above all, the elderly should be enabled to remain as long as possible in the environment where they have previously lived and worked. Various organised services and forms of home help should enable as many old people as possible to remain in their domestic environment. Institutional care should only be considered afterwards, and only when the individual can no longer live in his domestic environment and accommodation in a home is urgently necessary. Delaying institutional care for as long as possible is both in the interest of the elderly (who thus remain active in their own environment for as long as they are able, given their physical, mental and intellectual capabilities), and in the public interest, in that the demand for institutional care is limited to those who genuinely need this form of social care. The elderly must therefore be allowed to live independently in their domestic environment as long as they wish to and are able to, with the help of extra-institutional health care and social care.

7. The capacities of social care institutions are sufficient to accommodate over 4 per cent of the inhabitants of Slovenia aged 65 and over. Since however institutional care is also intended for younger persons with special needs, the homes actually only house 3.8 per cent of people aged over 65. Old people's homes are therefore fully occupied. The number of applications for places in old people's homes is growing from year to year, and waiting lists for a free bed are getting longer and longer. The number of applications runs into thousands - sometimes several hundred for an individual institution. It should be questioned, however, whether the number of applicants is actually as high as the number of applications, since the same people evidently apply for places in more than one institution. A true picture of demand could probably only be given by a central register of applications for places in old people's homes.

Since old people's homes are fully occupied, there are difficulties even in the case of urgent admittance. There is also great pressure for the admittance of elderly people directly from hospitals. As a rule a free bed is only available when somebody dies: in this way 30 to 40 per cent of the residents of old people's homes change every year.

In large old people's homes there is a danger of impersonal relationships between residents and between residents and staff. This can have harmful effects on residents and on the way they are treated. It is therefore worth encouraging the construction of smaller old people's homes for a smaller number of residents and as close as possible to their domestic environment.

Even the elderly have the right to be more demanding

8. In 1999, as part of the Human Rights Ombudsman's activity in the area of social welfare, we visited two special care institutions (the Ponikve-Prizma Occupational Care Institute and the Hrastovec-Trate Institute for the Mentally and Nervously Ill) and several old people's homes (in Kamnik, Mengeš, Radovljica and Jesenice). On the basis of these visits and a small number of complaints from elderly people relating to life in various social security institutions, we have made some important finds.

9. Improvement in the standards of living of inhabitants also justifies the demand to provide a higher standard and possibility of choice in the provision of institutional care for the elderly. The quality of life in homes is to a large extent dependent on living space - its size and comfort. Those we spoke to during our visits confirmed that candidates for places in homes and those already resident rate the privacy offered by an institution extremely highly. The greatest demand is for single rooms, of which there are too few everywhere. It would therefore be appropriate when building new institutions or when adapting or reconstructing existing institutions to give greater emphasis to single rooms and thus conform more to the wishes and needs of the elderly. It is also worth noting their expectations that rooms should be equipped with their own toilet and bathroom (bath or shower). The fact of having to share a toilet and bathroom with others is disagreeable to many residents. It is even worse if one has to go out into the corridor to reach a communal toilet or bathroom.

10. The feelings of residents are also affected significantly by the environment in which the old people's home is situated. Situating a home in a built-up urban environment, where there are no suitable green surfaces available to residents, does not contribute to a better sense of well-being. The use of terraces, balconies and similar open spaces cannot substitute green surfaces planted with trees and designed for walking and recreation, or simply for sitting and relaxing on garden

benches. We noted with concern that one of the homes we visited has no green surfaces, and that another has given over too much of the site's level ground to a car park, so that the residents are left with scarcely any green surfaces (and those that they have are steeply sloping).

Provision of quality services

11. The people we spoke to during our visits to old people's homes drew attention to the unfavourable relationship between the number of employees and the number of residents. The minimal staffing norms in old people's homes stipulate one employee per 2.5 residents. The stress of the work (daily contact with the mentally and physically ill and with the dying) results in a high incidence of sick leave among staff. The consequence of a lack of staff is poorer care for residents. This is more especially the case since homes are having to cope with a constant increase in the number of the most demanding group of elderly residents - those in care units or sickbays. An increase in dependency, immobility and incontinence demands more intensive care and nursing.

12. Old people's homes are predominantly self-financing: from the fees paid by the residents. Health care is financed by the Health Insurance Institute. It can happen that old people's homes actually have less employees than is dictated by staffing norms: the director of one home we visited explained that otherwise they would be in the red.

13. Although institutional care is defined by law as a non-profit activity, the fear of excessive 'commercialisation' of this activity with the consequent negative effects (the maximum possible number of residents with the minimum operating costs) seems justified. Given that demand greatly outstrips supply, competition between institutions is not a factor. Old people's homes as a rule do not have enough employees to allow bedridden residents at least occasional spells out of doors, in the open air. In one of the homes we visited, the residents denied the management's claim that when the weather is fine they take the bedridden out into the fresh air once a week and in fact told us that some bedridden residents had not been outside the whole year. Given this circumstance we proposed that every time a bedridden resident is taken outside, this should be noted in his personal file along with the date and the name of the member of staff who carried out the service, in this way providing the possibility of acquainting relatives and also the management of the institution with the situation.

Given the lack of staff, many old people's homes avail themselves of the public social security programmes which provide work for the unemployed. They could also make more use of the assistance of those doing civilian service as a substitute for military service. Their help can be extremely welcome - something confirmed by the experience of those old people's homes already availing themselves of this possibility.

Health care activity in old people's homes

14. An increasing number of residents in old people's homes are also sick and thus need treatment or at least medical attention, rehabilitation and more constant supervision. An increasing number come to old people's homes directly from hospitals and they are increasingly demanding as regards health care services, particularly nursing care. Social care institutions are increasingly also becoming health care institutions. The number of beds in sickbays and care units is increasing at the expense of residential units, while in many old people's homes this distinction is already disappearing. Since there are not enough social care institutions, old people's homes also house people younger than 65 who need institutional care because of mental and/or physical disabilities.

15. During our visits to old people's homes we obtained the worrying information that as patients the residents of homes are not always treated under the same conditions as patients not in institutional care when it comes to health care activities. The following accusations were made:

- that a resident is discharged more quickly from hospital on the grounds that he will be taken care of in the old people's home, or is not admitted to hospital for the same reason
- that the very old and terminally ill are not admitted to hospital despite the fact that they need hospitalisation.

The behaviour described could constitute a violation of the patient's right to quality health care. A sick person has this right even during the final stage of an illness, including the right to die with dignity.

Old people's homes do not as a rule provide an uninterrupted quality health care service. In the majority of homes a doctor is only always present in the morning; he comes from the local health

centre four or five times a week for a set number of hours, and in practice is not always even there for those hours. Thus there are frequent cases where a doctor prescribes treatment by telephone without even seeing the patient (on that occasion). In fact in such cases the decision about the necessity of a certain type of treatment/therapy is left to the nurses, who in many homes clearly bear a disproportionate share of the burden of health care, something which can affect the quality of medical services.

16. The development of medical science means a reduction in the mortality rate of patients, while many are, to a varying extent, dependent on the help of others after treatment has finished and need constant nursing. If the state of health of the patient is unchanged, continued hospitalisation is not necessary even though the patient still needs treatment or at least nursing. In keeping with the view that hospital treatment should be limited to the shortest time necessary, health care institutions are keen in such cases to transfer the patient to social care institutions, especially to old people's homes, where however there is usually a lower level of treatment and perhaps too of nursing. A suitable solution could be nursing homes which could relieve the burden of old people's homes and their care units and at the same time guarantee patients treatment, nursing and rehabilitation of the same quality as that provided by other hospitals.

Accommodating a patient in an old people's home is cheaper than hospitalisation in a health care institution. From this point of view it is perhaps a tempting idea to have health care activities for elderly patients carried out in social care institutions. However circumstances show that such a state of affairs can have harmful consequences for patients. Old people's homes are not equipped for demanding medical interventions and do not have enough professionally trained staff , at least not 24 hours a day. As we have already noted, the doctor is generally only present in the morning and on an occasional basis. There are also too few senior nurses. Since there are not enough medical personnel in old people's homes, there are also less possibilities for (quality) health care for each individual. We are not in possession of a more precise analysis of the described situation or of the extent of potential unequal treatment of patients in old people's homes in comparison with hospital patients; however the information collected shows that this is clearly a problem to which more attention needs to be devoted. The question is also raised as to whether supervision of the professionalism of health care in social care institutions is satisfactory and comparable to supervision in health care institutions.

17. In old people's homes, particularly in closed units, sickbays and care units, restriction of liberty or movement occurs with patients being secured to their beds. The use of such measures is only permitted as an extreme remedy if other more pleasant and humane measures are unavailable. Such a measure can only be adopted and ordered in the interest of the person concerned. It may not be used to make life easier for staff, and must certainly not be used as a form of punishment. As a rule the measure must be necessary for treatment, and therefore a medical indication must be given. This requires that every form of securing, no matter how humane in the judgement of the person ordering it (e.g. by a finger on the hand in the case of the need to immobilise the hand), be ordered for the shortest possible time and under suitable constant supervision. It would be right if such a measure were only adopted at the express order of a doctor or at least with his consent. Every use of restraining measures, including the various forms of securing, must be noted in a special register set up for this purpose, and also in the personal file of the person concerned. The record must contain details about the time taken to carry out the measure, the reasons for the measure, the full name of the doctor or other person who ordered or approved the measure, and a report on possible injuries received by the resident/patient as a result. Such a register enables easier control of the use of such measures, which are undoubtedly unpleasant for the person concerned.

Keeping residents informed and the possibilities of complaint

18. The majority of old people's homes do not have a brochure or even a leaflet to give to residents or their relatives on admittance. **We propose that every old people's home should prepare written information of this type which should contain an introduction to the institution, a description of the services offered, the rules of communal life in the institution and also a list of the rights and obligations which particularly concern the individual and his relatives in connection with institutional care.** The brochure or leaflet should be designed and conceived in such a way as to ease the concerns of new residents and make admittance to and residence in the institution easier for them.

An important internal document of old people's homes are the house rules, since these set out in detail the rules, the daily timetable and also the rights and obligations of residents. The house

rules usually also set out the methods of complaint available in the institution to residents and their relatives. It is important that residents are acquainted with the possibilities of complaint - if they are not, these possibilities may as well not exist. A letter box for 'comments and complaints' is not sufficient. A specific person must be designated to whom complaints can be addressed (a social worker, the head nurse or the director) and clear instructions should be provided for the lodging of complaints. Methods of complaint must be accessible without difficulty and easy to use. The guiding principle should be that a complaint is dealt with quickly, thoroughly and fairly. The procedure must be fair, unbiased and confidential. The complainant must receive a precise explanation of the matter. If the complaint is found to be justified, suitable steps must be taken to rectify the mistake or punish irregularities. The principle of dealing efficiently with complaints must be an inseparable constituent part of the institution's efforts to provide quality services.

Occasionally disciplinary proceedings have to be taken against the residents of old people's homes. Disciplinary sanctions can range from a warning to expulsion from the institution. Disciplinary proceedings, including the right to appeal, and so too must behaviour which constitutes a breach of discipline. Although in practice disciplinary proceedings are rare, especially those carrying the most serious sanction, it is nevertheless necessary to write out the rules for such cases in a clear and concise manner that the residents can understand.

Conclusion

19. This section deals mainly with old people's homes and the services which these institutions offer their residents. There is no doubt that in care for the elderly it is of the utmost importance to ensure circumstances that will enable elderly people to live at home or near to their domestic environment (in protected accommodation for example) for as long as possible.

Elderly people must themselves be allowed to choose the most suitable way of passing their old age - something which may change later as they get older or as their health deteriorates. In the case of accommodation in an institution, the respecting of the fundamental human rights of the elderly must be guaranteed. Particularly important here are the right to privacy, the right to one's own style of life, the right to information and the right to take part in decision-making. At the same time the elderly have the right to quality services and activities which ensure a pleasant, carefree, safe and happy old age.

2.2. Social security of disabled persons in the light of applications to the human rights ombudsman

European Social Charter

1. Social security is of special importance for disabled persons. Thus the right of disabled persons to social security is a constitutional category which binds the country to guarantee social rights to disabled persons in accordance with the principle of equal opportunities. The work of the state and its institutions in relation to this socially vulnerable section of the population must be oriented towards providing the same quality of life and social well-being which is guaranteed to other citizens. It is particularly worth stressing the right of disabled persons to independence, inclusion in society, and cooperation in the life of the community. The European Social Charter binds Slovenia to do the following in this field:

- to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;
- to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services;
- to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.

Ensuring an equal social position

2. All groups of disabled persons (be they children and young people with problems in their physical and mental development, disabled workers and other persons with disabled status, invalid war veterans, disabled soldiers and civilian war invalids or other disabled persons without disabled status) must be guaranteed as far as possible an equal social position, beginning with the everyday needs of these various groups of disabled persons.

Respecting the personal dignity of disabled persons requires that regardless of their age or the nature and origin of their disability they are guaranteed the effective exercising of their right to independence. The most effective way that the state can do this is by increasing the possibilities for disabled persons to lead an independent life, so that it enables them to be included and cooperate equally in all areas of life and work.

The state and local communities should do more for the total integration of disabled persons into society and to allow their cooperation in the every day life of society. The constitution guarantees disabled persons, in addition to care, the right to education and training for work and an active life in society. The task of a social state is to create suitable living conditions so that disabled persons do not feel like second class citizens. We are still finding that not all possible measures are being taken, even as regards the removal of (mainly) physical obstacles which make life difficult for disabled persons or which prevent free movement and access to public buildings and public transport.

Education of disabled persons

Education and vocational training are of key importance for the independent life of disabled persons. Economic independence and social security are mainly provided by employment. Knowledge and training are the best recommendation for obtaining and retaining employment. Naturally, training for those professions for which there is a demand on the labour market is especially useful and advantageous. If the acquisition of specific knowledge does not enable employment, then the education or training has not achieved its goal. It is therefore worth adapting education programmes and vocational training programmes to the actual employment possibilities of disabled persons.

Employment of disabled persons

3. The largest proportion of disabled persons are disabled workers. The legal basis for regulating the rights of this category of disabled persons is not unfavourable, either in the case of labour relations regulations, employment regulations or regulations relating to pensions and disability insurance. More a cause for concern than the normative level is the actual asserting and exercising of rights by disabled persons.

It is often not possible to provide a job which matches the remaining ability to work of a disabled person. The processes connected to reducing the number of employees generally mean heavy pressure on those employees who already have disabled worker status, and also on those who have not yet acquired this status but who feel less capable of work because of injuries, illness or old age. We observe that in such cases employees are resorting to procedure after procedure in order to secure more permanent rights deriving from disability insurance, in particular Category I disability which allows a disability pension.

Disabled persons are finding it more and more difficult to get employment, since the market laws of supply and demand are squeezing them out of the labour market. Labour relations legislation guarantees permanence of employment for disabled persons, which means a powerful safeguard. However this legislation is less effective in encouraging employers to offer new jobs to disabled persons. The state will have to do more in this area to make access to employment easier for disabled persons. It will be necessary to encourage employers, by means of tax reliefs and other economic measures, to employ disabled persons.

The requirements of employers are increasing; working hours are getting longer, for example in shops. The working conditions of employees are getting worse in many environments and new disabilities can be expected as a result. In order to prevent this we need to achieve the more consistent respecting of labour law regulations, in particular regulations on safety and health at work.

Acknowledging rights deriving from disability insurance

4. A common thread of the applications received by the Human Rights Ombudsman are claims of incorrectness in procedures for the acknowledgement of rights deriving from disability insurance. Predominant among them are complaints about the duration of proceedings both in the first and second instances (the two stages of the decision-making process). The applications particularly

criticise the work of the invalidity commissions. These commissions act as an expert body in the procedure relating to the exercising of rights deriving from disability insurance. Clearly individual members of invalidity commissions are still acting in a way which places insured persons in an inferior or even humiliating position. These circumstances and the obligation to ensure a correct attitude towards insured persons in the work of invalidity commissions was covered in detail in the 1998 annual report.

5. The rights and (economic) reliefs determined particularly for disabled persons are mentioned and set out in detail in several laws. These laws deal with various areas such as work and employment, education, health, pensions and disability insurance, social care and housing policy, taxes and customs etc. One result of this scattered regulation is that some categories of disabled persons obtain rights or reliefs from several laws, while others are overlooked. The tying of rights and reliefs to the characteristics of an specific group of disabled persons does not necessarily take into account the real needs of each individual, which some people feel as discrimination.

The organisation of disabled persons

6. Another factor important for the respecting of the human personality and dignity of disabled persons is that the state enables and encourages the self-organisation of disabled persons within the framework of various associations as a part of civil society. The appropriate organisation of disabled persons can make an important contribution to the easier asserting of common interests and the satisfaction of the specific needs of this group of the population. By carrying out special social programmes disabled persons' organisations supplement in an important way the social care activities which the state carries out as a public service as part of its care for disabled persons. Here however it would be desirable for the various disabled persons' organisations to find a common language so that useless competition would be replaced by cooperation for the benefit of the common interests shared by all disabled persons. The state must take steps to ensure that it gives no basis for quarrels between various categories of disabled persons or different disabled persons' organisations through unjustified differentiation.

2.3. Protection of the interests of children in proceedings concerning relations between parents and children

1. Children enjoy human rights and freedoms in accordance with their age and maturity. They enjoy all the human rights and fundamental freedoms guaranteed by the Constitution and the ratified and published international conventions, with the exception of those which do not apply to them because of their physical and mental immaturity. In principle children enjoy the same rights as other people, but the Constitution guarantees them special protection and care. Legislation grants them the position of a subject with the proviso that adulthood or the acquisition of full contractual capacity is the milestone which legally separates the child from the adult.

Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child occupies a special place in the area of guaranteeing the rights of children. In 1999 we celebrated the tenth anniversary of the adoption of this Convention. Under the Convention, which is part of the internal legislation of Slovenia and is applied directly, children also enjoy special rights not mentioned by the Constitution. One important advantage of the Convention lies in the fact that it derives from the rights of the child and not from the rights of parents, and in this way emphasises the child as a person. Such an arrangement is based on the recognition that a child is capable relatively early on of expressing his own interest, and this must be taken into account and respected by the state in all activities relating to children.

State bodies, and courts in particular, are applying the provisions of the Convention on the Rights of the Child in an increasing number of proceedings and individual decisions. Such action, which is required by Slovenian legislation, contributes to the promotion of the protection of children's rights. Here of course it is not enough merely to cite the provisions of the Convention or appeal to the rights contained therein as a kind of cosmetic addition in a decision-making process. Only when the Convention's (abstract) norm is applied to a concrete actual situation and is thus used as a legal basis for a decision in a concrete case it is possible to talk about the genuine and substan-

tive use of the Convention as a source of law in the area of the rights of children. The state's task is to implement in everyday life, via its bodies, the rights of children expressed in the Convention on the Rights of the Child. To this end the state is bound to pass the necessary legislative, administrative and other measures for the realisation of the children's rights acknowledged by the Convention. In Slovenia there are still many possibilities and unrealised tasks in the work of the legislative, executive and judicial branches of authority for the complete fulfilment of the obligations the state accepted by signing and ratifying the Convention on the Rights of the Child.

2. The state is bound to protect the family, maternity, paternity, children and young people, and to create the necessary conditions for this protection. Children enjoy special protection and care. Unfortunately we are still noting a gulf between the provisions of the Constitution and the Convention relating to children's rights and the practice of state bodies. The state must always ensure the protection of children when their healthy development is threatened or when other interests of the child demand this. It is bound to intervene if parents do not carry out their duty as parents or do not act in the child's interest. Children who because of lack of physical or mental development are not capable of independently protecting their interests must be guaranteed effective protection. Except in the case of asserting the right to maintenance a child cannot bring an action by which to demand from his parents the fulfilment of their duties as parents. The state is therefore bound even in relation to parents to assert the child's rights in the name of the child.

Measures taken by Social Services Centres and the interest of the child

Exercising of the right and duty of the state to supervise the exercising of the right of parenthood is under the current legal arrangement mainly left to Social Services Centres (CSDs). CSDs can carry out most measures in the interest of the child on the basis of the general authorisation under Article 119 of the Marriage and Family Relationships Act (ZZZDR), under which they are entitled and bound to do everything necessary for the protection and upbringing of the child or for the protection of his property rights or other rights and interests. Unfortunately practice shows that CSDs too often simply fail to use this power or that they use it reluctantly or inefficiently. By acting in this way they merely give those encroaching on the interests of the child erroneous signals which further worsens the already threatened situation of the child. Perhaps the otherwise justified consideration that even bad parents are better than intervention by the state is too much in evidence here. A solution to this dilemma is to be sought in the principle of proportionality: the CSD is bound to use the most suitable measure which will affect the parents and the child as little as possible, provided that this measure achieves the desired effect, i.e. ensuring the good of the child. Worst of all is the decision to let time bring a solution in place of a decision by the competent body in accordance with its responsibilities while taking into account the interests of the child.

3. The legal standard 'the interests of the child' is a value concept which in the procedures and decisions of CSDs takes on, in too many cases, a different meaning to that given by the Constitution and the UN Convention on the Rights of the Child:

- Making a decision about the good of the child frequently only takes into account the will and opinion of adults, while the opinions, will and wishes of the child are taken too little into account or hardly at all, even though the guarantee of the equal protection of rights, the giving of one's own opinion, is also guaranteed to a child capable of formulating such an opinion.

- Children are often the victims of lengthy and inefficient procedures. Such procedures can be the result of uncoordinated work by the individual state bodies taking part in the decision-making process, or even the result of an incorrectly and not sufficiently carefully conducted procedure. Although before making a decision on the rights and interests of a child CSDs must obtain the opinion of an expert commission and carry out an oral hearing, which should generally mean sufficient procedural guarantees, in the case of opposing views from the parents it tends to be almost the rule that the CSD brings an outside expert into the procedure. This gives rise to the feeling that the employees of the CSD wish to shift the responsibility for the decision to a third party, to at least to share it with a third party: it is only deemed necessary to nominate an expert when the body concerned does not have the special knowledge necessary for a correct and lawful decision about a contentious relationship. The inclusion of an expert often means a significant lengthening of the time needed to make a decision, especially if the resolution on appointing an expert made by the body concerned does not specify a deadline within which the expert opinion must be drawn up, or if the body itself fails to keep to the set deadline and does not urge action or take appropriate measures even in the case of a delay of several months by the expert. In administrative procedures managed in this way it is almost the case that the legal

deadline of two months for the issuing and serving of a decision, which applies for decision-making in both the first and second instances, is breached.

- In disputes arising from relations between parents and children the body which takes the decision must provide the parents with the possibility of expressing their views and interests, of making a declaration on the facts important for the decision, and of giving their opinion, which the body then takes into account in making its decision. The equal protection of rights is deemed to be violated if either of the parties is not given the opportunity of declaring itself in a procedure which concerns its rights and interests. This also applies to a decision by a court on which of the parents should be given custody of the child. In deciding on such a matter priority may not be given in advance to one of the parents, since the right of parenthood belongs to each of them. The decision of a court to award custody of the child to a specific parent must be based on a non-discriminatory expert witness procedure and a careful assessment of all important circumstances of both parents. Only such a route to a decision guarantees that the interests of an individual parent are subordinated to the interests of the child in accordance with the principle that the good of the child is the guiding principle of state bodies in all activities relating to children.

- The cases dealt with by the Human Rights Ombudsman show that CSDs make too little use of the possibility of appointing a conflict representative as per the first paragraph of Article 213 of the ZZZDR. A special guardian must be appointed if in proceedings involving relations between parents and children the parties have differing interests and their opinion about what in the given case is the good of the child differ significantly. The body conducting the proceeding is obliged to appoint a special guardian for the child in every case in which it could prove to be the case that the interests of the parents and the child are at odds. The principle of 'equality of weapons' requires that in such cases the weaker party in the procedure is given cooperation through the help of the conflict representative.

- Practice shows that individual CSDs do not have enough experts with legal training to be able to ensure a decision in accordance with the regulations governing administrative procedure. The consequence of this is frequent breaches of the rules of procedure which enable parties dissatisfied with the decision to have the decision overturned in appeal. This leads to the procedure being repeated merely because of formal irregularities which additionally and unnecessarily increase the duration of the procedure. Poor knowledge and mastery of the rules of the administrative procedure also makes it harder for CSD employees to prevent abuses of procedural rights which are usually mainly intended to delay the procedure - which cannot mean acting in accordance with the good of the child.

The dual role of Social Services Centres

4. We have already pointed in previous annual reports to the duality of the jurisdiction of CSDs when in cases involving the same individuals and the same circumstances they play the role of a provider of professional social care functions on the one hand and of an administrative body (with statutory powers) on the other. The duality of the work of CSDs is particularly evident in the area of family law. Often it merely causes a lack of confidence among parties and increases the disagreements which through their work the CSDs should be removing.

The state involves itself in the life of a family via the CSDs if it considers that the interests of the child are threatened. Thus the CSD is the body which, for example, begins proceedings to remove a child from its parents. It begins proceedings because it is convinced that removing the child is a necessary measure to protect the child's rights. A judgement made an advance prevents impartial decision-making, but it is the CSD which makes the decision in the proceedings. Its excessive power, in comparison to the parents and even more so in comparison to the child, is more than evident. Via the CSD the state thus acts as a party in the proceedings and at the same time makes the decision.

Professional social work must be separated from decision-making by the authorities. In order to resolve the problem the most suitable solution would probably be a change in jurisdictional norms by which the responsibility for decisions in family law cases is transferred to (special) family courts, where decisions on these sensitive cases would be left to specialised judges. At the same time the parties in procedures would need to be guaranteed 'equality of weapons' - something which applies in particular when children are involved in the procedure. An important step in this direction was taken with Slovenia's Civil Procedure Act (ZPP), Chapter 27 of which regulates the pro-

cedure in marital disputes and disputes involving relationships between parents and children. The provisions of the ZPP open the doors for greater jurisdiction for the courts at the expense of CSDs and also give greater emphasis to the protection of the interests of the child by enabling the child to take part in the procedure:

- A child over 15 who is capable of understanding the importance and legal consequences of his actions must be enabled by the court to carry out procedural acts independently as a party in the procedure. His legal representatives (who are also the child's parents) may only act in the procedure until the child declares that he is assuming the case himself. A child under 15 or a child whom the court deems incapable of understanding the importance and legal consequences of his actions is represented by a legal representative. If the child and his legal representative have conflicting interests, the court appoints a special representative for the child. The court also acts in this way in other cases if under the circumstances it judges that this is necessary in order the protect the child's interests. The new ZPP therefore sets the procedural capacity of a child in marital and parental suits at 15 years of age.

- A child over 10 who is capable of understanding the importance of the procedure and the consequences of the custody decision must be informed by the child custody court in an appropriate manner of the institution of proceedings and his right to express his opinion. Taking into account the age of the child and other circumstances the judge invites the child to the court for an informal conversation (outside the main hearing and not in the presence of the child's parents) or away from the court through the intervention of a CSD or school counsellor. The child can thus participate in the proceedings by giving his opinion. This is merely a right of the child and he may not be compelled to give his opinion and say which of his parents he would like to live with. The conversation does not take place if this would clearly be contrary to the interests of the child, or when the conversation could even harm the child (perhaps the parents are opposed to the conversation or perhaps the child is too upset by his parents' divorce proceedings).

5. In order to improve the child's procedural position it would be necessary even in a procedure before a CSD to grant the child the position of a party and at the same time provide him with an independent legal representative/counsel who would be the child's guardian for special cases in family law procedures. As subjects of duty towards the child the parents cannot of course assert his rights against themselves in the name of the child (as his legal representatives).

The second paragraph of Article 9 of the UN Convention on the Rights of the Child requires that a child in proceedings for the separation of the child from his parents must, as the affected party, have the possibility of cooperating in the proceedings and of expressing his opinion. Under Article 12 of the Convention the child must have the right in any legal or administrative procedure relating to him to freely express his own opinion if he is capable of forming such an opinion. He therefore has the separate right to be heard either directly or via a representative or appropriate body.

The ratification of the European Convention on the Exercise of Children's Rights, which entered into force in Slovenia on 23 October 1999, meant a new step towards guaranteeing the procedural rights of children and enabling the exercising of these rights and cooperation by children in family law procedures which concern them, be they before courts or before administrative bodies.

The right to contact with both parents

6. The right to personal contacts of parents with their child derives from parenthood, while the rights and duties which derive from parenthood have the constitutional law status of a human right. Above all, however, the child has the right to personal contacts with both parents. These contacts are chiefly justified by the good of the child. Making these contacts difficult or impossible is contrary to the interests of the child. Unfortunately the legal provision that the parent with whom the child lives must allow the other parent personal contacts with the child does not carry an effective sanction.

The applications we have dealt with point to an increasing amount of slow and indecisive action by CSDs in decisions regulating the contacts of parents and children. There are numerous complaints from parents who can only watch powerlessly while the other parent estranges the child from them, the final result of which is a complete breaking of contacts. This area will need to be given more suitable normative regulation so that the rights of the child to personal contacts with both parents will be actually and effectively protected. Even under the existing regulation CSDs should take greater account of the fact that the regulation of contacts between parents and children is an operation in which the interests of the child must be the guiding principle. This requires

the guaranteeing of contacts with the parent with whom the child does not live, except in the case of reasonable grounds, when such action would not be for the good of the child. A model here could be the legal regulation in force in Sweden, which does not talk about the right of parents to contacts with a child but about the need of the child for suitable contact with the parents.

Article 408 of the ZPP gives a general authorisation for the court (also ex officio) to take all necessary measures to protect the rights and interests of children. In this regard it is worth drawing attention to the possibility of more frequent use of the legal provision which gives the court the jurisdiction to decide on personal contacts between parents and children. In an open court procedure there is also a greater possibility of an agreement on the regulation of personal contacts than after the conclusion of a procedure when the decision on the custody of shared children is already known and the negotiating position of the two parents is changed to the advantage of that parent who is awarded custody of the child. Experience shows that in cases where there is no agreement between the parents personal contacts are frequently limited or even (temporarily) interrupted. But this means a danger of the emotional burden for the child, and also for the parents, lasting too long. Longer-lasting unpleasant psychosocial circumstances threaten the child's need for security and acceptance. The child is deprived of choice, begins to hide his feelings and it often seems as though he himself rejects contacts. The personality of the child to whom choice is prevented, or in whom this is even stifled, cannot develop appropriately. Thus the child suffers irreparable harm.

Personal contacts are often largely dependent on the quality of the dissolved relationship of the partners and the capability and willingness of the parents to reach an agreement. Therefore as much involvement and ability as possible on the part of the professionals is needed to confront the parents with their responsibility towards the child and make them understand the consequences which follow irresponsible behaviour such as obstructing or preventing contacts. The problem of regulating contacts often only reaches a successful resolution if it is resolved at the beginning, since the longer the procedure lasts the more the positions of the two parents differ and oppose each other, while the consequences are mainly suffered by the child.

Contacts between the child and his grandparents

7. It is not only contacts with his two parents that are in the interest of the child but also contacts with other people that the child is close to. This applies for example to contacts between the child and his grandparents. The ZZZDR does not contain an explicit provision regulating these contacts, even if the child has lived with has grandparents as part of the family. Thus we dealt with the case of a child who after the death of his mother, with whom he had lived together with his grandparents, went to live with his father. This move led to a break in contacts with the grandparents. Given that the grandparents had for many years been part of the family circle in which the child lived, the simultaneous loss of his mother and of his contacts with them was very traumatic for the child. The CSD rejected the grandparents' request to have their contacts with their grandchild regulated on the grounds that under existing legislation the grandparents are not entitled to contacts with the child. The CSD took into account the view of the father, who was opposed to the request.

The possibility of personal contacts of the child with other people close to him should be provided by legislation in the interest of the child. It should therefore be expressly prescribed that the child also has the right to personal contacts with other persons close to him unless this is contrary to his interests. Because however the CSD is obliged to do everything necessary to protect the child's interests, the possibility of deciding on this type of contact already exists under current legislation, on the basis of the general authorisation of Article 119 of the ZZZDR, which, as we have already mentioned, CSDs use with far too much reluctance.

Violence against children

The state should also play a greater role when the child is the victim of violence in the family. Experience shows that violence against children is often inseparably connected with violence in the family. Children become victims merely by witnessing violence, even if they have not been physically hurt themselves.

Violence in families is often not even perceived by the competent bodies. Because of their psychophysical dependence on their parents, children are powerless and find it very hard to talk about violence in the family, if indeed they will talk about it at all.

Applications relating to violence in the family show that there is no uniform strategy for helping children in cases when it is necessary to act quickly and effectively. In practice the rights of the child as a victim are not sufficiently protected, especially when they come into collision with the inter-

ests of the parents. A typical example is the case of a little girl who for several years was the victim of the selfishness of her father. Although this was a case of serious violations of the child's rights, and all competent bodies were acquainted with the facts, the father was able, without hindrance and disregarding the child's rights and interests, to assert his stubborn will to the detriment of the child for several years before suitable measures were taken by these bodies.

The better protection of children from various forms of violence requires coordinated work by those who are in daily contact with children and those who have jurisdiction in this area: especially among the social workers at CSDs, nursery school teachers, teachers and counsellors in schools, the police, the state prosecution service, the courts, etc. But an effective and integrated approach is only possible with appropriate professional training and interconnection between all the institutions involved in dealing with a specific problem, since if one of the bodies fails to cooperate it can ruin the efforts of the others.

2.4. Violence against women in the family

1. Violence in the family affects everyone - men and women, adults and children. There is no precise data on the frequency of violence against women. All we have are estimates, which do however show that the frequency of violence is a cause for concern and that we need to monitor more carefully the attitude to this phenomenon both at the institutional level and in public. Most of those who have applied to date to the Human Rights Ombudsman in connection with violence have been women. This shows that there is more violence, particularly physical violence, against women than against men. In their applications these women express fear, a feeling of powerlessness and the fact that they cannot see any way out of the situation.

Violence as a violation of fundamental human rights

Violence means a violation of such fundamental human rights as the right to security, the right to a life without fear and constraint, and the right to physical and mental integrity. Physical violence is usually accompanied by mental violence: humiliation, blackmail, threats, control. In dealing with applications we have noted that the protection of victims is poor, especially in the case of violence in the family. Legislation does not give sufficient emphasis to the protection of a victim who as well as receiving insufficient help from the state often does not know how to help herself, which means that the woman remains in the environment in which she encounters violence, or because she is unable to find other accommodation even returns to it. The victim of constant violence often finds herself in an utterly dependent situation and is incapable of a realistic response or of retreating from it. Since violence against a woman who is a mother also has a direct or indirect effect on the children, it also causes lasting harmful consequences to the emotional development and mental health of the children.

Prevention of violence and help for those in distress

2. Women can request help in tackling distresses and difficulties at the CSD. The CSD mainly provides help within the framework of social first aid (help in the definition and assessment of the position, acquainting the applicant with the possibilities of changing it), personal help (professional cooperation in rectifying the problem) and family help at home (professional counselling and help in mending relationships among family members). Help is also offered to victims by civil society, and there are SOS telephones, shelters and mother's homes.

An important role in the prevention of violence, and also when violence is occurring, is played by the police. The help of the police in a critical situation when a victim is exposed to violence can be of decisive importance. It is not surprising that it is mainly women who seek help in such cases, since they are the physically and often also mentally weaker party in violent behaviour. The response of the police to a call for intervention to prevent or stop violence is not always in accordance with the expectations of the victim. Naturally the police cannot be everywhere or be on the spot immediately. At the same time there may be too much reluctance by the police to decide to make an intervention which is contrary to their functions of protecting life, personal safety and property and the maintenance of public order. From this point of view the role of the police is particularly delicate in the case of calls claiming alleging in the family, among close relatives and partners, at home or in other private premises.

Shelters, mothers' homes, safe houses and similar institutions are designed for women and mothers with children who are experiencing distresses and difficulties because of violence or for

other reasons. These institutions provide temporary accommodation in a safe environment, support in tackling material problems, and professional help. Unfortunately there are too few shelters and homes in Slovenia, and at the same time they are unevenly distributed. This means that in some parts of the country they do not exist, which prevents women from remaining in the environment where they are employed and where their children attend school. Stays in these institutions should only be short-term and temporary, but the success of the women staying in these institutions in resolving fundamental problems, particularly the problem of housing, is more the exception than the rule. As a result shelters remain overcrowded and cannot help in addressing other perhaps more urgent cases.

3. Women who are the victims of violence are usually faced by financial difficulties along with their other problems. Many cannot afford to rent a flat. The successful resolution of their housing problems and general financial difficulties is often also hindered by the lengthy legal procedures relating to establishing the extent, share and division of joint property acquired during the marriage or relationship with the partner. These lawsuits, which by their nature and also because of the emotional involvement of the parties, are usually difficult to resolve and therefore lengthy, and courts do not generally deal with them as a priority. Courts should give more emphasis in these procedures to the prevention of procedural abuses, since it is quite common for the party who has the larger share of the joint property in his possession to drag out the procedure as much as possible and delay the decision. The conflict situation, also connected to the length of the legal decision-making process, often causes new disputes which additionally burden the courts with further suits and also with criminal proceedings. Such a state of affairs generally renders agreement between the parties impossible and extends the time needed to reach a decision in contentious relationships with regard to the establishing of extent and share and the division of common property.

There are frequent cases of a lack of funds to pay for legal aid, which once again calls for the introduction of a system of free legal aid. Lengthy and difficult legal procedures are also as a rule expensive. The economically weaker party in procedures involving (former) partners is usually the woman. It would not be right for such women to have to avoid a legal procedure, abandon it or even lose it merely for economic reasons, since they do not have enough money to pay a lawyer to represent them. The provision of accessible legal aid is thus also of special importance for women who are the victims of violence, so that they are not prevented for financial reasons from exercising their rights and legally protected interests.

Divorce proceedings

4. A divorce by mutual agreement enables spouses to end in a human and dignified way a marriage which they no longer wish to preserve, and at the same time to reach an agreement on the division of joint property or on which of them will stay on as tenant in the house which they have shared to date. The main purpose of a divorce by mutual agreement is for the spouses to avoid having to carry on a suit or meet in court after the divorce. Unfortunately the good intention of the legislator has somehow gone to waste, since a divorce on the basis of a suit is cheaper than a divorce on the basis of an agreement. The reason for this state of affairs is the notary's fee, since a contract on the regulation of property affairs must be concluded in the form of a notary's record. Spouses often therefore choose an action, because this is in fact cheaper than a divorce by mutual agreement. Such an action is however neither in their interest nor in the interest of the state.

5. An effective measure for protection against violence when a marriage breaks down is introduced by Article 411 of the ZPP: in the case of a marital dispute the court has the possibility of issuing, on the motion of one of the spouses, a temporary order evicting the other spouse from the joint abode if this is necessary in order to prevent violence. An appeal against a resolution or temporary order of this kind does not delay its execution, which can protect a woman exposed to violence at least until the court ruling issued in the divorce procedure or annulment procedure becomes final. Because this is a new legal provision it would be right for CSDs in particular to explain this possibility, in the case of a marriage breakdown, to women who are victims of violence and to help them use it.

We must not reconcile ourselves to violence

6. The attitude of society to violence against women is in need of a radical change. We need to remove ignorance and tolerance of this form of violence, since this is not only a private matter between two partners. The state should formulate a policy of a coordinated approach to tackling the problem of violence in the family and helping victims by activating a more effective social net-

work, in cooperation with non-governmental organisations and civil society in general. Too often we observe that women who experience violence remain alone in the struggle to find a way out of the violent situation, without the appropriate support of the broader community and the environment. This state of affairs is often also aided by the fact that women do not report violent acts committed against them. In this connection it is important to train social care and health care personnel to recognise cases of violence against women and to act appropriately with women who are victims of violence. It is necessary to spread awareness of the seriousness of the problem of violence and of the fact that all forms of violence against women, whether physical, mental or sexual, mean a violation of human rights. Preventive work has an important role in the prevention of violence. Violence needs to be given an appropriate response, including a policy of sanctions where it is vital that harsher treatment of offenders reduced the number of violent acts committed. A violent person must take responsibility for his actions and accept the consequences of them. Meanwhile the victim must receive appropriate help as soon as possible from state bodies and local government bodies for her reintegration into normal life. In the procedures of exposing and dealing with violent (criminal) acts, the competent bodies can help the victim by ensuring that she only needs give evidence once and will thus not have to describe the tragic events several times over, thus being forced to relive them.

2.5. Initiatives for special ombudsmen

1. In relation to the special position of individual categories of people there are also special mechanisms proposed for the protection of their rights. The reputation and efficiency of the ombudsman on the one hand, and real needs for the special protection of specific vulnerable groups of the population on the other, are certainly among the reasons for the numerous initiatives for the establishment of new ombudsmen for special, more specific sectors or areas. Such initiatives have been particularly frequent recently. The purpose of the present analysis is to present these initiatives together and to display the ways in which they might be realised and the problems which are to be expected.

Variety of applications and areas

2. Most of the proposals for the establishment of a special ombudsman relate to the area of **children's rights.** At the proposal of the Equal Opportunities Commission, the National Assembly proposed, in Point 5 of the resolutions which it passed after reading the annual report for 1997, "that from the point of view of the interests of children the possibility of establishing a special ombudsman for children's rights should be studied". A special ombudsman for children's rights is also proposed by non-governmental organisations. The Friends of Youth League of Slovenia has proposed to the government "the formulating of a law on an ombudsman for children's rights and the initiation of procedures to establish the ombudsman" and also a government children's office. The PIC (NGOs' Legal Information Centre) analyses the need to establish a special ombudsman for children's rights in Slovenia in a special publication entitled 'The Children's Ombudsman'.

In a letter addressed to the Ministry of Economic Relations and Development, the Bank of Slovenia has proposed the foundation of "an independent institution for the protection of consumers in relation to payment transactions". An independent institution for settling disputes should be founded in order to conform with the corresponding EU directive, where in the opinion of the Bank of Slovenia it would be sensible to found such an institution for all financial services: a **banking or finance ombudsman.** Some proposals have appeared for the foundation of an independent institution to intervene in the settling of consumers' disputes: a **consumers' ombudsman.** The need for harmonisation with the legal system of the EU has given rise to the idea of founding a special **ombudsman for the protection of personal data.** In the 1998 annual report, in our analysis of the exercising of the right to information of a public nature, we ourselves proposed that a special statute governing the exercising of this right should also envisage the establishing of a special **information ombudsman.** This ombudsman would intervene in the exercising of the right to information of a public nature. At professional conferences and in public, ideas have been put forward on a number of occasions about establishing a **media ombudsman** who would intervene in disputes between individuals and public media, and a **medical ombudsman** to receive and deal with complaints relating to health care activities. In Slovenia as elsewhere in the world, the expansion of the activities of homes for the institutional **care of the elderly** will raise the question of informal mechanisms for the protection of the rights of residents in these homes. Some organisations for disabled people

intend to proposes the establishment of a **ombudsman for the rights of the disabled.** The City of Ljubljana is considering introducing a **city ombudsman,** to mediate between citizens and civic bodies. The Association of Tenants of Nationalised Housing proposed to the government at its 1999 general assembly the appointing of a **housing ombudsman.** The proposal is justified by the lack of success in establishing the councils for the protection of tenants in municipalities envisaged by the Housing Act (SZ) and the need for the ombudsman to deal not only with violations of the rights of tenants in relation to the state, but also in relation to the owners of property. Last year we gave our opinion to the pupils and headteacher of the Jože Plečnik Grammar School on the draft statute of the pupil's parliament which envisaged the establishing of a **pupils' ombudsman.**

It is clear from the above that the initiatives are very diverse and at various phases of elaboration. Some envisage that a new institution, while in principle striving to promote the interests of special groups, would also deal independently with individual complaints or offer its conciliation or arbitration services in disputes.

Various grounds for special ombudsmen

3. The Human Rights Ombudsman is interested in the effective exercising and protection of the rights of citizens and other inhabitants and in more effective mechanisms for the protection of special groups, even in areas which he himself does not cover, particularly in the private sphere. For this reason we do not oppose the establishing of new ombudsmen, although before replying to the question of whether we need special ombudsmen, and if so, which ones, we would need to clarify certain systemic and constitutional issues, and follow the principles of rationality and efficiency in the introduction of new mechanisms.

4. The basis for establishing the Human Rights Ombudsman is given by the first paragraph of Article 159 of the Constitution, which defines the operational goal of the institution (the protection of the human rights and fundamental freedoms of individuals) and the extent of his powers (only in matters involving state bodies, local government bodies and statutory authorities). The second paragraph provides the legal basis for establishing special ombudsmen empowered by statute to make determinations on particular subjects.

Slovenia's national Human Rights Ombudsman is a type of parliamentary ombudsman working at the state level. He is also empowered by statute to work at the local level. No ombudsman model or ombudsman scheme exists which could be summarised and transferred from one state system to another. Every country has developed its own ombudsman or ombudsmen model, and these models differ from each other in numerous systemic solutions and details.

Between the public and private sectors

5. Regardless of this variety, it is possible to further divide ombudsmen into two main groups: **public sector** ombudsmen and **private sector** ombudsmen.

Undoubtedly most important among **public sector ombudsmen** is the **parliamentary ombudsman,** who covers the whole of the country. He is appointed on the basis of the constitution or by statute. This group also includes certain ombudsmen who because of special features of the constitutional systems of individual countries are not appointed by parliament but by the executive or the president of the state or various combinations of the two. Into this category we could also place **special ombudsmen** who protect special target groups of the population. These can be appointed by parliament although they most frequently work within the framework of the executive. Special ombudsmen in the Scandinavian countries, for example, can be placed into this group. These ombudsmen are appointed by the government (thus they are **government ombudsmen**) and are subject to the supervision of the main, parliamentary ombudsman. The third group are **regional, local** or **city ombudsmen,** who work exclusively at the level of local communities and are completely independent of state bodies.

Private sector ombudsmen supervise the non-governmental subjects which appoint and finance them. They are usually set up by large private providers of specific services who wish in this way to convince their business partners that they are interested in a high level of services and in dealing seriously with their complaints. Often companies are encouraged by the state to establish such ombudsmen, sometimes via the legislation which regulates the mechanisms of incentives and sanctions in a specific field.

6. The division of ombudsmen into public sector ombudsmen and private sector ombudsmen does not have to be very consistent. Various combinations of the two are also possible. The state can

prescribe the appointing of ombudsmen working in the private sector and co-finance them. Meanwhile private sector institutions can join a public sector ombudsman 'scheme'.

However, given conditions in Slovenia and taking into account the provisions of Article 159 of the Constitution, the combination of an ombudsman working in both the public and the private sectors would be questionable. In this case a number of additional questions would be raised. If the ombudsman had specific powers in matters involving individuals or other civil subjects - in order to be effective he would need at least the right to request and obtain specific information from them - **the question of the constitutional basis** for such powers would be raised. In this case the ombudsman would act like a state body in relation to subjects of civil law, which would lead to a question of the constitutional authorisation for such action and the mechanisms to protect the rights of these subjects which could be affected. The Constitution does not allow interventions by state bodies without a constitutional and statutory basis. This question raises itself in particular in the cases of a potential ombudsman for children's and consumers' rights, since in the majority of cases the violators of rights are private individuals or legal persons. Of course it is possible to extend the powers of the ombudsman to subjects of civil law, but these must assent to this voluntarily, and the state may only encourage them to do so through its mechanisms.

Special ombudsmen can also be in the framework of the government

7. Of course, dealing with individual cases of violations of the rights of individuals is not the only role of the ombudsman. He also deals with more general issues of the violation of rights and proposes to state bodies measures for rectifying them and above all for removing the causes which lead to violations of rights. Another important function is promoting the harmonised, efficient and citizen-friendly work of the bodies which he deals with. **Special ombudsman can therefore be established within the framework of the government,** where they can even have a more effective influence on the harmonisation of the work of government bodies and non-governmental bodies in individual sectors. Legislation and other regulations are also usually prepared within the framework of the government, and so a government ombudsman can have an important role in the **harmonisation of regulations** which encroach on the position of the group which he represents. Also important is the **promotional and educational role** of ombudsmen, which can likewise be successfully carried out within the framework of government powers.

There are already a number of offices working within the framework of the government which deal with and take care of special target groups. These are the **nationalities office,** the **women's policy office,** the **office for the disabled** and the **religious communities office.** Within the framework of the Ministry of Economic Relations and Development there is also the **consumer protection office.** These offices can successfully carry out a large part of the functions we have mentioned, in particular with regard to the harmonisation of policy within the framework of the government. There remains the question of dealing with individual applications. So far government offices have passed individual complaints addressed to them to the Human Rights Ombudsman. Thus the ombudsman can continue to deal with all complaints from all the sectors mentioned and in matters involving state bodies, local government bodies and statutory authorities. It is also possible to **orient the work and responsibilities of government offices towards dealing with individual cases** to a greater extent. The only office missing is an office for children's rights, which could carry out a greater part of the functions cited by those calling for the establishment of a children's ombudsman.

Possibilities for the rational and effective establishing of special ombudsmen

8. Slovenia is a relatively small country both in terms both of number of inhabitants and economic strength. It is therefore necessary when establishing new state bodies to take into account the **aspect of rationality.** Establishing new independent institutions is also related to suitable organisational and logistic support. Such costs would be unjustified given the relatively small number of cases to be expected (in the light of our experience) in individual sectors.

Possibilities for carrying out the functions of special ombudsmen in individual areas, if these should prove necessary, also exist **within the framework of the institution of the Human Rights Ombudsman.** Such a solution is certainly more rational than establishing completely new institutions since the costs of the accompanying personal and technical support are reduced. Furthermore it is possible, in the light of the number of applications received, to ensure a more uniform burdening of those responsible for specific functions. The Human Rights Ombudsman Act (ZVarCP) envisages the function of deputy ombudsmen with powers for individual more specialised areas, who have with regard to these areas, the same powers as the ombudsman. Statute pro-

vides for a minimum of two and a maximum of four deputy ombudsmen. If it turned out that in this way it was possible to provide more effective protection for special groups of individuals, it would be necessary to increase by law the upper number of deputy ombudsmen.

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9. In the light of the above, proposals for the establishment of special new ombudsmen can be realised in the following ways:

- by establishing a special ombudsman by statute (in the public sector) or founding act (in the private sector)
- by establishing a special ombudsman by special or sectoral statute, where the performance of his function is temporarily or permanently entrusted to the Human Rights Ombudsman
- by establishing an ombudsman by special or sectoral statute, where his function would be performed by one of the deputy ombudsmen
- by establishing new government offices or transforming existing government offices.

Each of these methods has its advantages and disadvantages, and therefore for each area special analysis would need to be carried out of the need for informal protection of special groups of the population or a specific category of rights, and solutions would have to be adapted to this. Given the relatively small number of cases expected in individual sectors, the most rational solutions are appropriate transformation or expansion of the competences of government offices, or one of the possibilities within the framework of the existing institution of Human Rights Ombudsman.

3. Issues dealt with

In this chapter of the annual report we present our now customary review of problems by individual areas. We present new problems and those with which we have already been dealing for some time, but whose solution is a lengthy process. Because the nature of the problems varies, for some areas we describe the more interesting and important problems deriving from just one or a few of the applications dealt with, while for other areas we summarise the common characteristics which are a summary of frequently discovered inadequacies or a widespread problem. The completeness of the presentation of the problems dealt with is also helped by the descriptions of individual cases which we present in the final chapter of this report. The chapter contains cases which only have a specific importance.

Who can be a qualified applicant

In the past year we have encountered doubts as to who is entitled to initiate proceedings at the ombudsman's office. In reference to a case which we describe under the section on denationalisation (below), the Ministry of Culture (MK) explained that it understood the provisions of the Human Rights Ombudsman Act (ZVarCP) to mean that the ombudsman could only deal with applications from individuals, in other words from natural persons but not from legal persons. This view was mainly based on the provision of the first paragraph of Article 27 of the Act, according to which applications must be marked, inter alia, with the personal details of the applicant. The question they asked was: what human right and fundamental freedom can be violated in the case of a legal person?

Articles 9 and 26 of the ZVarCP stipulate that proceedings at the ombudsman's office can be initiated by anyone who believes that his human rights or fundamental freedoms are violated by the act or action of a state body, local government body or statutory authority.

Under Slovenian law the holders of rights, liabilities or legal benefits may either be individuals or legal persons and others (see for example Article 1 of the General Administrative Procedure Act). The principle of the equality of legal subjects applies. Legal persons enjoy the same rights as natural persons - with the exception of those rights linked to the human being as an individual (personal integrity, family relations, the right to vote, conscientious objection, etc.).

Under the Constitution and the ZVarCP the ombudsman is responsible for the protection of human rights and fundamental freedoms. Since this is precisely the wording of Chapter II of the

Constitution, there can be no doubt that the protection of all rights set out in this chapter lies within the jurisdiction of the ombudsman. Among these rights are many which are by no means limited merely to the individual (autonomy of universities and other colleges of further education, special rights of the indigenous Italian and Hungarian national communities in Slovenia, the position and special rights of the Romany community in Slovenia; but also some basic rights: equality before the law, equal protection of rights, the right to legal remedy; and eventually the right to private property).

Under the European Convention on Human Rights and Fundamental Freedoms (ECHR), which is applied directly under Article 8 of the Constitution, the second group of rights listed in the previous paragraph must also include the right to fair procedure; Article 1 of the first protocol to the ECHR explicitly extends the respecting of property to every legal person.

Under Article 34 of the ECHR the (European) Court (of Human Rights) may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation of the rights set forth in the Convention or the protocols thereto. In practice the Court evidently interprets this provision rather broadly, since it has, inter alia, accepted applications or complaints from private schools (in relation to the capping of school fees) and several Greek monasteries (in relation to encroachments by the state on their ownership, wherein it took the position that the right of ownership is undoubtedly a civil right in the sense of Article 6 of the ECHR).

An important remedy in Slovenia's legal system for the protection of human rights and fundamental freedoms is the constitutional complaint. The conditions for lodging a complaint against individual acts are set out in Article 50 of the Constitutional Court Act in a way very similar to the conditions for submitting applications to the ombudsman. The Constitutional Court deals with the complaints of both natural and legal persons. A legal person can of course only legitimately lodge a constitutional complaint when it can claim that a right appertaining to it as a legal person has been violated.

During the discussion of the standing orders of the office of Human Rights Ombudsman on 15 September 1995, the National Assembly Committee for Internal Policy and Justice took the view that the possibility of applying to the ombudsman may not be restricted to individuals, since 'formal and informal groups' are also entitled to this. The text of the standing orders should therefore include, alongside individuals, 'all other possibilities'.

For the reasons we described in our opinion that the word 'everyone' in Articles 9 and 2 of the ZVarCP does not only mean natural persons. The text of the first paragraph of Article 27 of the ZVarCP on the personal details of the applicant as a compulsory element of the application only means that (every) applicant must identify himself with sufficient precision in his application. We have consistently taken this view in practice since the institution of ombudsman was founded, and we have therefore stuck to it even in the face of the opposition described.

3.1. Fundamental constitutional rights

Under the heading 'constitutional rights' we place applications involving the violation of one of the fundamental constitutional rights. This does not mean, however, that we do not also deal with such cases within the framework of other areas of our classification. The number of applications in this area remains at the level from previous years, but their internal structure has changed. The number of applications regarding violations of the protection of personal data and the publication of the names of persons suspected of criminal offences ('trial-by-media') has increased, while the number of applications regarding violations of children's rights and the work of the security services is low and falling. The majority of cases which we have classified under violations of constitutional rights, however, are extremely varied individual cases of breaches or alleged breaches of fundamental constitutional rights which are difficult to put into categories.

We are also receiving applications of types we have not dealt with in previous years: we have received a number of applications about the placing of surveillance cameras in the communal areas of residential blocks and lodgings for single people. The applicants believe that the placing of surveillance cameras is an encroachment on their personal rights, since they enable supervi-

sion of the movements and personal conduct of individuals, or even encroachment into their intimate sphere. The administrators or owners of premises in which the cameras are sited state that they have been placed there purely for security reasons. It will only be possible to give a final answer on the justifiability of such an encroachment on personal rights after a thorough weighing of the advantages and disadvantages of the introduction of such a form of supervision. Only judicial case-law will be able to provide the criteria to decide when the placing of surveillance cameras is justified and when it is an unjustified encroachment on privacy and personal rights.

The cases dealt with this year and in previous years give a sufficient basis for the assessment that there are no serious or systematic violations of fundamental constitutional rights in Slovenia. However, when a breach of any of the fundamental constitutional rights does occur in individual cases, the competent state bodies, particularly within the framework of the judicature, usually take sufficiently effective measures in accordance with statutes that the intervention of the Human Rights Ombudsman is not necessary.

Acquisition of personal data for the assertion of rights before state bodies

A applicant did not receive from a police station the information he had requested on the causer of damage to a residential building. He wanted to claim damages from the causer of the damage, via the courts if necessary, but he did not have all of his personal details. The incident was dealt with by the police station, which informed the applicant that administrative offence proceedings had been brought against the perpetrator, but did not provide him with the personal details requested. The applicant asked us to intervene with the police to obtain the data he needs to bring an action.

Article 105 of the ZPP stipulates that applications to a court must contain the name and permanent or temporary residence or registered office of the parties. If the application does not contain all the necessary information, the court requests the lodger of the application to correct or supplement it (first paragraph of Article 108 of the ZPP). If the lodger of the application does not correct or supplement his application so that it can be dealt with, the court rejects it (Article 108/4 of the ZPP). The same applies to other procedures. If for example administrative offence proceedings are initiated by the injured party, the proposal must among other things state the full name of the perpetrator of the offence and his address (Article 105/6). The fifth paragraph of the same article stipulates that a proposal for the initiation of administrative offence proceedings must include information on the identity of the perpetrator (full name, date and place of birth, profession and employment, address). The Protection of Personal Data Act (ZVOP) states that the user of personal data must be authorised by statute to obtain this data unless he has the permission of the individual to whom the data relates (Point 6 of Article 2 of the ZVOP). We have already criticised in previous reports the practice of state bodies which interpret the provisions of the ZVOP very narrowly and are not prepared to accept the obligation and responsibility of supplying data to entitled individuals who need this data in order to assert their lawful rights or interests. Such an attitude is in a sense understandable, since the providing personal data to someone who is not entitled to it is a punishable offence. The manager of data collections must be 'covered' by lawful grounds, as stipulated by the ZVOP, before he can provide the data.

We have also represented the view, as is evident from our annual reports, that the competent state bodies must enable the communication of personal data when this is requested by injured parties in order to assert their lawful rights. Neither is it disputable in theory that the legal basis for obtaining personal data needs to be interpreted broadly or in such a way that it is not necessary to explicitly determine a specific user authorised to obtain data. It is enough that he is determinable. Thus a subject (a natural or legal person) of whom the law in specific cases requires that he provide data about another person is counted as an authorised user. We also encounter such cases when procedural laws require those lodging applications to the court to state some personal details about the individual who is the party to or participant in such a procedure.

In the area of the protection of personal data frequent conflicts occur between different rights, including those which are constitutionally and legally protected. In such cases it is necessary to consider which right takes precedence in a concrete case. On the one hand there is the right to the protection of personal data, and on the other the right to judicial protection or the asserting of some other right or interest. In such cases the manager of the personal data collection must consider whether the concrete case is covered separately by regulations, which right will be given precedence, and on this basis whether or not to provide the personal information which has been requested.

The ZVOP states that personal data may only be used for lawful purposes, and it is therefore necessary to solve the question of **the way in which a user will prove to the administrator of personal data** that he needs the requested data for such a purpose. In the case of applications before a court or other state body, the user must document in some way the fact that he is exercising such rights.

A new basis for the acquisition of personal data for petitioners exercising their rights before state bodies is defined by a new provision of the fourth paragraph of Article 11 of the ZVOP. This provision stipulates that the manager of a central population register or records of registered permanent or temporary residents must provide the individual or legal person or other organisation the full name and address of the person against whom he/it is exercising or protecting his/its rights before state bodies, local government bodies or statutory authorities in the manner stipulated for the issuing of an attestation. However in this case the petitioner must be in possession of details which unambiguously define the person whose address he wishes to obtain. We feel that in this way it will be possible to resolve many of the difficulties of those who till now have had problems obtaining the personal details of individuals against whom they have been exercising their rights, for example in legal actions before state bodies.

We proposed to the applicant that he return to the police station with his request for the personal details of the causer of the damage together with proof (a duplicate of the lawsuit or the court report that has to complement a lawsuit) that he needs the data in order to exercise his rights before state bodies.

Customs Service Act does not contain the possibility of complaint by an individual

The Customs Service Act entered into the force the day following its publication in the Official Gazette of the Republic of Slovenia, i.e. 14 July 1999. Chapter Four of the Act is given over to the powers held by authorised official personnel of the customs service. Some powers are of such a nature that they are comparable to the powers of the police under the Police Act (ZPol).

Customs officers and inspectors may inter alia invite people into official premises, seize documents, stop, inspect and search any vehicle, enter certain facilities, inspect business premises and other premises (an inspection of business premises without consent requires a court order), carry out a search of a person etc. The search of a vehicle can be carried out even in the case of grounds for suspicion (which is a relatively low level of likelihood) of a violation of customs or excise regulations or other regulations whose implementation is the responsibility of the customs service. Suspicion that these regulations are being breached or have been breached is also sufficient grounds for a personal search.

Without a doubt these are powers which in the case of abuses or arbitrary encroachments change from their lawful purpose into violation of human rights and fundamental freedoms. The state needs an effective customs service, but it also needs effective supervision with appropriate and sufficient guarantees which effectively prevent abuses. In this regard the Act mentions the rules of the code of ethics of employees of the customs service and the regulations on the method of implementing customs powers prescribed by the minister responsible for finance at the proposal of the general director.

The Act does not however contain any provisions on methods of complaint for an individual who feels that his rights or freedoms have been violated by the behaviour of authorised official personnel of the customs service. Neither are there any provisions as to the legal route an individual can take when he feels that an authorised official person has made or mistake or merely acted incorrectly. The Act does talk about disciplinary responsibility but the individual is not the proposer in disciplinary proceedings.

Even in the case of the Customs Service Act we can thus encounter a legal vacuum in the area of (informal) methods of complaint. The affected individual should be enabled an effective method of complaint which guarantees a rapid, affordable and correct decision on his complaint. The public should be acquainted with the possibilities of complaint and be alerted to them.

The Customs Service Act mainly asserts the interests of the state, whereby it overlooks the fact that the individual concerned must also be a subject in this relation and must be guaranteed the right to an effective method of complaint, especially with regard to the extent and nature of legal powers. The individual is only left with judicial protection, which can be time-consuming and is not always affordable or accessible to everyone.

3.2. Restrictions of personal freedom

3.2.1. Detainees and convicts serving sentences

Persons in custody are that section of the population which perhaps most frequently applies to the Human Rights Ombudsman. Detainees and convicts serving prison sentences submitted 147 written applications in 1999, while the number of phone calls was several times this number, since persons in custody are allowed to call the Human Rights Ombudsman using a freephone number from the institution where they are detained or serving a prison sentence. Applications do not only arrive directly from persons in custody themselves but also from members of their family, particularly their wives or partners and also their parents. Last year, as every year, we listened with special attention to the difficulties and distresses of persons in custody, since this is required by the fact that these are people marginalised on the edge of society who live their lives behind high walls in conditions where they are deprived of their liberty and where their fundamental human rights and freedoms are restricted.

Through our interventions we wish to draw attention to the fact that prisons must also be safe for the mentally and physically weakest prisoners. Each of them needs to be guaranteed respect of his human personality and his dignity even when deprived of his liberty and when serving a prison sentence. We intercede for treatment which encourages and prepares convicts for life on the outside, so that they will no longer repeat their offences. We especially stress the need for persons deprived of their liberty to be enabled contacts with their family and relatives, since contacts with the outside world can be an important contribution to the resocialisation of a convict.

In dealing with the issue of persons deprived of their liberty we most frequently cooperate with prisons and the National Prison Administration (UIKS) at the Ministry of Justice (MP). The response of these institutions to our criticisms, and also our proposals and recommendations, is correct - something which is also shown in the numerous improvements and changes which are the result of our intervention.

In 1999 we carried out detailed inspections at three prisons: Koper Prison, Dob pri Mirni Prison and the Murska Sobota department of Maribor Prison. Additionally we made 14 short visits (some unannounced) to almost all prisons in Slovenia and had conversations with 132 prisoners.

New legal regulation of implementation of prison sentences ever closer

The Implementation of Criminal Sanctions Bill had its second reading in the National Assembly in 1999 and was passed in March 2000 just as preparations for this annual report were being completed. After it has entered into force it will be necessary to issue the appropriate executive regulations as soon as possible - at least within the legal deadline of one year - including the most important among them, the regulations which will regulate in more detail the implementation of prison sentences.

In order to conform with the provisions of the new Act and the regulations issued on its basis it will be necessary to pass again or at least significantly change and complement the house rules of prisons. The introduction of new legal bases for the treatment of convicts serving prison sentences will be a new opportunity to pass an integral, complete and coordinated internal regulation which will determine more precisely the life and work of convicts in prisons. It is appropriate that for convicts who do not understand Slovene the house rules are translated into one of the world languages or languages of the countries from which a considerable part of convicts serving prison sentences come.

Prisons are overcrowded

Slovenia is increasingly encountering a problem typical of several European countries: prison overcrowding. The number of prisoners in Slovenia has been growing constantly since 1996 and in this period has increased by approximately a third - or by more than 10 per cent annually. At the end of 1999 there were more than 1000 prisoners. Overcrowding is most noticeable in closed prisons - i.e. prisons with a strict regime.

Such a state of affairs affects the living conditions and general conditions of people in prison - not only their comfort and feelings but also relations between prisoners. A greater number of prisoners means more convicts in bedrooms designed to house groups of prisoners. In Dob Prison up to 12 convicts are accommodated in some rooms. In a few years the number of convicts in some departments of the prison has almost doubled.

A consequence of prison overcrowding is that in many prisons the regime is stricter and less agreeable for the convicts. The Dob Prison authorities justifies the use of stricter measures for convicts

serving prison sentences with the claim that the convict population has changed and requires a greater emphasis on security and stricter supervision. There is no doubt that questions of security, order and discipline in a prison is also related to the number of convicts, especially when there are more of them than the prison is designed for. The consequences of a greater number of prisoners are not only felt by convicts in their living quarters but also during visits, telephoning and time outdoors. Thus it is not surprising that bedrooms are shared by smokers and non-smokers, that during visiting hours the visiting rooms are thronged with convicts and their visitors and there are not enough chairs for everyone and even a minimum degree of privacy is difficult.

Housing a larger number of people than a prison is designed for cannot conform to the health, hygiene and treatment demands of the implementation of a prison sentence. Measures to prevent (even further) overcrowding of Slovenia's prisons need to be passed and implemented as soon as possible. At the same time short-term measures are also needed in order to mitigate the harmful consequences of housing too many prisoners in a given prison.

On 30 September 1999 the Committee of Ministers of the Council of Europe adopted Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation. The Recommendation draws attention to the problem of prison overcrowding and recommends to member states the passing of appropriate legislation and practical measures guaranteeing the human treatment and the respecting of the dignity of everyone deprived of his liberty. It stresses as a fundamental principle that the deprivation of liberty is an extreme measure which should only be stipulated and used if another sanction would clearly be inappropriate given the gravity of the criminal offence. It recommends so-called alternative criminal sanctions which the law should envisage instead of the deprivation of liberty. It encourages measures which reduce the length of the actual serving of the sentence (e.g. conditional discharge) and at the same time emphasises the principle of individualisation, whereby the implementation of a criminal sanction is adapted to the character of the offender.

Slovenia has already made the first steps in the direction of introducing alternative criminal sanctions. Thus the fourth paragraph of Article 107 of the Penal Code gives the court the possibility of substituting a prison sentence of up to 3 months with work on behalf of humanitarian organisations or the local community. As a substitute sentence this special form of implementing a prison sentence will gain its useful value with the introduction of the procedure to be prescribed for its implementation in the new Implementation of Criminal Sanctions Act. Something else which will have an effect on overcrowding in Slovenia's prisons will be the possibility also envisaged in the Implementation of Criminal Sanctions Act that convicts who fulfil prescribed conditions may while serving a prison sentence work at the normal place of work and live at home, except on days off, when they must stay in the prison.

Practice will show whether the existing catalogue of alternative criminal sanctions is enough, or whether it will be necessary to enact some other substitute for a prison sentence, including one of those contained in the Council of Europe recommendation mentioned above. Above all it is to be hoped that alternative criminal sanctions will be used more in (court) practice, since this could make an important contribution to the reducing and eliminating overcrowding in prisons. Of course the introduction of alternative sanctions is above all related to punishment policy as a part of criminal policy: how and with what means should the state most sensibly and most effectively fight crime. Here it is worth stressing that criminal policy does not only mean suppressing crime through repression, but first and foremost by ensuring a system of suitable crime prevention measures.

Among the short-term measures for relieving the problems of overcrowding it is worth stressing measures by means of which the time spent by prisoners in living spaces is reduced (e.g. employment of convicts in various ways, free-time and employment activities). Overcrowding in closed prisons could also be mitigated by a suitable policy of transferring convicts to prisons or departments with a semi-open or open regime, where problems of space are not yet present.

Unsupervised contacts of a detainee with the Human Rights Ombudsman

The second paragraph of Article 51 of the Regulations Implementation of Detention regulates the supervision of the detainee's telephone conversations. It stipulates that the telephone conversations of a detainee shall be supervised, except conversations with his legal representative or with a diplomatic or consular representative of his country. Since this clearly a taxative listing of cases where the telephone conversations of a detainee are not supervised, the Regulations should specify the same privilege for the Human Rights Ombudsman.

Article 42 of the ZVarCp gives the ombudsman the right to hold a conversation with persons in custody without the presence of other persons. Under the third paragraph of Article 213b of the Criminal Procedure Act (ZKP) the ombudsman may visit a detainee and correspond with him without prior notice or the supervision of the investigating judge. The prohibition of supervision which applies to visiting and corresponding naturally also applies to other contacts that the Human Rights Ombudsman has with a detainee. We have therefore proposed an addition to the Regulations such that the permitted unsupervised telephone conversations of a detainee shall also include conversations with the Human Rights Ombudsman. The Minister of Justice has assured us that Article 51 of the Regulations will be suitably changed or supplemented as soon as possible.

As derives from the legal provisions cited, any kind of court supervision of a detainee's correspondence with the Human Rights Ombudsman is unlawful and counter to the purpose of this institution. Despite this we occasionally identify violations even in this area.

Thus Velenje County Court sent us seven letters from a detainee addressed to the Human Rights Ombudsman. Enclosed with the packet of letters was a letter from the court explaining that the detainee's letter had been mistakenly opened and checked. The judge who had thus carried out supervision of the detainee's correspondence explained that the mistake occurred because she had not expected letters for the ombudsman among the mail since they should have been sent directly to the Human Rights Ombudsman by the prison where the detainee was in custody.

The president of the court and the judge of the Velenje County Court confirmed that with the inspection of mail addressed to the Human Rights Ombudsman described here the law was violated. The judge apologised for the mistake and gave an assurance that it would not happen again.

Court President does not visit detainees regularly

Supervision of the treatment of detainees is carried out by the president of the county court in the area that the institution holding the detainees is situated. He may visit a detainee at any time, talk to him and receive his complaints. But at least once a week the president of the court or a judge specified by him must visit detainees and ask them, without the presence of warders if he feels this necessary, how they are being treated. He is bound to take whatever steps are necessary to remove irregularities noted during his visit to the institution.

A detainee in the Celje juvenile detention centre and prison drew attention to the fact that the president of the Celje District Court does not visit detainees regularly. On the basis of entries in the 'Prison Rounds Book' we discovered that in the period to which the applicant referred no visits took place in the last two weeks of August and the first week of September 1999. The court president explained that he makes the visits regularly every Thursday and is also available to detainees outside this time if they request this. He only fails to appear when objective circumstances such as urgent meetings, hearings, etc. prevent this.

The ZKP specifies no exception to the president of the court's liability to visit detainees at least once a week. If he is prevented from making the visit the detainees shall be visited by a judge designated by him. There can therefore be no excuse if this form of supervision is not carried out at least once a week. In reply to the warning that it is necessary to ensure regular weekly visits to detainees in Celje Prison the president of Celje District Court confirmed that in the future the court will carry out this legal liability regularly.

The state must guarantee the security of all persons serving prison sentences

The complaint was convicted of sexual assault on a child. Shortly after arriving in the prison where he was to serve his sentence he noticed that he was unwelcome among his cellmates. He asked to be moved to another room, while his cellmates also requested that he be moved, 'otherwise we'll do something about it ourselves'. The warnings were in vain, the prison clearly did not do anything, or not enough. The applicant was physically attacked by his fellow convicts and seriously injured. Dob Prison thus violated one of the fundamental principles of prison sentences - that it is obliged to ensure the security of convicts.

The incident did not only cause serious injuries to the applicant, it also had consequences for his state of mind. He claims that he sees every convict in Dob Prison as a potential assailant. Undoubtedly a contribution to this feeling is the fact that the perpetrator (or perpetrators) was (were) never tracked down and punished, which cannot contribute to the prevention of a repetition of such behaviour. Afraid of a repeat attack the applicant has not made use of his right to take

exercise in the open air. Because he feels threatened he proposed a transfer to another prison, but his request was rejected on the grounds that 'the employees of Dob Prison will protect the convict from potential new attacks by a fellow-prisoner with all the measures and means at their disposal'. The applicant's appeal was also rejected on the grounds that Dob Prison has 'the greatest possibilities of guaranteeing the convict's security'.

Although Dob Prison may have the greatest possibilities of guaranteeing security, the convict, despite this assessment of security conditions was in this very prison the victim of a physical attack by fellow prisoners, despite a timely warning about what was going to happen. It is not therefore difficult to understand the applicant who, concerned about his own security, proposed a transfer to an environment where he will at least feel safer.

We have stressed several times that all reasonable measures should be used to prevent physically and mentally stronger prisoners from molesting or settling scores with weaker prisoners. If it is not possible to guarantee security in the prison where the convict is situated (as clearly turned out to be the case here), it is necessary to take suitable measures, including transfer to another prison. The feeling of the prisoner himself that (because of serious and already carried out threats) his safety is more at risk in one prison than in another, where his fellow prisoners are less hostile or do not know what criminal offence he has been convicted of, is not entirely without importance. Transfer to another prison (although only temporary) can be effective, merely because the prisoner is moved out of the way of explicit threats, which unfortunately was not done in the applicant's case.

Prisoners who respect the rules and discipline and are thus entitled to extramural privileges are sometimes exposed to the 'convict underworld' which views them with mistrust, tries to harm them and compromise them in front of the prison staff. It would be wrong if it were to prevail as a negative value if a convict respects the rules and tries by means of a model life and model work in the prison to obtain trust (particularly the trust of the education service) and extramural privileges. Convicts who make efforts in the right direction should be helped by prisons - which must also give them suitable protection, perhaps by accommodating them in a separate block.

The use of forcible measures and a delayed disciplinary procedure

A convict serving a sentence in Dob Prison complained that on 16 December 1998 authorised official persons (warders) unlawfully used forcible measures against him - physical force and a rubber truncheon. The administration of the prison denied the allegations saying that the convict had thrown a container of food at a guard and tried to attack him physically. The administration drew attention to the fact that the convict in question is 'very offensive and aggressive', that he 'tried the patience of the prison staff on a daily basis… with rude retorts, insults, threats and spitting' and that in his case 'all educational and disciplinary measures had been exhausted'.

Force was used by at least two warders, who dealt the convict at least three blows with the truncheon. Following the incident the prison doctor examined the prisoner and found several injuries in the form of bumps, swellings, bruises and weals on his head and other parts of his body. The warders who took part in the intervention were not injured.

The report with which the prison administration substantiated the entitlement and lawfulness of the use of force stated that 'conversations have been carried out with all those who took part in the conflict'. The report also made explicit reference to the conversation with the convict. In connection with the processing of his application we visited Dob Prison but were enable to get hold of the record of the conversation with the convict or his statement on the matter. Later the administration of the prison explained to us that the day after the incident the deputy head of the security and protection service held a conversation with the convict. He included the convict's statements in the report on the use of forcible measures but 'for this reason did not write a special record of the conversation with the convict'. It was also confirmed by the UIKS that Dob Prison had not written a record of the conversation with the prisoner, but that this did not mean an irregularity since regulations 'do not explicitly specify this'.

Paragraph two of Article 62 of the Regulations on the Performance of the Duties and Functions of Authorised Official Personnel of Penal/Correctional Institutions stipulates that the head of a unit of authorised official personnel should take the necessary steps to ascertain whether forcible measures were used within the borders of lawful authorisations and in accordance with these regulations. Interpretation of the regulation which obliges him to 'take the necessary steps' does not

require him, according to the view of the UIKS and Dob Prison, to obtain a written statement from the convict against whom forcible measures were used. It is no surprise the applicant denied the accuracy of the record of his statements in the report on the use of force: he claimed that it was an 'adaptation' of the facts so as to justify the use of force. In the application to the Human Rights Ombudsman the convict's statements about the progress of the incident were different from those ascribed to him in the report on the use of force.

The text of the regulation that in the case of the use of force the 'necessary steps' should be taken can only be understood to mean that in order to correctly and fully establish the facts it is necessary to collect and record the statements of all involved in the incident, including the convict against whom force was used. With a careful record of the statement, which is given to the convict to sign, it is possible to avoid possible later claims that his statement was summarised or interpreted wrongly. We therefore proposed that in every case of the use of force the convict should be allowed to give his version of the incident by making his own statement which is then recorded. Moreover, the claim that the decision on the lawfulness of the use of force was one-sided and violated the principle of hearing both parties (audiatur et altera pars) is not far from the truth.

As a result of the allegation of a breach of the house rules, disciplinary proceedings were begun against the convict in connection with the incident of 16 December 1998. We would expect the disciplinary hearing to have taken place as soon as possible so that the obviously contentious positions of the positions could be clarified and the personal responsible punished. However the accused in the disciplinary proceedings was not heard until 7 May 1999, and five days later a decision to punish him with solitary confinement was issued. After his appeal had been ruled on the disciplinary penalty was served at the end of August and in the first half of September 1999, i.e. nine months after the incident.

The regulations which govern the pronouncing and serving of a disciplinary penalty dictate that the proceedings should be carried out quickly. A disciplinary penalty only serves its purpose if disciplinary proceedings are carried out within a reasonable time of the alleged breach of order and discipline in the prison. Delaying and putting off the procedure of establishing the decisive facts can also give rise to the feeling that there is no real wish to find the truth, which as time goes becomes more and more distant.

3.2.2. Persons with mental disorders

In 1999 we received 21 applications from persons with mental disorders. The number of applications is unchanged with regard to previous years, and their content is more or less the same. Most applications relate to detention procedures and involuntary placing in health care or social care institutions. In dealing with the open questions relating to mental health it is worth making special mention of cooperation with civil society, particularly with the various non-governmental organisations which likewise are striving to bring about improvement in the position of this often marginalised group of the population.

Mental Health Act still not passed

One constant of the efforts of the Human Rights Ombudsman are warnings about the legal lacunas in the area of the detention and treatment of patients with mental illnesses, since the inadequate legislation governing the legal supervision of this sensitive area of human privacy and personal rights is not appropriate for a state based on the rule of law.

In May 1999 the Minister of Health assured the Human Rights Ombudsman that the Mental Health Act would 'see the light of day' before the summer. However, instead of a mental health bill prepared by the Ministry of Health and proposed for parliamentary procedure by the Government, parliament is discussing a member's bill on patients' advocacy and the protection of rights in the area of mental health. Thus we can only repeat our proposal of the need for the Ministry of Health to do more to have a law passed as soon as possible to regulate the whole of this area, which is particularly sensitive for the individual as it involves the state encroaching on human privacy via its institutions.

Legal provisions on the detention procedure do not apply to Ormož County Court?

With involuntary hospitalisation in a psychiatric hospital two fundamental rights guaranteed by the Constitution are limited: the right to freedom and the right to voluntary medical treatment (which includes the right to refuse medical treatment). For this reason the legislator has specified judicial supervision of involuntary hospitalisation. Article 74 of the Non-Contentious Jurisdiction Act stipulates that in a detention procedure the court must visit the health care institution where the person has been detained without delay (within three days of receiving notification of detention at the

latest) and question him, unless questioning him would harm his treatment or if this is not possible given his state of health. On the basis of Article 76 of the same Act, the court is bound to decide, within 30 days of receiving notification of detention, whether the detained person should continue to be detained in a health care institution or be discharged.

We have already criticised the conduct of Ormož County Court in the 1997 annual report, since we found that the court does not respect the provisions on the judicial supervision of involuntary hospitalisation. We expected that the court would fundamentally change its practice and bring it into conformity with the law. Unfortunately in 1999 we again dealt with two cases of involuntary hospitalisation at Ormož Psychiatric Hospital and found that Ormož County Court had not carried out the prescribed detention procedure. From the point of view of the violation of legal provisions the facts contained in the file under Ref. No. Pr 225.99 were particularly eloquent: a person was detained in a closed unit from 18 April to 3 May 1999. Despite having received the notification of detention in good time, the court failed to carry out any of the procedural acts prescribed by law and did not even visit the person in the hospital. After receiving notification from the hospital that the detention had finished, the court failed to serve the detained person with the order by which the detention procedure was concluded. The latter did not even know that a detention procedure relating to his case had been instituted and completed before the court. Moreover since he did not receive the order that the procedure was 'not to be instituted', he was deprived of the opportunity to lodge an appeal, which means a violation of a constitutionally guaranteed human right.

Further investigations showed that in 1998 Ormož County Court received notification of detention in 699 cases, and in the first 6 months of 1999 in 376 cases. On the basis of the notifications of detention received, the court opened a new file in each case, but in no case did it carry out the detention procedure as prescribed and required by law. In no case did a judge visit a detained person in the psychiatric hospital within three days of receiving the notification of their detention. Even outside this legal deadline a judge only visited three detained persons, and even then this was only on the basis of their complaints. Thus in the period mentioned, Ormož County Court opened 1075 new files on the basis of notifications of detention received, but in no case were the prescribed procedural acts carried out and none of these cases were heard. Only in one case did the court issue an order on the termination of the detention procedure and only in this case was the detained person served a court order on the termination of the procedure.

Given such a manner of 'dealing with' detention procedure cases we can only repeat our criticism from the 1997 annual report, that drawing up court files in detention procedures is less about protecting detained persons and more about increasing the record of the judge's work, or in other words it is a considerable 'help' to the judge in achieving his expected annual productivity.

The facts show that the warnings of the Human Rights Ombudsman about the failure to observe the legal provisions regarding the involuntary hospitalisation procedure at Ormož County Court have still not met with a response. The president of the court justifies the described situation with the claim that Ormož County Court 'has neither the staff nor the financial possibilities to act in accordance with the Non-Contentious Jurisdiction Act'. Such arguments cannot of course be a justification for a court to (consciously) fail to act in accordance with legal provisions. In a country based on the rule of law it is of course impossible to reconcile ourselves with the view that a court does not fulfil its legal obligations because of possible staffing or financial difficulties.

3.3. Judicature

3.3.1. Judicial proceedings

Court statistics for 1999, whatever way we look at them, show an enormous number of unresolved cases. Courts in Slovenia ended 1999 with 565,352 unresolved cases. Nevertheless last year was the first year since the Human Rights Ombudsman began work that the number of unresolved cases at the end of the year was less than in the previous year. This situation, the result of a greater number of resolved cases and also of fewer new cases, allows us to hope that things are changing, if slowly, for the better.

Despite the improvement shown by statistics, there are no grounds for excessive satisfaction. We are still facing serious backlogs in the courts: the number of unresolved cases at some cases is still growing, which shows that there are more new cases than resolved cases. The duration of

judicial proceedings has reached such dimensions that it has become not just a matter for the judiciary but even an important political question.

The number of applicants turning to the Human Rights Ombudsman because of the duration of judicial proceedings is still increasing every year. Applications relating to judicial proceedings account for the greatest share of applications received. In 1999 the Human Rights Ombudsman received 868 applications relating to judicial proceedings, which mean a nine percent increase over 1998 and almost 26 per cent of all applications.

The speed of judicial protection is one of the fundamental conditions for its efficiency. To delay judicial protection is to deny it, and this can have the same consequences for the party concerned as if it were expressly refused. Therefore the judicial protection provided by the courts must not arrive late. The longer judicial proceedings last, the less value has the judicial protection which the party expects from the judicial branch of authority. Unjustifiably lengthy judicial decision-making threatens the legal security of the individual and the credibility of the state. It encourages recourse to (physical) self-defence, which undermines one of the essential foundations of the state based on the rule of law. The most important sign of a properly regulated country is that self-defence is prohibited within its borders and that remedy against a committed wrong is left to the courts. Here the principles of a state based on the rule of law require that seeking a right before the court is for no-one worse than self-defence.

Lengthy and consequently expensive judicial proceedings can in no way be advantageous to the party concerned. Only help in the form of rapid and effective judicial protection can prevent greater damage occurring and help the person exercising the judicial protection of his rights or legally protected interests. Rapid judicial protection also has psychological and preventive effects which are evident in greater discipline in the area of the property, civil law and general legal relations of natural persons and legal persons. It is not thus not only in the interest of the individual but also in the interest of the state that judicial proceedings finish is quickly as possible.

There is no doubt that the large backlogs which point to the excessive burden faced by Slovenia's courts cannot be eliminated overnight. Neither is it right to ascribe the backlogs merely to the reform of the courts, the transition period and political and economic changes in society and the country. There are several causes, both objective and subjective. Above all the state must enable the courts to function normally and at the same time ensure via suitable mechanisms that the independence of judges will not mean irresponsibility.

As well as rapid and effective judicial operation the right to a fair hearing also contains the right to quality judicial decision-making. For the individual, the quality of the administration of justice is as important as reducing the backlogs in courts: judicial protection must be fast and effective but also consistent and complete. The goal of judicial action is not merely speed but most importantly the issuing of a correct and lawful ruling. It would not then be right if in its desire to eliminate or at least reduce large backlogs the state were to neglect the other side, which is reflected in quality judicial decision-making, where a party can expect a just court decision in a fair trial and a just court decision.

Access to court while waiting for a law governing (free) legal aid

Access to court and thus to judicial protection is certainly not made any easier for the individual by the new ZPP. The new ZPP is in fact stricter and less friendly to parties. It has introduced, for example, several limitations of the principle of help for a party unacquainted with the law. Thus the new act no longer stipulates that the court helps a party complete or correct an incomprehensible or incomplete application. Likewise a party can no longer make an application orally. At the same time the legislature specially stresses that it is the duty of the court to draw the attention of the party only to procedural rights, and only if the party does not have a lawyer and fails to use these rights because of ignorance.

The new ZPP limits the right of a party to carry out procedurally effective procedural acts alone, without a barrister. A party in proceedings involving extraordinary legal remedies can only carry out procedural acts via an authorised person who is a lawyer unless he himself or his representative has passed a national legal examination. In proceedings before a circuit court, superior court, and the supreme court the authorised person may only be a lawyer or other person who has passed a national legal examination. Such an enforcement of postulatory capacity, which has most likely been legalised with the aim of speeding up proceedings, and also to make it more difficult for the

party to take part in proceedings, is constitutionally permissible but only on the condition that the state at the same time provides real accessibility of legal aid (a lawyer). There is still a legal vacuum in this area in Slovenia, something which is a cause for concern. When introducing compulsory representation the legislature should have also regulated the payment of the costs and fee of authorised persons or lawyers, since social reasons must not be allowed to prevent the individual from exercising the constitutionally guaranteed right to judicial protection.

The provision of Article 170 of the ZPP, which enables the appointing of an authorised person/lawyer at the cost of the court if the party is completely exempted from the payment of costs, cannot mean a suitable substitute for the complete regulation of (accessible) legal aid. Neither is this provision of the ZPP anything new, since almost exactly the same regulation was contained in Article 174 of the Civil Procedure Act of the former Socialist Federal Republic of Yugoslavia. The purpose of this provision, and more important its content and prescribed conditions, are not such as to fulfil the legal obligation of the state to guarantee the individual access to court regardless of his financial capability, particularly with regard to the introduction of the institution of qualified authorised person and compulsory representation by an authorised person who is a lawyer.

The ZPP does not contain provisions governing the payment of the costs and fee of an authorised person/lawyer when the party is obliged by law to be represented by such a person. The assurance given by the Minister of Justice at his meeting with the Human Rights Ombudsman on 25 May 1999 that parliament would begin debating the free legal aid bill by the end of July 1999 came to nothing. Until the payment of lawyer's costs and fees is regulated in such a way that free legal representation will be provided for those unable to pay for it themselves, the institution of compulsory regulation is constitutionally questionable.

It would be right for the ZPP to be passed simultaneously with a law governing free legal aid. Until actual accessibility of legal aid regardless of financial and social situation is guaranteed, violations of the constitutional right to access to court can occur. The state is therefore bound to pass as soon as possible a law under which a person who for economic reasons is unable to engage a lawyer will be provided with free legal aid.

The court did not respect the right of an injured party to continue a prosecution

The protection of the victim of a criminal offence must be one of the fundamental tasks of criminal law. Criminal procedural law is of course mainly oriented towards the relation between the state and the offender, but may not neglect to consider the needs of the victim or the protection of his or her interests. It is particularly important that in criminal proceedings the courts consistently respect and take into account the rights of injured parties. Unfortunately we have identified violations of the law even in this area.

Maribor County Court halted criminal offence proceedings with a resolution dated 27 January 1998, Job No. II K 159/96 because the circuit state prosecutor withdrew the charge before the beginning of the trial. The injured party was not invited to the trial and was not informed that the state prosecutor had withdrawn from the prosecution. The court ruled on the finality of the resolution on halting criminal proceedings without giving a copy of this resolution to the injured party. A judicial decision made in this way utterly overlooks the institution of the injured party as prosecutor which enables a potential mistake by the state prosecutor to be corrected by a more active role of the person injured by the criminal offence.

The first paragraph of Article 439 of the ZKP explicitly states that in proceedings before a county court the judge must also invite the injured party to the trial. The court replied to the Human Rights Ombudsman's warning about this matter saying that the injured party was not invited to the trial 'for reasons of economy and rationality', since she had been questioned as a witness and 'it was not certain whether the accused would even appear at the trial'. It is patently obvious that such arguments cannot justify the failure to apply a valid legal provision.

Under the provision of Article 429 of the ZKP the provisions under Articles 430 to 444 of the ZKP shall be applied in proceedings before a county court. For issues not regulated in these provisions, other provisions of the same law are mutatis mutandis applied. Thus the first paragraph of Article 60 of the ZKP stipulates that in the case of the state prosecutor withdrawing the prosecution the court must inform the injured party of this within eight days and advise him that he can initiate a prosecution himself. Since the state prosecutor withdrew the charge before the commencement of the trial, the court, on the basis of the first paragraph of Article 293 of the ZKP, should have separately

informed the injured party of her right to continue the prosecution within eight days of receiving the state prosecutor's report. Only if the injured party did not intend to continue the prosecution would the court be allowed, on the basis of the second paragraph of Article 293 of the ZKP, to halt criminal proceedings by means of a resolution. This resolution would also have to be sent to the injured party.

In the case of this applicant Maribor County Court therefore broke the law, since it failed to notify the injured party that the state prosecutor had withdrawn from the prosecution before issuing a resolution on halting criminal proceedings, and did not advise her of her right to continue the prosecution in the role of injured party as prosecutor. As a result of this violation of the law, the legislature's intention of providing protection for injured parties that is as complete as possible proved to be a failure.

3.3.2. Administrative offence proceedings

Slovenia's Administrative Offence Act (ZP) was passed in 1983 and has since then been amended and supplemented several times. The large number of amending statutes and corrections, which have been published in at least ten Official Gazettes from 1983 onwards, make the ZP hard to understand if not completely incomprehensible for the individual. The fiction that the publication of a regulation in the Official Gazette means that it is known to everyone is, given the fragmentation of this law, rather too audacious and not entirely in harmony with a state based on the rule of law. The ZP is in fact a regulation of broad application which if nothing else is shown by the large number of cases heard by administrative offences judges. People's encounters with administrative offences judges are thus sufficiently frequent to require the state to devote more care to the ZP itself. The difficulty here is shown by the fact that in past years a new administrative offences bill was submitted to the National Assembly but was later withdrawn and the patching up of the system continued with amending statutes to the current Act. The situation, and in particular the efficiency of administrative offences judges are such that fundamental interventions and systemic changes are urgently necessary in this area. The longer we wait for a new Act, the longer the agony of the current inefficiency of administrative offences judges will last, mainly as a result of objective circumstance which the judges have little possibility of changing.

The main problem is that administrative offences judges, particular in larger centres, but also at the second instance, are faced with a large amount of work which in the given conditions is practically unmanageable. Such a situation is especially typical of the administrative offences court in Ljubljana, the largest first-instance administrative offences body in Slovenia. Given the fact that an individual judge can have up to 5000 cases pending at once, it is no surprise that, according to the president of the administrative offences court in Ljubljana, 40 to 50 per cent of administrative offences proceedings fall under the statute of limitations. An additional contribution to the inefficiency of the entire system is the fact that only around a third of all fines are paid or exacted. For the state this means the loss of several billion tolars every year. To this must be added budgetary costs, both those for the work of the various authorised proposers of penalties and the costs of the actual organisation and work of administrative offences judges, which because of the often negligible final result are literally thrown away.

A state which rules certain conduct to be an administrative offence but at the same time is incapable of penalising a committed administrative offence does not encourage much confidence as a state based on the rule of law.

3.3.3. Advocacy

Lawyer's statement of costs sufficiently comprehensible to the client?

Under Article 18 of the Advocacy Act a lawyer is obliged to make out an invoice for his client. The lawyer's code of professional ethics stipulates that at the request of a client a lawyer is obliged to provide an itemised statement of costs. In practice the invoice is made out in such a way that it lists the individual services carried out by the lawyer for the client, and for each service lists the number of points under the lawyer's tariff. Such an invoice is not always sufficiently understandable to the client for him to be able to check whether it is in accordance with the lawyer's tariff. A rapid and effective checking that the invoice tallied with the lawyer's tariff would be possible if the invoice cited for each legal service the provision of the individual tariff number: for example composition of a suit as per Point 2a of tariff number 13, fee 300 points.

Applications which accuse invoices of legal services of overcharging are not uncommon. We therefore decided to find out the view of the Bar Association on the (compulsory) content of the invoice or bill which the lawyer is bound to issue to the client in relation to legal services provided.

The Bar Association feels that control of whether the lawyer's tariff is applied properly is possible in a simple way since the tariff is not complicated: the items are perfectly simple in civil proceed-

ings, criminal proceedings and administrative procedures, while 'for the drawing up contracts, enforcements and suchlike, the invoice is even simpler'. Therefore the Bar Association considers it an unnecessary burden for a lawyer to have to include the point of the tariff number on the basis of which the service is charged for every item on the invoice. At the same time the Bar Association draws attention to the lawyer's obligation to explain to the client on request what items of the tariff he has used in the invoice, and to enable the client to check the lawyer's tariff himself. The administrative committee of the Bar Association feels that quoting individual tariff numbers is not even required by the provisions of the Value Added Tax Act (ZDDV).

The lawyer's tariff, especially the tariff section of it, is effectively a price list of legal services. As a consumer the client is entitled to be acquainted with the price of the service. Regardless of the open question about whether the lawyer's tariff is really sufficiently understandable, useful and clear for the individual, it would be a good idea for it to be available to clients to look at in the lawyer's office. To this end the Bar Association could have a brochure printed containing the lawyer's tariff, a few copies of which could be made available to clients in the waiting rooms of every lawyer's office. Perhaps it would even be worth thinking about producing a poster at least of the tariff section of the lawyer's tariff. Meanwhile, the lawyer should draw the client's attention to his right to demand an itemised statement of costs and be informed of the legal basis for each charged item on the invoice of legal services. This should be done at the latest at the payment stage.

Initiation of disciplinary proceedings against a lawyer

An applicant complained that his documents and files were not returned to him after his lawyer had finished representing him. He also accused the lawyer of overcharging him by 28,250 tolars for ordering a proposal of entry in the land register, since she did not carry in order to this service.

The applicant's complaint was dealt with by the Bar Association of Slovenia. The Association's disciplinary prosecutor reported to the applicant that a client cannot demand that a lawyer send voluminous documentation by post and that the lawyer is entitled to ask the client to come and pick up the documents from her office in person. Since this is what the lawyer did, she fulfilled her obligation.

In order to resolve this long-running dispute we contacted the lawyer directly. We agreed over the telephone that she would send the client all the documentation from his file by registered post together with a statement of the lawyer's work and costs and a photocopy of the proposal for entry in the land register for which the applicant paid 28,250 tolars legal costs.

The applicant later informed us that the agreement had not (yet) been kept. We therefore wrote to the lawyer reminding her of the agreement and proposing that she send the documentation as agreed to the applicant as soon as possible. We received no reply. Later we tried again to reach the lawyer by telephone but she was never available in her office and did not respond to our appeals to call us back. We therefore turned to the Bar Association of Slovenia to try and ensure that the applicant would get his documents and files and evidence showing the lodging of a proposal for entry in the land register.

In reply the Bar Association deemed the conduct of the lawyer as extremely incorrect and contrary to the lawyer's code of professional ethics. It immediately assigned the case to the disciplinary prosecutor with the proposal that the case be dealt with as a priority. Some months later the disciplinary prosecutor requested the initiation of disciplinary proceedings against the lawyer at the first-instance disciplinary commission at the Bar Association of Slovenia for violation of her duties in carrying out the profession of lawyer.

3.3.4. Notaries

VAT has increased the cost of legal services and notary services by 19 per cent

Since the VAT Act (ZDDV) entered into force, notaries have been charging their clients 19 per cent VAT in addition to the fee stipulated by the notary's tariff. Lawyers are acting in the same way, since on 31 August 1999 the administrative committee of the Bar Association of Slovenia passed a resolution under which 19 per cent VAT is charged on the value of services provided. The introduction of VAT has therefore increased the price of legal services and notary services by 19 per cent.

Lawyers and notaries were taxpayers even before the introduction of VAT. However at that time there was no controversy over the fact that they could not charge a client more than the price stipulated by the lawyer's and notary's tariff. Since the passing of the ZDDV the price of legal services and notary services has not fallen even in the case of those tax liabilities which no longer apply but which before the introduction of VAT were borne by lawyers and notaries since they were includ-

ed in the price of services set by the lawyer's and notary's tariff. Since tax liabilities which before the introduction of VAT were borne by lawyers and notaries have ceased to apply, their earnings are now even higher since they have shifted the entire burden of VAT to their clients.

Under Article 17 of the Lawyers Act a lawyer is entitled to payment for his work and the repayment of costs relating to work done according to the **lawyer's tariff.** Under the second paragraph of Article 107 of the Notaries Act the payment of notaries is specified by the **notary's tariff.** Under Article 29 of the Notary's Code of Professional Ethics a notary is entitled to charge a fee **only** in accordance with the valid notary's tariff. There is no legal act stipulating that the price of legal services or notary's services can be set higher than on the basis of the lawyer's or notary's tariff. Article 3 of the lawyer's tariff talks about the price of legal services, while Article 11 of the notary's tariff talks about the price of notary services, which means that **the tariffs set the price of the service which must be paid by the client for the legal service or notary service provided.**

Although it is true that at the time the lawyers and notaries acts were passed the obligation to pay VAT had not yet been determined, there is no doubt that the price from the lawyer's or notary's tariff stipulated by these regulations means the amount of money a client must pay a lawyer or notary for services provided. The lawyer's and notary's tariff thus **determine the highest permitted amount** a lawyer or notary may charge a client for a service provided. By stipulating the obligation to pay VAT the legislature undoubtedly did not intend to raise the price of goods or services by the level of tax stipulated in the ZDDV.

Article 21 of the ZDDV only stipulates the tax basis for VAT, which of course does not mean that this basis is the same as the price which a client must pay under the lawyer's or notary's tariff for a service provided. The price specified by the lawyer's and notary's tariff can in relation to Article 21 of the ZDDV also be understood to mean that both the tax basis and 19 per cent VAT are included in the price of this service.

Setting the price of legal services and notary services cannot only take into account the interest of lawyers and notaries, but also the public interest. This is the reason for the provisions of Article 19 of the Lawyers Act and the second paragraph of Article 7 of the Notaries Act which require the consent of the minister of justice in the setting of the tariff on lawyers' and notaries' fees. At the same time we should not overlook the fact that the Bar Association and Notaries Chamber only provide explanations and compulsory interpretations on the use of the lawyer's and notary's tariff but do not have such responsibility in relation to the ZDDV. We therefore proposed to the minister of justice that as the body to whom the protection of the public interest is entrusted he tell us whether he agrees with the interpretation of the Bar Association and Notaries Chamber which has as its consequence a 19 per cent increase in the price of legal services and notary services. In his reply the minister stressed that he cannot independently change the values stipulated in the lawyer's or notary's tariff. Only at the proposal of the Bar Association or Notaries Chamber may he assess whether a proposal to change the values is justified, and on this basis give withhold his consent. At the same time he stated that since September 1999 negotiations have been in progress between the Ministry of Finance (MF), the MP and the Bar Association and Notaries Chamber, on the percentage by which the value of lawyer's and notary's point should be reduced taking into account the deduction of admission taxes. On the basis of the analysis being prepared by the MF on the size of the average deduction of admission taxes on legal services and notary services, the MP will propose to the Bar Association and Notaries Chamber an appropriate change to the value of the lawyer's and notary's point.

It is regrettable that a proposal for an appropriate change to the lawyer's and notary's tariff was not made before the ZDDV entered into force, since this would have avoided a situation unusual for a social state based on the rule of law whereby the clients of lawyers and notaries have to pay 19 per cent more than the price of legal or notary services stipulated by the lawyer's and notary's tariff.

A change in the value of the point under the notary's tariff only with the consent of the minister of justice

In the 1998 annual report we pointed out that setting the tariff on the payment of notaries also includes changing the value of the point which under the notary's tariff serves for the assessment of the price of a notary service. The Notaries Chamber did not agree with our opinion that the consent of the minister of justice is also necessary for a change in the value of the point under the notary's tariff. The Chamber cited the position in 1997 when the then minister of justice informed the Notaries Chamber that her consent to a change in the value of the point was not necessary. Thus the executive committee of the Notaries Chamber passed a resolution on increasing the

value of the point from 76.50 tolars to 87.40 tolars without the consent of the minister. The resolution entered into force on 26 September 1998.

The Human Rights Ombudsman's request for a review of the constitutionality and legality of the fifth paragraph of Article 11 of the notary's tariff and the two resolutions of the executive committee of the Notaries Chamber on the change to the value of the point was ruled on by the Constitutional Court on 20 May 1999 (Ruling No. U-I 57/1999). The Constitutional Court confirmed the position of the Human Rights Ombudsman and in the explanation of the ruling stated that the value of the point was a fundamental element of the notary's tariff. Therefore a change in the value of the point is a change to the notary's tariff. Since however the second paragraph of Article 107 of the Notaries Act stipulates that decisions on the notary's tariff are taken by the Notaries Chamber with the consent of the minister, the obligation for this consent applies to the whole of the notary's tariff, and thus also to every value of the point in the notary's tariff.

The Constitutional Court ruled that the provision of the fifth paragraph of Article 11 of the notary's tariff is not contrary to the Constitution and statute although it does not specify that a change in the value of the point shall be decided by the executive committee of the Notaries Chamber with the consent of the minister. The provision of the second paragraph of Article 107 of the Notaries Act on the consent of the minister is 'thus both in principle and technically applicable as it stands. Therefore the fifth paragraph of Article 11 of the notary's tariff is not contrary to the legal provision, even if it does not repeat it'. In fact the Constitutional Court overturned the resolution on changing the value of the point which was passed without the consent of the minister. Thus on 12 June 1999 the previous value of the point (76.50 tolars) passed with the consent of the minister began once again to apply.

On 15 June 1999 the executive committee of the Notaries Chamber increased the value of the point to 87.40 tolars. The minister moved very quickly too, giving his consent to this resolution just a day later. The change to the value of the point came into effect on 18 June 1999.

The intervention of the Human Rights Ombudsman has thus not significantly changed (lowered) the price of the notary's tariff. It has however ensured that in the future changes to the value of the point under the notary's tariff will only take place with the consent of the competent state body to which the protection of the public interest is entrusted.

Sometimes they act quickly, sometimes slowly...

The action of the minister of justice in consenting to an **increase** in the price of notary services was thus extremely rapid. Unfortunately it has been anything but in the case of the enforcement of the resolution of the National Assembly from 11 June 1997 with the recommendation that, in cooperation with the Notaries Chamber and Bar Association, the government achieve a **reduction** in the tariff for compiling, certifying and verifying documents on legal transactions. Despite numerous warnings, including some from the Human Rights Ombudsman, this resolution has still not been enforced. We are now in the third year since the resolution was passed but the minister for justice has done nothing...

3.4. Police procedures

The protection of human rights and fundamental freedoms demands an efficient police force. The right to security is also guaranteed by the Constitution. If people are not guaranteed personal security and the security of their property, we cannot say that the national authorities are functioning as they should so as to enjoy the confidence of the people. The legislature has for this very reason given the police relatively broad powers which also encroach on human rights and freedoms in order to enable the police to perform the tasks entrusted to it efficiently.

Human rights and freedoms are limited by the equally strong rights and freedoms or other people. Thus the effective defence against delinquency is an important constituent element of the state based on the rule of law. The duty of the legislature here is to provide suitable and sufficient guarantees which will effectively prevent abuses, since great powers also mean a great temptation to exceed them or use them unlawfully.

The cooperation of the public in the supervision of the police is important. For this reason the ombudsman in last year's report welcomed the provision of the ZPol that representatives of the

public shall also take part in the addressing of the complaint of an individual who feels that his rights and freedoms were violated by the action or neglect of a police officer. Unfortunately circumstances show that this legal provision has not yet begun to function in practice. We propose that public supervision in the area of addressing complaints be ensured as soon as possible.

A report that we received from the Ministry of the Interior (MNZ) while dealing with an application stated that 'staff fluctuation' at the crime investigation department of the police force was the reason for the unreasonable amount of time needed to resolve cases. This is worrying. The officers of this department are 'heavily burdened with tackling older criminal cases which are threatened by the statute of limitations'. The requests of circuit state prosecutors for the completion of denunciations from 1998 had still not come up for repeated treatment by August 1999. Such difficulties of an organisational nature can have a significant effect on the efficiency of the work of the police, and thus indirectly on the work of the state prosecution service and the courts. The police force needs to be provided with appropriate staffing and material conditions to enable fast and effective work.

Regulations on police powers still not passed

Among the executive regulations to be passed on the basis of the ZPol are the regulations on the manner of implementing the powers of the police. The regulations on police powers are prescribed by the Minister of the Interior at the proposal of the general director of the police. Since under Article 127 of the ZPol the Ministry must harmonise organisation and work with the provisions of the ZPol within a year of the Act coming into force, it can be concluded that within this period, i.e. by 18 July 1999, the minister should also have issued a new regulation on the method of implementing the powers of the police.

The importance of issuing regulations on police powers as soon as possible is also based on the fact that the ZPol does not list, among the regulations which are to remain in force until the issuing of new regulations once the ZPol has come into force, the Rules on the Exercising of the Powers of Authorised Official Personnel of Internal Affairs Bodies of the Socialist Republic of Slovenia, which otherwise have their basis in the previously valid Internal Affairs Act.

Although police powers are listed more definitely and unambiguously in the ZPol than they were in the old Internal Affairs Act, a legal vacuum nevertheless exists because the method of implementing the powers of the police is not now stipulated by a regulation. The old rules on exercising powers are no longer in force, while new rules conforming to the powers of the police under the ZPol have not yet been prescribed. It is worth emphasising here that only a precise regulation with clear and detailed rules enables effective legal supervision over the use of the powers of the police, so that protection is ensured against arbitrary encroachments on constitutionally guaranteed rights and freedoms.

It is a matter for concern that this is already the second year since the passing of the ZPol but there are still no regulations on police powers. We therefore propose once again that the minister of the interior issues these regulations as soon as possible. This will also make the work of the police easier, since they will be able to carry out their functions more effectively on the basis of clear rules for the use of their powers.

Inspection of detention rooms at police stations

Every year the Human Rights Ombudsman visits a number of police stations around Slovenia. In 1999 we inspected detention rooms at police stations in Murska Sobota, Gornja Radgona and Lenart.

Murska Sobota police station has two sufficiently large rooms also designed for 48-hour detention. Blankets are available for detainees but not mattresses. Natural light is very poor in both rooms, making it impossible to read, for example. Both rooms are on the ground floor as an extension of the police station building and it would be possible by means of a relatively minor intervention (increasing the size of the window) to decisively improve the natural light in the room. Exercise in the open air is possible in the yard next to the police station building but the yard has not yet been used for this purpose. The book of detainees is properly kept, and we only found once case where a detained person had not been told when his detention would end.

Gornja Radgona police station has a detention room with two beds. The room is also used for detention of up to 48 hours. The room is not suitably illuminated: natural light is power and the artificial light is inadequate in that the three light cubes in the wall above the door do not give

enough light (more powerful light bulbs would possibly be a solution). The room is also poorly ventilated. During our inspection we noted a smell of faeces. The flush on the toilet in the cell was evidently broken. The room also gave the impression of neglect: the were walls were visibly damp, with the plaster falling off. There were traces of leaking in the corner where the toilet is situated. The wooden beds had no mattresses, although enough blankets were available. There is no permanent access to water for drinking and washing: water is brought to detainees in plastic bottles. There is no running water in the corridor outside the cell, though there is in the garage - but this is obviously not accessible to detainees. We also drew attention to the uneconomical way that food is provided to detainees - it is brought from a hotel 18 kilometres away in Murska Sobota. Delivering food from so far away is irrational, especially since it is possible to get hot food in the immediate vicinity of Gornja Radgona police station.

At Lenart police station the detention room is only used for detention of up to 12 hours. The room is in the basement and in terms of size is suitable for detaining one person. There is no natural light. The wooden bed is covered with chipboard and has no mattress. There are two blankets and a further two can be requested. The room is not heated, which raises doubts about whether it can be used during the winter. Food is not provided to detainees. On the whole the detention room gives the impression of neglect.

On reading the Human Rights Ombudsman's report on the inspection of detention rooms the MNZ drew attention to the great emphasis it has placed in recent years on the arrangement and adaptation of detention rooms. The majority of rooms are arranged so as to conform at least to the minimum criteria. There are still however some rooms designed for detention which do not correspond to the standards put forward by the European Committee for the Prevention of Torture and Inhumane or Humiliating Treatment or Punishment and also urged by the Human Rights Ombudsman in his interventions.

In response to the findings of our inspection of detention rooms the ministry reported that room at Gornja Radgona police station will not be used for detention until improvements have been carried out or until further notice. The delivery of food from Murska Sobota was a one-off case dictated by objective circumstances. According to the ministry's report food is actually supplied to detainees from a restaurant in Radenci. At Lenart police station they generally do not carry out detention during the winter. The cell in the basement has not been in use since 1 January 2000 when they began using a new detention room on the first floor of the police station building which is arranged and equipped in accordance with recommendations and standards.

In the 1998 annual report we warned that Slovenian regulations do not stipulate the minimum technical conditions for detention rooms. We therefore proposed once again that an executive regulation should specify the minimum technical conditions for equipment and premises designed for police detention. The MNZ followed the proposal and at the end of 1999 prepared a draft of 'norms for the building, adaptation and maintenance of detention premises'. This is undoubtedly a step in the right direction. Provided that the content of this legal document is suitable and that it is applied consistently, the minimum technical conditions of detention premises will be an important contribution to ensuring the respecting of human personality and dignity in cases of the deprivation of liberty through police detention.

3.5. Administrative affairs

The principal new feature in this field was the adoption in 1999 of the General Administrative Procedure Act (ZUP). This act brings with it an essentially new system of administrative procedure, and in comparison with the previous system the changes should improve the position of individuals and other clients dealing with state authorities, local government authorities and holders of public authority which decide on the rights, obligations or legal benefits of such clients. The changes should also ensure the more efficient work of these authorities. Unfortunately, however, there were no noticeable shifts in the organisational legislation (on the Government, ministries and public organisations) towards achieving this improvement, or in the position of public servants. For this reason certain key issues remain unresolved, and we drew attention to these in last year's report under chapter 1.2.III. The implementation of administrative supervision has begun, but it has yet to cover sufficiently all bodies and all administrative fields. The efforts and measures of

certain bodies for the more rapid resolving of matters in administrative procedure have still not produced a situation with which we could be satisfied.

The number of applications received in this field fell by almost a tenth in comparison to 1998, chiefly as a result of the halving of applications in connection with citizenship. There were also fewer applications in connection with administrative procedures and in the area of social activities. On the other hand, the number of applications in connection with denationalisation doubled, and in the area of tax and contributions there was a 15 per cent rise in applications.

3.5.1. Implementation of the general administrative procedure act

In 1999, in addition to the frequent missing of legally provided deadlines for the issuing of decisions, we again found the majority of other errors to be in the conducting of administrative procedures, which we have presented in reports from earlier years. We dealt primarily with two issues.

a) Confirming the legal effect of administrative decisions

We dealt with the application of two clients in the denationalisation process, who stated that the responsible administrative unit had given a positive decision on denationalisation with he awarding of compensation in the form of shares of the Slovenian Indemnity Fund (SOS). Forty days after a decision of the Ministry of Environment and Physical Planning (MOP) rejected the appeal of the SOS against the denationalisation decision, the administrative unit confirmed the finality of its legal effect. The applicants were convinced that the matter was finally closed, and after paying the costs of the procedure they began activities for implementation of the decision. These activities, however, were stopped by a notice from the administrative unit stating that the denationalisation decision was not final since the SOS had instigated an administrative dispute against the decision of second instance. It is not understandable how the legal effect of the decision could be confirmed a week after the lodging of the complaint. On the same day the person in charge of the particular case specified in the denationalisation decision was in touch with staff at the SOS regarding implementation of the decision, but no one told him that an administrative dispute had been instigated and that therefore the decision could not be implemented.

Our enquiries produced a response from the administrative unit that the administrative body had not been informed of the lodged complaint and that it had confirmed prematurely the legal effect of the first instance decision. When they received the information that a complaint had been lodged against the MOP decision, they annulled the notice of final legal effect and passed the file on to be dealt with by the Ministry or Administrative Court.

Our findings show that this is not the only case of premature confirmation of the legal effect of a decision. Such mistakes are not only psychologically upsetting for those affected, they also cause unnecessary extra work, and they waste time and money. We believe that this should not be allowed to happen. Yet it appears that there are no mechanisms up and running which would prevent such mistakes. The first instance bodies are as a rule informed of the instigation of an administrative dispute against a rejection decision by a second instance body only when the Administrative Court requests from them via the second instance body the relevant file; and this can be a slow as well as fast procedure. This method is therefore not sufficiently reliable or expedient. And if they observed our view regarding the possibility that files might not be sent to the court until it is the turn of the matter in question to be resolved, something we discuss below, by this route the first instance bodies could never be informed in the proper time about the instigation of an administrative dispute.

On the other hand, the administrative bodies obviously do not have clear instructions or standard practices whereby in respect of confirming legal effect they cannot simply rely on their feeling or their own assessment of how much time has passed since the issuing of a decision by a second instance body, without discovering that an administrative dispute has been instigated; rather they should establish this fact in the proper way. The establishing of such circumstances will also be required in view of the fact that according to the new Administrative Dispute Act (ZUS), as a rule a complaint against a ruling given in an administrative dispute is permissible. And there is little likelihood of any standard practice regarding the annulling of a premature or actually mistaken confirmation of legal effect.

It seemed to us pertinent here to raise the question of whether in (all) administrative matters it is at all appropriate to confirm legal effect. The purpose of confirmation is without doubt so that the

decision can be implemented. Yet as we are aware, in administrative matters implementation is tied to legal effect only if an individual law so provides; otherwise it suffices that the decision is final (cases where a complaint is not permissible or where it does not stay implementation we are deliberately leaving to one side, since in these cases the issue of legal effect falls more within the sphere of interest of bodies than of individuals). Moreover, in exceptions even a decision with legal effect cannot be implemented if as part of the fulfilment of obligations a timetable or condition is set which expires or is fulfilled only after the decision takes legal effect. Articles 278 and 279 of the ZUP, and Article 42 of the Execution and Insurance Act speak of confirmation that a decision can be implemented. So given the discrepancy between legal effect and actual implementation, would it not be more appropriate in administrative matters to confirm that a decision can be implemented?

b) Non-resolution of administrative matters due to sending of files to other bodies

From the other application that we dealt with, it was evident that through a decision by the competent administrative unit in 1997 the applicant had been granted the status and rights of a victim of military or wartime violence. In a review procedure the Ministry of Labour, Family and Social Affairs (MDDSZ) overturned the decision and returned the matter to the body of first instance for renewed processing. And the decision made in the renewed procedure was also overturned upon review. The administrative unit again received the matter for renewed processing, but the processing of the case was discontinued.

Our enquiries at the administrative unit revealed that a fortnight after receiving the second review decision, they passed on the relevant files to the MDDSZ as a result of an administrative dispute being instigated. The Ministry sent the files, along with its own, to the Administrative Court. Since they do not have the files, they cannot carry out renewed processing.

We have already encountered a considerable number of cases where the administrative procedure reaches an impasse at the first instance, because the files are at a second instance body or at the Administrative Court. And this involves not only situations as described where an administrative dispute has been filed against the decision of a second instance body on the overturning of a first instance decision, but also cases where a complaint has been lodged against a partial decision (e.g. on denationalisation) or because of no response from the administrative body.

We believe it is unacceptable for administrative bodies, in cases where they should be conducting administrative procedures or making decisions, not to make such decisions because the files are not in their direct possession. In all the situations described there is no reason or proper excuse for the procedure not being continued.

With regard to administrative disputes, we are drawn here to consider Article 30, paragraph one of the ZUS, which provides that as a rule a complaint does not impede the execution of the administrative act against which it is lodged. At the same time, for the case described earlier Article 242, paragraph two of the ZUP provides that following rejection of the decision and the return of the matter for renewed processing, the body of first instance must issue a new decision without delay, and at the latest within thirty days.

In a partial decision, the obligation to continue the procedure in relation to the remaining part derives from the legal definition of the conditions for issuing such decisions.

It is absolutely unacceptable for a body through its own silence not to treat a complaint as a stimulus to at least carry out the necessary procedure immediately upon receipt of such complaint, rather than temporarily resolving the matter simply by sending the files to the appeal body. As for the question of how bodies of second instance act and how efficient they are, we have only touched upon this; we have yet to see, in the case of unjustified silence from a body of first instance, an appeal body acting pursuant to Article 246, paragraph two of the ZUP, and itself deciding on matters.

The described situations would not be so critical if matters were resolved at second instance bodies in the legally provided - and at the Administrative Court similarly short - deadlines. In the current state of affairs, with complaints at some ministries taking two years to be resolved, and administrative disputes even longer, it is of course impossible to accept that for reasons that are

in fact of a technical nature - in other words the actual location where files have been temporarily placed - they should not be conducting administrative procedures which they could or should.

The possibilities for appropriate action are in our opinion the following.

1) We have already mentioned the first possibility, which is that files should be sent to the Administrative Court only when the matter is next in line for being dealt with by the court. According to our information, in some cases such a practice is already in place. We can indeed see no justifiable cause for files lying around for an excessively long time, and for this reason administrative matters not being resolved; if they were resolved, then without doubt some of these administrative disputes would no longer even be matters of dispute. On the other hand it would be necessary in this to resolve certain questions in connection with responding to complaints (Article 36 of the ZUS). Of course, in the case where upon reflection such a possibility seemed appropriate, and through the proper measures such practice was generally established, administrative bodies would need to be regularly and quickly informed that an administrative dispute was under way in connection with their official decisions.

2) The other possibility is photocopying of files which are needed for the procedure at the administrative body, wherein it would of course be necessary to ensure the demonstration of their authenticity.

3) Some of these problems would be eliminated if administrative bodies took greater advantage of the possibility of amending or quashing their (own) decisions in connection with administrative disputes, pursuant to Article 261 of the ZUP, or if they dealt with the complaint appropriately in view of a body's silence.

We proposed to the Ministry of the Interior (MNZ), as the body charged with responsibility for implementing the ZUP, that it study both of these issues under question - and regarding administrative disputes certainly in cooperation with other bodies - and that it take whatever action is found to be necessary and possible so that

- there will not be any erroneous, and especially not premature, confirmation of the legal effect (or possibility of implementing?) of administrative decisions;
- administrative matters will be resolved in the first instance in line with the letter and spirit of the ZUP, even if this matter is subject to administrative dispute, complaint lodged against a partial decision or complaint as a result of the silence of an official body.

We received an answer from the Office for Organisation and Development of Administration at the MNZ which included a definition of the significance of the statement of legal effect (confirmation pursuant to Article 172 of the ZUP), the conditions for issuing of confirmation (no complaint or application being received) and a range of administrative acts for which legal effect must be confirmed (chiefly those for which it is not sufficient for implementation that they are finally in administrative procedure). In connection with administrative disputes, a confirmation of legal effect can be given on the basis of a written notice from the Administrative Court that within the legal deadline no complaint had been lodged or that no appeal had been lodged against a decision of the said court.

At the Administrative Court, all complaints lodged are immediately entered into the computer records. Upon special written request, which must contain at least the name of the body that issued the official decision, the name and residence of the client and the client's legal representative or proxy if any, a brief indication of the matter in procedure, and the reference number and date of the official decision, the administrative unit will be notified in writing in two days at the latest following receipt of the request whether an administrative dispute has been lodged against a final official decision or whether an appeal has been lodged against an Administrative Court decision.

As for the other issue, the MNZ also believes that in line with Article 242, paragraph two of the ZUP, the body of first instance must always act in line with the decision on complaint and without delay, and at the latest within 30 days of receipt of the matter it must issue a new decision in a renewed procedure.

If in a renewed procedure the first instance body has not given a decision within the prescribed 30-day deadline, while in view of the lodging of a complaint at the Administrative Court the second

instance body has requested the files of the administrative matter from the first instance body, the procedure must continue at the first instance on the basis of photocopied files of the administrative matter, and the original files must be submitted to the second instance body.

In view of these findings the MNZ guaranteed that the Office for Organisation and Development of Administration, which pursuant to the Administration Act directly supervises implementation of the ZUP, and with the cooperation of the appropriate departmental administrative bodies, will further study our suggestions and take appropriate steps.

3.5.2. Citizenship

The 50 per cent reduction in the number of applications received relating to the procedure for acquiring Slovenian citizenship can be seen as a sign that through the efforts of the MNZ to eliminate backlogs, they have resolved the greater part of the applications which were directly connected to Slovenian independence. As far as we know, however, in 1999 there was a large rise in the number of new applications for citizenship, so we may expect that there will still be considerable work in this area if the MNZ does not organise itself to keep on top of the workload in these procedures. Certain applications received of late are indicating that the new applications are rapidly growing old.

This general introductory remark does not mean, however, that over the last year we have not had to deal with cases of very lengthy procedures, including the **still unresolved applications pursuant to Article 40 of the Citizenship of the Republic of Slovenia Act (ZDRS).** This involves primarily cases where a ruling by the Supreme Court (sometimes for the second time) or even a ruling by the Constitutional Court has overturned a negative decision of the MNZ. A provision of the ZUS states explicitly that a new decision must be issued within 30 days, whereas some are not even issued in two years. The reason lies most often in verifying the defence reservations from the Ministry of Defence (MO). The MO persists in its reservations even in cases where it cannot properly substantiate them. The explanation for a negative decision can therefore cite simply serving in a foreign armed force, which is of course insufficient reason, and such a decision cannot sustain judicial inspection. These problems arise not simply over Article 40, but also over regular naturalisation and over the issuing of permits for temporary residence. We have always taken the view that it is necessary to establish and assess the specific circumstances and actions of the applicant that might indicate their past or present security threat, and the existence of such threat should in the decision-making be demonstrated with concrete facts, and not just suspicions.

Procedures based on Article 40 should indeed be completed after almost nine years. This situation, which does not speak of a state based on the rule of law, is compounded by the backlog of administrative disputes at the Supreme Court. This court is having no success at all in resolving matters received up until 30 June 1996 and which pursuant to the ZUS could not be resolved at the Administrative Court. So one of our applicants has been waiting for the resolution of just such an administrative dispute since the middle of 1995. Pursuant to Article 40, citizenship was denied because of a threat to national defence (serving in a foreign armed force). Since this related to an employee of the military who was working in a construction unit, and since in court proceedings related to military pension it was established that there was no proof of the applicant having collaborated in the aggression on Slovenia, we proposed to the MNZ that it investigate all avenues for resolving the matter on the basis of Article 261 of the ZUP, issuing a new decision whereby the administrative dispute against the old decision would no longer be relevant. The MNZ did not accept this proposal; they replied that they would wait until the outcome of the administrative dispute.

In its decision no. U-I-89/99 of 10 June 1999 the Constitutional Court determined that the **third paragraph of Article 40 should be abrogated in as far as it related to the reason (for rejection) of a threat to public order.** In the Court's opinion, on the passing of the ZDRS it was not possible to foresee the events that followed Slovenian independence, and therefore the condition prescribed later (December 1991) regarding threat to the security or defence of the state did not represent an unconstitutional infringement of the principle of safety of trusting in the law (legal safety). Regarding applicants who might potentially threaten public order, during this time no new circumstances have arisen which would justify amending the ZDRS.

This decision means that henceforth in deciding on the granting of citizenship pursuant to Article 40, an application cannot be rejected because of a threat to public order. On the other hand those who did not apply for citizenship pursuant to Article 40 because of prior convictions, will still not be able to do so, despite the Constitutional Court decision, because the legal deadline for appli-

cations expired on 25 December 1991. Negative decisions with final legal effect which were issued on the basis of the provision under discussion, could be overturned on the basis of permitted extraordinary legal remedies, but these are not evident in the ZUP. The consequence of all this is that in identical cases the decisions will differ, depending on when they were or will be made.

We have already described in previous annual reports the inconsistent application of the provision of Article 13 of the Constitutional Act Implementing the Basic Constitutional Charter on the Independence of the Republic of Slovenia (UZITUL), whereby **applicants for citizenship on the basis of Article 40,** up until a final decision on citizenship, **are equal in rights and duties to Slovenian citizens** (with the exception of property rights). Such cases have involved the issuing of an employment record book, registering for insurance and entry or rather re-entry to Slovenia. In 1999 we dealt with two such cases.

In the first case, which we describe in more detail in the selected cases section, an applicant with such status was not granted the right to a personal identity card (although he did succeed in registering his permanent residence). We advised the MNZ that in declining to issue a personal identity card it was not clear what the provision of Article 13 of the UZITUL was supposed in fact to be ensuring. The fact that the applicant had the right to reside in Slovenia was beyond any doubt. And since in his obligations he was equal to Slovenian citizens, he was also subject to the obligation pursuant to Article 3, paragraph one of the Personal Identity Card Act, whereby on the request of a legally empowered official person, he must present a personal identity card for inspection. If he has been denied the right to a personal identity card, it is not clear how he should prove his identity. The provision of Article 1, paragraph one of the Personal Identity Card Act, whereby a personal identity card is (also) used to establish citizenship, presents no problem here, for by appropriately filling in the personal identity card form it would be clear what was involved. Any kind of reference to the possibility of the applicant obtaining documents from his country of origin is out of place, for his current status in Slovenia is guaranteed by the described constitutional and legal provisions, and is in no way dependent on the circumstance of whether or not he might take advantage of that possibility.

In its reply the MNZ underlined that according to the new law the personal identity card served as proof of identity and citizenship, and also for crossing the state border, if this has been provided by international agreement. It is no longer an obligatory document, since identity can be established with other documents. The suggestion of appropriately filling in the identity card for cases such as that of the applicant is not acceptable because of the technology used in making the identity cards, and there is no legal basis for it. The personal identity card is tied to citizenship of the Republic of Slovenia.

These arguments cannot shake our position as described above. If a citizen with permanent residence in Slovenia has the right to a personal identity card, then this right is also held by those who in their rights and obligations are equal to Slovenian citizens. This is a constitutional-level norm which cannot be denied or restricted by some inappropriate wording or interpretation of a law.

In the second case, our applicant's **status pursuant to Article 13 of the UZITUL was not taken into account at all.** Despite an application lodged pursuant to Article 40 of the ZDRS, from 1993 on the administrative body of first instance treated him as a foreigner, issuing him with temporary residence permits, since upon checking in the register they found that he did not have a registered permanent address. He applied again for a temporary residence permit at the beginning of 1999, and had confirmation of this application. In September he was stopped and checked by two police officers in Ljubljana. Although we still have not received answers to all our enquiries, it is clear that neither the police officers nor the misdemeanours judge wanted to see the confirmation slip on the application for temporary residence (which serves as a residence permit until a decision is issued on temporary residence), and that they did not want to hear about the applicant having applied for Slovenian citizenship. For residing illegally in Slovenia the misdemeanours judge fined him SIT 21,000 and ruled the security measure of removing the alien from the country for six months. The police station issued him with a decision on being housed in the Centre for Removal of Aliens.

All this took place when pursuant to Article 81 of the Aliens Act (ZTuj) the provisions of this very act still did not apply to our applicant. As luck would have it, on the day before these events a positive decision on citizenship was issued (and the applicant received it in six days). The behaviour

of the authorities, who did not take the time to establish the true state of affairs, can in no way be excused by the fact that they were dealing with a person suffering from mental illness - indeed this should mean the very opposite.

Even before the deterioration of conditions in the Federal Republic of Yugoslavia (FRY), the Ombudsman was approached by a large number of applicants who had applied for Slovenian citizenship through naturalisation. The MNZ had already given an undertaking that they would be granted Slovenian citizenship if and when they applied for a release from their current citizenship. Very few individuals were **released from FRY citizenship,** and for the most part the applicants had to request an extension of the deadline from the undertaking or for the issuing of a new undertaking. And even if a document of release was issued, given the still valid Legalisation of Documents in International Traffic Act and given the fact that the FRY is not a signatory of the Convention on Abolishing Legalisation of Foreign Public Documents, the applicants had difficulties in establishing or gaining recognition of the validity of such a document of release with Slovenian authorities.

Following the outbreak of the Kosovo crisis, the situation in the FRY deteriorated to such an extent that the hitherto poor work of the bodies responsible for issuing releases from FRY citizenship completely ground to a halt. Owing to the state of emergency in which the FRY found itself, the Federal Ministry of the Interior in Belgrade issued practically no more releases or confirmations that the applicant would be released from their current citizenship if they were granted Slovenian citizenship. Article 10, paragraph two of the ZDRS provides that the condition of being released from current citizenship is deemed to be fulfilled if a person is stateless or if that person proves that they would lose citizenship according to the law of the person's original country by being naturalised in the adopted country. If the person demonstrates that their country does not issue releases or considers the acquiring of foreign citizenship to be disloyalty sanctionable under their country's laws, it is sufficient to have a statement from the applicant that they renounce their original citizenship if they receive Slovenian citizenship.

We proposed to the MNZ that they take into consideration the actual state of affairs in the FRY and assess the existence of reasons which would justify applying Article 10, paragraph two of the ZDRS and using this as the basis for appropriate decisions and measures.

The Ministry drafted, and on 17 June 1999 the Government adopted the proposal that until the end of the state of emergency in the FRY it should be considered that the citizens of the FRY fulfil the conditions for release from their current citizenship.

The state of emergency ended at the beginning of June, but procedures for release from FRY citizenship still did not start again, and at least for individuals from Kosovo it is not certain when and even if they will start. So the MNZ can only finally resolve applications for citizenship from persons who are married to Slovenian citizens (this provides a basis for ignoring the release requirement), and take a suitably flexible approach on the expiry of the deadline for submitting releases. For this reason we proposed that they study the situation again and come up with appropriate solutions. They assured us that they were working on this.

The MNZ has not yet succeeded in gearing itself up for the **more rapid resolving of complaints against findings relating to Slovenian citizenship** which were issued primarily in connection with denationalisation. We are familiar with the professional demands of these procedures and the personnel problems in the responsible department at the Ministry, but we cannot reconcile ourselves to the fact that in one case a complaint going back to the beginning of 1996 was still not resolved in 1999.

3.5.3. Foreigners

In the area of dealing with the position of foreigners 1999 was a watershed year. Indeed we finally witnessed the realisation of proposals we had made every year for the legal regularisation of the position of citizens of the former Yugoslav republics who remained in Slovenia following independence, as well as the position of foreigners proper and of refugees.

In last year's report we had already pointed out that in its decision no. U-I-284/94 of 4 February 1999 the **Constitutional Court determined that the ZTuj was at variance with the Constitution,** because it did not set out the conditions for obtaining a permanent residence permit for those persons as under Article 81, paragraph two, following the expiry of the deadline in which they could apply for Slovenian citizenship, if they had not done so, or following the day when a decision deny-

ing Slovenian citizenship became final. The Constitutional Court determined that the responsible administrative body should not have transferred these persons from the register of permanent residents to the record of aliens ex officio, and without any official decision or notice to the persons concerned. They had no legal foundation for such action. In the same way they should not have applied to these persons the provisions of Articles 13 and 16 of the ZTuj, which set out the obtaining of residence permits for (proper) foreigners. By treating the people involved in this way while their special status had not been settled in the transitional provisions of the ZTuj or in a special law, there were violations of the principle of the state based on the rule of law (legal safety), the principle of equality and in certain cases there may also have been violations of human rights and freedoms, which according to the Constitution are accorded to all persons who are residing legally in the territory of the state, irrespective of their nationality.

The Constitutional Court charged the legislative authority with eliminating this variance with the Constitution within six months of the publishing of their decision. In line with this, on 8 July the National Assembly adopted the **Act Regulating the Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia** (ZUSDDD). Its content and the issues which nevertheless remain unresolved have been presented in our report for 1998 (page 67).

Pursuant to the ZUSDDD, the deadline for applications for the issuing of permanent residence permits expired at the end of the year. The number of applications received (around 12,000) - even if some of them turn out to be unfounded - indicates that the number of 'stray' foreigners without settled or properly settled status in Slovenia has been greatly underestimated.

We are aware that the MNZ geared itself up for the quickest possible response to applications. Despite this there are fears that there could be a modest or significant exceeding of the legal deadline for decisions. This should be avoided as much as possible, for it involves procedures with which the state is correcting its own error, which is now several (often eight) years old, and on the other hand exceeding the deadline could cause new injustices and harm to individuals. We have already received an application from an applicant who had a temporary residence permit. Since he put in his application pursuant to the ZUSDDD early enough to expect justifiably that it would be dealt with before the expiry of his temporary residence permit, he did not apply for an extension of the temporary permit. Nevertheless the permit expired, and despite the expiry of the legal deadline his application pursuant to the ZUSDDD has still not been dealt with, so the applicant is once again in Slovenian 'illegally' and among other things he has now forfeited the health insurance for his wife, who is a Slovenian citizen.

In the explanation of its decision of 4 February 1999, the Constitutional Court determined that the legal consequences of the non-settled legal status of persons who are citizens of other republics of the former SFRY are still evident, and that these persons find themselves in differing circumstances, which the legislators should take into account. The Court therefore determined a variance with the Constitution, leaving the settling or elimination of this variance to the legislators. The explanation of its decision, and even more so the Constitutional Court decision in connection with constitutional complaints owing to removal from the register of permanent residents and denial of exchange of driving licences, clearly indicates the **position of the Constitutional Court regarding the interim period between removal from the register and issuing of permanent residence permits** (pursuant to the ZUSDDD). The Court overturned all the official decisions of the administrative unit, the MNZ and the Supreme Court in connection with removal from the register and exchanging of driving licences which were based on the 'old' interpretation of the ZTuj. It stated that only after the enactment of the law which will eliminate the established unconstitutionality (i.e. the ZUSDDD) will it be possible to decide again on permanent residence for the complainant. Until that time the complainant must be accorded such legal status as he held pursuant to Article 13 of the UZITUL prior to the expiry of the deadline set out in Article 81, paragraph two of the ZTuj. This means that the complainant must be recognised as residing permanently at the address where he was registered prior to the unlawful removal from the register of permanent residents for the period up until the adoption of the ZUSDDD or until the expiry of the deadlines which that law will provide for the settling of status, and that for this period the administrative unit is bound to exchange the complainant's driving licence. When the ZUSDDD is adopted, the complainant will of course have to settle his status in line with the provisions of that law. For this reason the Constitutional Court determined that until the adoption of the law that will settle the status of citizens of other successor republics to the former SFRY in Slovenia, or until the expiry of the deadlines provided in that law, the administrative unit is bound

to re-enter the complainant in the register of permanent residents of the Republic of Slovenia and for that time issue him with a driving licence.

This was indeed what happened. Yet this in turn opens up the problem of the unequal position of those who have or will by means of a constitutional complaint gain recognition of their uninterrupted permanent residence in Slovenia (and other pertaining rights?), and those who pursuant to the ZUSDDD will obtain permanent residence permits - but most probably not backdated. In our opinion this problem should be resolved by the legislators, for otherwise it will very probably end up before the Constitutional Court again.

At the same session as the ZUSDDD the National Assembly also adopted the new Aliens Act (ZTuj-1) and the Asylum Act (ZAzil). The authors of these acts have given assurances that they are wholly aligned with the systems governing these areas in the countries of the European Union. Yet it has turned out that at least in the initial phase not everything will be clear in terms of their implementation. In 1999 we already dealt with two questions, the first albeit relating chiefly to the existing Ztuj.

We received several applications in connection with the **procedures for denying visas and denying entry into Slovenia to foreign citizens.** Based on our dealings with these applications we arrived at certain conclusions relating to the regulations covering certain areas of handling foreigners and the implementation of these regulations.

In the annual report for 1998 (pages 67 and 68) we pointed out that the part of the Ztuj covering denial of visas and denial of entry into the country was in part lacking. There was a dichotomy between Article 10 of the Ztuj, which provided taxative conditions for entry into the country and for the issuing of visas, on the one hand, and the provisions of Article 23 of the same law (cancelling of residence) and Article 22 of the Supervision of the State Border Act (ZNDM) (prohibition or denial of entry). The latter two articles provided an essentially broader basis for denying entry to specific persons, or for cancelling the residence of persons who for example had entered Slovenia on the basis of an entry visa. Despite holding an entry visa, a foreigner could be denied entry at the border or their residence could be cancelled immediately upon entry for reasons not provided in Article 10 of the Ztuj but provided in Article 23 of the same law or in Article 22 of the ZNDM (e.g. for reasons of public order).

Similarly, visas could be denied to persons for whom there were substantive reasons for such denial but not formal reasons. In a specific case, the Ministry denied a visa on the basis of Article 10, indent five of the Ztuj. In the available documents we could ascertain from the objections that the concerned person had been given the security measure of removal of an alien from the state, which measure had already expired and could therefore not be the basis for denial of a visa. When he finally succeeded in obtaining an entry visa, his entry into the country was denied on the basis of the provisions of Article 22 of the ZNDM. In this article, whereby the state border authorities can for reasons of public order prohibit or deny entry of a foreigner into the country, it is not clear what kind of prohibition of entry is involved and what such prohibition signifies. While the measure of prohibition of entry can be decreed in connection with the subordinate penalty of expulsion of an alien from the state, the security measure of removal of an alien from the state and the decreed measure of cancelling of residence, where in every case an official decision is issued, the ZNDM does not contain any provisions that would cover cases where it is possible to decree prohibition of entry into the country or a procedure for decreeing prohibition.

The case of another applicant showed that the recording of the measure of denying entry was not envisaged, either. And there was no evident basis for any kind of period of time for validity of the measure of denying entry. We describe this matter in greater detail in the section on selected cases.

Regarding the issues covered above the new Ztuj-1 is more comprehensive in its regulations, for it sets out the reasons for denial for visas in article 20, and the reasons for denial of entry into the country in Article 9, paragraph one. Here, as a reason for denial of entry into the country, Article 9, paragraph one, fourth indent expressly provides the threat posed by an alien to public order and peace. In this way it covered the area previously governed by Article 22 of the ZNDM. With the new Ztuj-1 and the rule that *lex posterior derogat legi priori,* the relationship between the Ztuj-1 and the ZNDM has become unclear, and the purpose and application of Article 22 of the ZNDM has become questionable. Even if this provision was still applied, it is - as stated - unclear how the

measure of prohibition of entry into the country is applied according to this article. This lack of clarity is compounded by the Ztuj-1, which lists among the reasons for denial of entry into the country in Article 9, paragraph one, sixth indent, the case where, if time has not yet run out, a foreigner can be prohibited from entering the country, in which case it is not certain whether this involves prohibition of entry in connection with cancellation of residence (which is covered by Article 9, paragraph one, fifth indent) or whether it is a prohibition on some other basis and what basis that might be. That this is probably simply the result of a nomotechnical slip can be seen in the fact that pursuant to Article 85 of the Ztuj-1 the records provided do not include any records of foreigners who have (only) been prohibited from entry.

Furthermore, in procedures conducted pursuant to the Ztuj-1, we also encountered the problem where an individual had been issued with an entry visa, but despite this entry into the country was denied. In the procedure for deciding on the issuing of a visa, reasons for not issuing a visa must be established. These are at the same time reasons for denying entry into the country as under Article 9 of the Ztuj-1. We are aware that the practice of the authority responsible for issuing visas is such that visas are issued or denied only when reasons for denying entry into the country have been evaluated, and this is requested from the MNZ. Article 22, paragraph one of the Ztuj sets out the cases where visas may be cancelled. The circumstances giving rise to the cancellation of a visa may have already existed on the issuing of the visa, or may have arisen later, when the visa was already issued. With truly diligent and coordinated work on the part of the responsible bodies, non-fulfilment of the conditions for issuing a visa should as a rule be established during the process of deciding on whether it should be issued. In other words, only in exceptions should there be a cancellation of a visa due to the later discovery that at the time the visa was issued the foreigner did not in fact fulfil the legal requirements. Given that a visa may be issued to a foreigner if there are no conditions provided by law for denying their entry into the country, the same should apply for denial of entry into the country when a foreigner has a valid visa.

Merely to illustrate the problems that can arise as a result of insufficiently precise concepts and procedures in this area, and as a caution for the practices of judicial bodies, we cite the case of a third applicant, although in actually dealing with the application we did not have recourse to the Ministry. The applicant, a Czech citizen, was denied entry twice, and this was marked in her passport, first on 2 September 1999 at the Dolga vas border crossing and then on 3 September 1999 at the Jelšane border crossing. On her third attempt she legally entered the country during the night of the 10/11 September 1999 at the Dolga vas crossing. However, on 12 September during checks at the Fernetiči border crossing it was found that she had violated the provisions of the ZNDM by disregarding the prohibition on entry into the country, thereby committing an offence pursuant to Article 59, paragraph one, tenth indent of the ZNDM. During this procedure the applicant was also detained, and the Fernetiči border police submitted a proposal for proceedings to be instigated to the misdemeanours judge in Sežana. In a decision of 13 September 1999 the judge in turn found the applicant liable for an offence, handing down a fine and the security measure of removal of an alien from the state for a period of six months. Upon appeal against the decision of the misdemeanours judge, a misdemeanours panel halted the proceedings in a decision on 17 September 1999. In the explanation of its decision the panel emphasised that the fulfilment of the conditions in the sense of Article 22 of the ZNDM is ascertained and assessed separately for each entry into the country, and the application of that article was in fact questionable in view of the new ZTuj-1. On the basis of the misdemeanours panel decision, the measure of removal from the state was struck from the records. The applicant's counsel was also successful in requesting compensation for the damage caused by the applicant being unjustly detained pursuant to Article 109, paragraph two of the ZP.

We proposed to the MNZ that it re-examine the issues under discussion and set out its position, particularly regarding:
- the period of validity for denial of entry into the country,
- the application of Article 22 of the ZNDM following the entry into force of the Ztuj-1,
- a possible fourth type of prohibition on entry into the country not connected to criminal acts, misdemeanours or cancellation of residence,
- denial of entry into the country despite a visa having been issued, where circumstances for denial already existed on the issuing of the visa.

We dealt particularly with an application from a limited company owing to **difficulties it was experiencing in obtaining entry visas for its business partners.** In our contacts with the MNZ we were

assured that the Ztuj-1 had adopted the regime current in European Union countries for issuing visas. Article 19 of the law provides that a foreigner must obtain a visa prior to entering the country from a diplomatic or consular representative abroad. In exceptions, a border control body may also issue a single entry visa. The border control body may issue a single entry or transit visa if it is demonstrated that for unforeseeable, objective reasons of time or for urgent reasons the foreigner was unable to obtain a visa at a diplomatic or consular office abroad.

In specific cases the authorities could issue visas at the border if they were provided in time with all the necessary information. In issuing visas at the border they take account of all the objective circumstances that dictate the issuing, although they must also take account of the legal provisions which permit this manner of issuing visas only in exceptional cases. We are committed to having the visa issuing regime as flexible as possible, and particularly to having all those involved fully acquainted with this regime.

We dealt with the application of a Slovenian citizen who married a Ukrainian citizen in 1999. The applicant permanently resides in Slovenia and of course wants his wife to live with him, so he started the **procedure for issuing a temporary residence permit to a foreign close family member of a Slovenian citizen,** pursuant to Article 37 of the Ztuj-1. He learned that he could only apply for this permit at the Slovenian consulate in Budapest, and that in submitting the application his wife also had to be present (or failing this she should send a notarised authorisation). His wife would then have to come personally to the consulate to collect the document.

They submitted their application, and experienced some difficulties in doing so, for the applicant's wife produced certain documents which should have been previously translated into Slovenian. They arranged for the consulate to hold on to the application until court verified translations could be sent. The application should have been sent to the competent administrative unit, and once the procedure had been concluded it should then have gone to Budapest where the decision would be handed to the applicant's wife. The wife obtained a three-month tourist visa and resided in Slovenia.

In a letter to the MNZ we pointed out that in the implementation of the new Ztuj-1 there would without doubt arise numerous practical questions for which it would be necessary to find appropriate answers. The Ombudsman wishes these answers to be no more unpleasant to the individual than is absolutely necessary. In other words, all interventions in the sphere of the individual should be based on an unequivocal legal basis. We expressed the hope that positions and explanations would not be presented for which it would transpire that they were at variance with our (constitutional) legal system, as had unfortunately happened with the earlier Aliens Act.

Pursuant to Article 28 of the Ztuj-1, foreigners must obtain a permit for first residence in Slovenia prior to their entry into the country, unless otherwise provided by law. Applications for such permits should be submitted to a Slovenian diplomatic or consular office abroad. We are not aware of such offices having any other responsibility in the procedure for issuing permits than receiving applications (which probably includes ensuring that they are complete) and handing out the decisions of the competent body. For this reason, in connection with the procedure described above several questions can be raised:

- is it truly necessary in submitting an application pursuant to Article 37 of the Ztuj-1, which application is dealt with by the competent body in Slovenia, for a Slovenian citizen to travel abroad;
- who in this procedure is the client: without doubt the Slovenian citizen who has submitted the application, and certainly also (as a side participant?) the foreign close family member;
- are there any special reasons why the permit could not be handed (also?) to the 'main' client;
- is the personal presence of the clients essential in submitting the application and receiving the official decision; does this mean that a Slovenian citizen married to an Australian citizen would have to travel to Sydney in order to submit an application; handing over the official decision as a rule involves simply returning the passport, in which the competent administrative unit has, pursuant to Article 46 of the Ztuj-1 entered the permit in the form of a sticker;
- Article 63 of the Ztuj-1 prescribes the application of the ZUP unless otherwise provided; in these procedures valid application can also be made of the provisions of the ZUP on the duty to accept an application, on dealing with inadequate, incomprehensible or incomplete applications and on dealing with applications received by post; in other words, how an administrative unit should act when it receives by post a complete application from a Slovenian citizen for the issu-

ing of a temporary residence permit for a foreign family member: should it send it to the consulate which is competent to receive it, and then the consulate return it to the administrative unit, because the said unit is competent to decide on the application?

A provision on submitting applications for temporary residence at diplomatic and consular offices abroad is contained in the article dealing with the issuing of first-time residence permits, and that in a situation where a permit must be obtained by a foreigner who has not yet entered the country (Article 28 of the Ztuj-1). Article 29 also obviously covers cases where the applicant for a permit is a foreigner. Yet in the case under discussion the residence permit for a close family member must be obtained by a Slovenian citizen, which in procedural terms the Ztuj-1 does not specifically cover. Through linguistic, logical and teleological interpretations of Article 28 and other provisions of the Ztuj-1 it would be possible to arrive at the conclusion that applications for temporary residence do not need to be submitted to diplomatic and consular offices abroad in a number of cases, and not just in those cases for which the law explicitly provides exceptions.

We have described this case because it very clearly demonstrates a digression from the fundamental principle of economy in administrative procedures. There is a similar situation in certain other cases, for example in the application of a (Slovenian) employer pursuant to Article 34, paragraph three of the Ztuj-1, the application of a foreigner with permanent residence in Slovenia for the uniting of his family pursuant to Article 36, paragraph three and last but not least the application of a foreigner who is seeking a first-time temporary residence permit but who is already physically in Slovenia.

We proposed to the Ministry that it study the issue of submitting applications for temporary residence permits in the light of the described - and probably also other - circumstances and that they seek solutions which will come closest to the fundamental principle of economy in administrative procedures, in other words solutions which will cause the least amount of lost time and expense for the client.

In its response the MNZ did not take any explicit view on our proposal. It was possible to surmise, however, that according to the Ministry's position Slovenian citizens must also submit applications pursuant to Article 37 of the Ztuj-1 for the issuing of temporary residence permits for close family members at Slovenian diplomatic and consular offices abroad. They are basing this on Article 28 of the Ztuj-1, and they obviously do not feel it is important that pursuant to Article 37 of this law it is not a foreigner who is obtaining the permit but a Slovenian citizen.

The response does not focus on whether it is acceptable to force a Slovenia citizen to travel abroad in order to arrange a matter for which the competent authority is in Slovenia. The possibilities are indicated for the Slovenian citizen in this case to authorise another person (a close family member who is a foreigner?) or to send the application by post to the body responsible for receiving it. In our applicant's case these possibilities were not mentioned at all, from which we may conclude that the administrative units and diplomatic and consular offices do not have such instructions. If they did, the question would immediately arise as to why in this case the legal provision is not expressly different from that in Article 28, such that the Slovenian citizen might therefore submit an application directly at the competent administrative unit. The other possibility for a different system would be that applications for permits under Article 37 should also be made by foreign close family members of Slovenian citizens, and the foreigner should then have to demonstrate (the plausibility?) that this involved the uniting of a family.

From the response it is not clear whether in connection with applications the diplomatic and consular offices might have some other function than receiving them and attempting, without any obligation, to ensure that the application is as complete as possible. For this reason it is hard to understand why the administrative unit should send a complete application received by post to a diplomatic or consular office abroad. Could matters then be taken into the realm of absurdity, with for example a Slovenian citizen, despite explanations that the diplomatic or consular office abroad is responsible for accepting applications, persisting in submitting the application to the administrative unit, which would - pursuant to Article 66 of the ZUP - accept the application, but then reject it, despite being the competent body appointed to deal with it?

In the 'legalistic' approach to the issue under discussion the response contains a surprising position, that a permit issued pursuant to Article 37 should be handed personally to the foreigner, in

such a way that on being handed over (at the diplomatic or consular office) the sticker is affixed to the foreigner's passport. Pursuant to Article 42 the administrative unit is responsible for the issuing of temporary residence permits, and pursuant to Article 46 the responsible body issuing (i.e. not "handing over") permits places such permit in a clearly visible manner as a sticker in the foreigner's passport.

For this reason we urged anew and serious study of our proposal. If the view prevails that even in cases where the applicant for a foreigner's temporary residence permit is physically in Slovenia, the body competent to receive such application is still a diplomatic or consular office abroad, then we could expect at least appropriate instructions to the administrative units and consular offices that might tone down the severity of the provision of Article 28, paragraph three.

Just before this report was completed we received a reply from the MNZ that following a new study of this issue they had come to the conclusion that in order to protect the basic human right to preserve the integrity of the family it was both acceptable and permissible for Slovenian citizens applying for a first temporary residence permit for a foreign close family member to submit such application either to a Slovenian diplomatic or consular office abroad or to the competent administrative unit (the choice is up to the applicant). But in the future, issued permits will still be handed to the foreign close family member only at diplomatic and consular offices. The MNZ has already issued appropriate instructions to the administrative units.

Temporary refugees and asylum seekers

In last year's report we pointed out that the Government had (still) not adopted a resolution that in view of the situation in Kosovo the conditions from Article 2 of the Temporary Refuge Act were fulfilled and that therefore refugees from that area should be granted refuge. Following a continued rise in the number of people fleeing to Slovenia from Kosovo in 1999, this resolution was finally adopted on 8 April 1999, and the National Assembly then determined the number of people to whom Slovenia would offer temporary refuge (a further 1,000 in addition to the 2,477 already registered; the number may be exceeded if this involves reuniting families or urgent humanitarian reasons). The responsible bodies attempted to implement an organised system of refugee arrivals. Temporary refuge was granted to 3,257 people. Following the change in the situation in Kosovo their number started to fall.

We dealt with the application of foreigners who had been granted temporary refuge, and who, by decisions of the Office for Resettlement and Refugees on the basis of a Government Decree on the contribution of persons with temporary refuge towards maintenance and accommodation in the accommodation centre in the level of humanitarian assistance receivable by persons with temporary refuge (hereinafter the Decree), were granted humanitarian assistance for six months. The decisions were issued soon after the Decree took effect, in August and September, but this assistance, as the applicants have stated, has not been paid.

We received an explanation from the Office for Resettlement and Refugees that on the passing of the Decree the financial means for its implementation had not been secured. Since the means have still not been secured, the decisions, despite now qualifying for implementation are not in fact being implemented. As we have ascertained from the Office's reply, they have advised the Prime Minister's Office and the MF of this problem.

In a letter to the Prime Minister's Office we stressed that regulations should be observed not simply by individuals, but also (and especially) by state authorities. The state is bound to ensure the actual fulfilment of rights of individuals as provided to them through regulations. Every variance between what was declared and what was real for individuals aroused distrust in the legal system and in this way also in the state itself and its institutions. The issuing of decisions which could only be implemented on paper, and not in reality, signified the most irresponsible behaviour, which in a state based on the rule of law should not be allowed to happen. We proposed that appropriate measures be adopted as soon as possible and actual payment of the humanitarian assistance be effected according to the decree. We learned from the applicants that a part of the assistance had indeed been paid.

The influx of refugees from Kosovo meant that the premises of the transit centre for foreigners (PDT) became overcrowded. In such conditions at the building on Celovška Street in Ljubljana it was impossible to distinguish between those seeking asylum and those foreigners who were at the PDT for their identity to be established or waiting to be removed from the country. The

Ombudsman and the UN High Commissioner for Refugees were therefore approached by an asylum seeker who was staying at the PDT with his family. He also complained about the police checking their presence after 10 p.m., the low financial allowance, small meals and so forth. We received an assurance from the managers of the PDT that they would try their utmost to avoid any actions which would give grounds for justified complaint. Upon renewed complaint from the same applicant we suggested that in determining the house rules and in other measures they take as much account as possible of the different position of asylum seekers. Here it would be appropriate in our opinion to reassess whether it is truly necessary to have regular checks on the presence of foreigners housed there for longer periods, and to have such checks late at night. If such roll calls are unavoidable, they should be carried out with an appropriate degree of sensitivity, especially if there are children who might already be asleep.

The managers then clearly dealt with the situation. As far as we know, they also implemented a separation of the premises for asylum seekers and other foreigners. Meanwhile the PDT itself ceased to function with the entry into force of the Ztuj-1 in July 1999. Pursuant to the new law its tasks were taken over by the Centre for Removal of Aliens, and tasks under the ZAzil were taken over by the Asylum Centre, which was scheduled to be set up within six months of the entry into force of the ZAzil. We do not know if and when the decision on setting up the Asylum Centre was issued, but in any event, owing to awkwardness in the system of regulations it was discontinued.

In connection with procedures for obtaining asylum we received just one application. Despite this, we feel it necessary to draw attention to the need for the earliest realisation of MNZ plans for implementing the ZAzil. Here we have in mind the issuing of regulations on the method of implementing the law, the appropriate organisation of the competent authority and in particular the punctual and absolutely irreproachable conducting of procedures for obtaining asylum.

3.5.4. Denationalisation

In 1999 the influx of applications in this area grew considerably. We received 139 applications, which represented a 110 per cent growth over 1998. We can ascribe this increase in the number of applications received in part to the action of the Association of Appropriated Property Owners, under whose wing those eligible under denationalisation and those submitting requests sent responses to a questionnaire. In all we received 692 such responses.

We received the completed questionnaires over a period of time, so we were able to conduct a more thorough analysis only when the influx tailed off. It was clear both from the questionnaire and from the Thirteenth Report on the Implementation of the Denationalisation Act (ZDen) just how far off the conclusion of denationalisation still was. The Ombudsman's office has encountered the problem of implementation of the ZDen since the start of its operations. In 1995 we received 60, in 1996 we received 66, the following year 71 and in 1998 we received 62 applications in this area. Occasionally we were approached by groups with an interest or stake in the denationalisation processes and others who were directly affected by denationalisation (owners of appropriated property, tenants of denationalised apartments and business premises). These cases often involved the formulation of a policy for implementing the ZDen and even demands for changes to it, in other words they involved issues that went beyond the competence of the Ombudsman.

As part of the powers given to us by the ZVarCP, we advised and proposed appropriate measures regarding the problems deriving from the applications received. In this way we helped to gradually resolve some of the problems, but unfortunately not as much as could have been hoped.

The applications primarily and for the most part related to the speeding up of procedures, so our work was also directed chiefly towards this goal. In a number of cases we were able to have the procedure concluded or at least reduced. We were less successful with bodies where personnel and other 'objective' circumstances caused bottlenecks in conducting denationalisation procedures.

After studying the Thirteenth Report, on 18 March 1999 the Government adopted several resolutions to improve the situation, and we agree with these resolutions. Appropriate positions, recommendations and resolutions were also adopted by the National Assembly which studied the Report at its 14th session, on 10 June 1999. On the basis of our comments on the problems in implementing the ZDen, on 15 July 1999 we sent a comprehensive letter to the Government, responsible ministries, funds and the Office for Denationalisation. In this letter we briefly set out the work of the Human Rights Ombudsman in connection with the implementation of the ZDen and

an analysis of the aforementioned 692 responses to the questionnaire from the Association of Appropriated Property Owners. We cited certain reasons for the (slow) progress of denationalisation procedures and some substantive problems in connection with the implementation of the ZDen. We stressed that these were merely the problems it was possible to identify on the basis of dealing with applications at the Ombudsman's office.

The following reasons and problems are involved:

- insufficiently thought out and imprecise regulatory provisions in the law itself;
- later interference in the law (almost 20 times) with amendments and additions, temporary suspension of the implementation of certain provisions and decisions of the Constitutional Court in connection with assessments of constitutionality;
- the influence of legislation which did not exist at the time of the adoption of the ZDen (privatisation, setting up the SOS and the SKZG - the farm and forest land fund - and transformation of the state administration and local government);
- delays and confusion in connection with the necessary implementing regulations;
- insufficient action by the competent bodies for the timely clarification or resolving of issues that have arisen in implementing the law (e.g. regarding the provision of replacement property, the issue of agricultural land in complexes, and the approach needed when it is the state in possession of property);
- poor initial organisation for implementing the ZDen in terms of personnel and real difficulties faced by some bodies because of a lack of staff, their lack of training, turnover etc;
- dubious and as a rule not very effective solutions with external implementers of denationalisation procedures;
- inadequately professional conducting of numerous procedures, which is a result of both inadequate training of the responsible employees and a lack of timely and complete instructions; in some assessments approximately half of the cases are returned at least once to the first instance body for renewed decisions;
- lengthy resolving of preliminary questions, particularly the citizenship of the person eligible under denationalisation;
- ineffective legal remedies in connection with the 'silence' of official bodies;
- non-standardised and slow valuations;
- objective difficulties in connection with establishing the value of property when it was taken over by the state, improperly organised land and cadastral registers and similar;
- the issue of costs of the procedure, particularly for measuring land, identification deeds and valuers;
- deciding on complaints and administrative disputes in periods of time that far exceed those provided by law or that are reasonable;
- difficulties in identifying those eligible in respect of the form of denationalisation, non-coordinated demands of applicants, the entry of new applicants into procedures;
- vacillation over judging the possibility of returning property itself or in kind;
- impermissible disposal of property following the entry into force of the ZDen;
- time-wasting behaviour of those liable, particularly the SOS, the SKZG and certain municipalities, through postponement of statements of intent, excessive use of legal remedies etc; the administrative authorities tolerate such behaviour too much.

We pointed out that the state of affairs in this area is poor because of the above and other reasons, which probably include the most significant fact, that the principles involved in denationalisation are varied, and that there is therefore no unified will or proper atmosphere for effective implementation of the ZDen. We drew special attention to the fact that events in the time following the adoption of Government resolutions aroused serious doubts about these resolutions actually being implemented, and even about whether in implementing the ZDen there would ultimately be any real movement. In support of these doubts we mentioned the still unknown criteria for returning replacement farm land, confusion over procedures in connection with investments in property taken over by the state, the slow start of work by the Office for Denationalisation and the fact that it is not possible to identify the activities of the Government's interdepartmental committee for monitoring fulfilment of the ZDen. We proposed that the Government and all other recipients of our letter ensure the consistent and effective implementation of the Government resolutions of 18 March 1999, and in fulfilling the National Assembly resolutions of 10 June 1999 they should determine and carry out other measures for the earliest conclusion of denationalisation.

As stated, we have also been successful to a certain 'objective' extent in speeding up individual denationalisation procedures, where the limit of this extent is represented in particular by the currently long time needed for decision-making at certain second instance administrative bodies and in administrative disputes at the Supreme and Constitutional Courts. In these cases we are trying through intervention with the heads of these bodies and the Government and by publishing details in the Ombudsman's annual report to influence matters such that the situation might come closer to what it should indeed be in a state based on the rule of law, in other words that all matters should be resolved in the legally provided, or approximately reasonable, time frames. Until this happens, it will also be difficult and problematic for the Ombudsman to secure any priority treatment of the cases of applicants who have approached us; problematic because this might generate injustices for other eligible people who are in an equal or even worse position.

Content of applications received in 1999

In 1999 certain problems continue to remain salient, and these problems were already highlighted in the previous year. The majority of applications, including those from religious communities, related to the still or even more acute problem of the very drawn-out denationalisation procedures. The content of the applications also indicates problems in implementing the Act Amending and Supplementing the ZDen (ZDen-B), adopted in 1998. It was hoped that this law would eliminate or resolve certain controversies in the area of denationalisation, but as we have ascertained, it has in practice opened up certain new questions and problems, relating to:

- return of replacement farm land,
- renewal of procedure pursuant to Article 23, paragraph one, fourth indent of the ZDen-B,
- procedures in connection with establishing the benefit from investments in property taken over by the state.

Applications received in 1999 continue to indicate certain problems that are still current, and which we pointed out in previous years:

- unjustified waiting on the part of the first instance bodies for those liable to state their position
- unjustified delaying of procedures on the part of some of those liable to return property, particularly the SOS.

In 1999 we also identified a new problem relating to the impossibility of realising denationalisation decisions with which eligible persons have been granted the right to return of property in the form of SKZG certificates.

Return of property in the form of replacement farm land

The ZDen-B determined the SKZG as the body liable for returning replacement farm land, and in this way very clearly opened up the possibility for settlements to be made between the SKZG and those eligible or their legal successors, pursuant to Article 42, paragraph three of the ZDen.

It turned out that data had not been gathered on how much replacement land those eligible had demanded. For this reason in October 1999 the SKZG published in the media a public call for those eligible and their legal successors to register for settlement in the denationalisation process, or for them to submit applications for the allocation of replacement farm land and forests. Of course the data obtained in this way is not complete, either.

The Supreme Court took the view that even according to the ZDen-B the provision of replacement land was a subject for agreement between those liable and those eligible, and was therefore optional, which is probably not what the legislators had in mind. As far as we know, a mandatory interpretation of Article 27, paragraph one of the ZDen is being prepared. Neither was it clear to the administrative bodies that before the concluding of an agreement on provision of replacement land the procedure must be conducted up to the report on the legal ad actual state.

In the light of this, there are still no criteria for returning replacement land, and the legal provision, from which numerous eligible persons expected much, is still not being implemented.

Establishing citizenship in denationalisation procedures

We discovered inconsistent practices regarding the application of Article 23, paragraph one, fourth indent of the ZDen-B. Two distinct views are apparent. According to one, in line with the aforementioned article it is possible to lodge a proposal for the renewal of procedure only against a decision with legal effect issued in the denationalisation procedure, and not also against a deci-

sion with legal effect on the establishing of citizenship. According to the other view, it is possible to lodge a proposal for the renewal of procedure only against a decision wit legal effect establishing citizenship.

Return of property to religious communities

We received some applications from different dioceses as a result of problems arising for them in the procedures of denationalising property which the state took over from the church. They cited chiefly the lengthy duration of these procedures, which in the opinion of church representatives constitutes deliberate time wasting on the part of the state and the authorities.

One of the applications dealt with related to denationalisation of the castle of Betnava. In connection with the application we sent an enquiry to the Ministry of Culture (MK) regarding the possible objections which had meant that even six years after lodging a request for denationalisation they had not given a decision. Only after persisting did we receive an answer from the Ministry, in which they set out their understanding of Article 1 and Article 27, paragraph one of the ZvarCP, and the opinion that the applicant in this case (a Roman Catholic diocese) had the status of a legal person and as such had no place in procedures with the Ombudsman. So the Ministry declined to offer any kind of information in connection with the application.

Using arguments set out earlier under 3., page 32, we explained to the Ministry our understanding of Article 1 and Article 27, paragraph one of the ZvarCP. We stressed that the word "everyone" (vsakdo) in Articles 9 and 26 of the ZvarCP and Article 18 of the rules of procedure of the Human Rights Ombudsman was not intended to mean just natural persons. We proposed that the MK adopt the necessary measures to ensure the final conclusion of denationalisation procedures for which it was responsible. The Ministry clearly accepted our position regarding interpretation of the provisions of the ZvarCP, for it acquainted us with the circumstances of the case under discussion and with the objections which had held them back from deciding in the matter, and it assured us that this denationalisation request would be further expedited.

Unjustified waiting for those liable to state their position

This year, too, one of the frequent causes of hold ups in denationalisation procedures has been through the first instance administrative bodies waiting for those liable to return property to state their position regarding the denationalisation request. In our report for 1998 we had already given an opinion in connection with this issue, that in cases where the person liable to return property offers no statement on the denationalisation request in the time provided by the administrative body, this should not hold up the procedure. This year in certain individual cases we also conveyed this opinion to some administrative units (e.g. Slovenska Bistrica and Ormož), and in specific cases they generally took account of our opinion and continued with the denationalisation procedure.

Unjustified delaying of denationalisation procedures on the part of certain liable persons

In the applications received we observed some unjustified delaying of procedures on the part of certain persons liable to return property, chiefly the SOS, the State Attorney and the SKZG.

The actions of the SOS are often directed at one goal alone - drawing out the procedure. In one case dealt with, we sent an enquiry to the MOP regarding the time frame for resolving the complaint of our applicant. In its reply the Ministry acquainted us with its findings regarding the cause of the delays and hold ups in denationalisation procedures. The problems and causes highlighted by the Ministry to a large extent concur with our own findings, that one of the very frequent causes of the drawn-out resolving of denationalisation matters is the action of the SOS, which:

- often takes no part in discussions and inspections, and then objects to violations of the procedural rules;
- objects to decisions which are based on an earlier agreement between the liable body (the SOS) and the eligible person;
- lodges administrative complaints in matters where even at first glance it is clear that the complaint will be thrown out;
- does not carry out denationalisation decisions with final legal effect;
- reacts in different ways to matters that are identical in substance;
- usually disagrees with valuations etc.

In their responses to our enquiries, certain administrative units underlined that in denationalisation procedures there are frequent impediments from the State Attorney as the legal representative of the state and from the SKZG, which does not take part in oral hearings, expresses its lack

of confidence in the findings of administrative bodies, often makes unnecessary demands for documents to be sent by post and persists in using exceptions pursuant to Article 19 of the ZDen without concrete proof.

SKZG certificates

In dealing with applications we have run up against the problem of non-fulfilment of obligations under Article 27 of the ZDen in cases where the person eligible for denationalisation has through a official decision been granted the right to SKZG certificates for farm land taken over by the state. We requested an explanation from the Fund as to how it was fulfilling its obligation to issue certificates, deriving from Article 27 of the ZDen. In its response the SKZG acquainted us with the fact that in the entire territory of the Republic of Slovenia since 1992 to the present only four denationalisation decisions had been issued which specified the return of property in the form of SKZG certificates. The Fund explained that the provision of Article 27, paragraph three of the ZDen was in practice not implemented, for there was still a lack of clarity regarding the method of actually handing out certificates, their validity, the possibility of cashing them in and possible interest in the event of the eligible person not using them to purchase farm land or forest or not exchanging them for bonds. There was also deemed to be controversy surrounding the level of bonds and the validity of the SKZG bond relative to the SOS in the event of exchanging certificates for bonds.

On 28 October 1999, upon studying the Fourteenth Report on the Implementation of the ZDen, the Government adopted a resolution with which it charged the State Attorney and the SKZG with producing in one month a possible solution regarding the certificates. During 1999 this Government resolution was not realised, but at the time of writing this report our information indicates that preparations for issuing certificates have come so far that we may finally see an end to the inadmissible situation and the prospect of the exercising of legally provided, entirely unequivocal eligibility.

3.5.5. Taxes and contributions

In 1999 we have also observed an increase in applications in this area. We received 101 applications, which in comparison with 1998 represents an increase of almost 20 percent in such cases. In view of the total number of taxpayers in Slovenia, the number of applications received is not so great, although the applications nevertheless indicate certain significant problems in this area. One of the main reasons for the increase in applications is the emergence of a legal vacuum in the area of deciding on writing off, partial write-off, postponement or payment by instalments of debts deriving from unpaid obligatory contributions for pension and disability insurance. In 1999 alone we received 26 applications relating to this issue.

Write-off, partial write-off, postponement or payment in instalments of debt deriving from unpaid obligatory contributions for pension and disability insurance

As stated, over a quarter of all applications received in the area of tax procedures related to the problem of the legal vacuum surrounding the exercising of the right to write-off, partial write-off, postponement or payment in instalments of debt deriving from unpaid obligatory contributions for pension and disability insurance. Up until 1 January 1999 applications of this nature from taxpayers were decided on by the competent first instance tax authorities. Following the adoption of the Act Amending and Supplementing the Tax Procedure Act (ZdavP), which entered into force on 1 January 1999, the provisions of this act relating to write-off etc no longer applied to contributions for pension and disability insurance. The Tax Administration of the Republic of Slovenia (DURS) thereupon declared that it was not competent to decide on these applications. In clarifying the question of which state body was competent to decide on writing off these contributions, we discovered that the Institute for Pension and Disability Insurance (ZPIZ) had also declared itself non-competent in this matter. So in 1999 there was no exercising of the legal eligibility of taxpayers to request the write-off of their tax debt, which the competent authority may write off in those cases where it establishes that collecting the tax debt would cause hardship to the taxpayer and their family members.

In connection with this problem we proposed to the MDDSZ that by prior agreement and coordination with the MF they take all necessary measures for the adoption of a regulation which would determine the conditions, criteria, the competent body and the procedure whereby it would be possible to deal with applications for write-off, partial write-off, postponement or payment in instalments of debt deriving from contributions for pension and disability insurance. A solution came only at the end of 1999 with the adoption of the new Pension and Disability Insurance Act. Article 228 of the Act provides that the assembly of the institute shall, on the proposal of the institute's management board, write off, partly write off, and approve postponement and payment in instalments and the return of contributions for obligatory insurance.

By way of transition to the new Pension and Disability Insurance Act, Article 235a of the Act Amending and Supplementing the ZDavP provides that the assembly of the Slovenian ZPIZ shall,

on the proposal of the institute's management board and until the adoption of criteria pursuant to the law governing pension and disability insurance, write off, partly write off and postpone contributions for pension and disability insurance, with the application mutatis mutandi of regulations on write-off, partial write-off and postponement of contributions for pension and disability insurance.

Collection of tax debt and informing taxpayers of the level of their debt and overpayment

Taxpayers often have problems in obtaining explanations of the level and origin of their tax debt from first instance tax authorities and in coordinating their accounts with official records. In dealing with applications we encountered cases where the tax authority had started the procedure for forced collection of tax debt even several years after it had arisen. The late forced collection of debt, complete with high late payment interest, can place many taxpayers in a situation where their debt becomes practically uncollectable. It is true that tax obligations remain independent of the procedure for forced collection. But the reasons why taxpayers have not settled their debt are varied (real incapacity to pay, relying on the success of legal remedies used). Irrespective of their greater or lesser justification and of the public interest, the principle of economy of administrative procedures, the equality of taxpayers, the aforementioned provision of Article 41 of the ZDavP (and more) demand that forced collection is punctual and efficient.

Late forced collection is questionable particularly when the taxpayer has not even been informed of the existence of a tax debt, believing for example that they have fully settled their obligations, while the tax authority has allowed the taxpayer to believe in the following years that they have paid in full, without informing them of the level of their debt.

Change of taxpayer for payment of tax on profit from agriculture

At the beginning of March 1998 an applicant sold a piece of farm land. A month after the conclusion of the contract of sale, the purchaser paid the sales tax and submitted an application for the change of ownership rights to be entered in the land register. A year after this the applicant received a notice from the competent tax office of the level of cadastral profit for 1998. He was given the explanation that he would be charged for the cadastral profit from the sold land until such time as the new owner was entered in the land register, a procedure which could last several years.

This state of affairs bears poor testimony to the quality of work conducted by state bodies, a major component of which should be keeping their work up to date. The main reason for this problem is indeed the situation at some (primarily larger) courts, but the individual still senses - and also assesses - the work of the state as a whole and is less interested in which cog in the machine is holding everything up than in the fact that the whole machine is not working as it should.

In line with the valid regulations, which define the person liable to pay tax on profits from agriculture and the method of measuring it (Personal Income Act, Tax Procedure Act, Land Register Act and Establishing Cadastral Profit Act), the entry in the land register determines all the further procedures for entering changes in the land cadaster and in the tax records of the competent tax authority. So it happens not infrequently that information in these records is not a reflection of the actual situation, for the new owner or purchaser as a rule begins to use the purchased land before the entry of their ownership right in the land register. Another consequence of late entry of changes in the official records is the fact that several years after the conclusion of a contract of sale the vendor is still liable to pay tax on profits from agriculture, even though he no longer has any right to the sold land.

We took the view that the person liable to pay this tax should be the actual owner, i.e. the person who exercises all ownership eligibility on the agricultural land. One possibility for the tax authority keeping their records of persons liable to pay tax on profit from agriculture more up to date with the actual state of affairs could be that in cases where the aforementioned circumstances exist, changes of the persons liable for tax could be entered in the tax records on the basis of concluded and notarised contracts of sale. We therefore proposed to the DURS that they study the possibility that in cases where owing to the situation in individual local courts there are delays in entering transfer of ownership in the land register, tax offices could record the actual transfer of ownership in some other appropriate way and take this transfer into account in establishing the person liable to pay tax on profit from agriculture. We pointed out that in the regular system of assessing tax pursuant tot the ZDavP there was already a one-year off-set (tax is assessed according to data from the land cadaster on 31 December before the year for which tax is assessed, and must be assessed by 31 December of the year for which it is assessed) and that Article 23, paragraph two of the Personal Income Act provides the possibility that in cases where land is being used by

someone who is not entered in the land cadaster as the owner, the holder of the right of use or usufruct, tax on profit from agriculture is assessed for the user of the land.

The reply from the DURS stressed that the problem of backlogs at the local courts should be resolved through the MP, and that they only receive one or two complaints a year as a result of non-updated records, which in their opinion indicates that in the contract of sale the parties have already agreed on assuming tax liability. They also offered a rather narrow interpretation of Article 23, paragraph two of the Personal Income Act. Later they informed us that the position had been cleared with the MF that exceptionally in cases where owing to backlogs at individual local courts there were delays in entering the transfer of ownership rights in the land register, the tax authority could record the change of person liable to pay tax on profits from agriculture on the basis of submission of appropriate proof (e.g. notarised contract of sale or other contract on the acquisition of ownership or possession right and the application for entry in the land register).

3.5.6. Other administrative matters

Correcting injustices

In this area we have observed a higher growth in the number of applications received in comparison with 1998. We received 35 applications in 1998, while in 1999 we received 210 applications, of which 186 applications were from the relatives of persons killed after the war, with the remaining applications relating primarily to the slowness of decision-making by the Government commission on the demands of those eligible pursuant to the Correction of Injustices Act.

In the applications from relatives of persons killed after the war (i.e. persons executed directly after the Second World War - translator's note) the relatives proposed that the Ombudsman instigate appropriate procedures at the legislative and executive authorities to discover, properly mark and protect the graves as sites of national importance, to identify and list the Slovenian victims of post-war killings, to record their deaths in the registers of death, to issue the relatives ex officio with death certificates, give a public honouring of the dead and public condolence to the survivors, and provide full public condemnation of the killings. In some applications there was also the request that the state should officially notify the relatives of the fate of their family members.

Since the very beginning of its work the Ombudsman has dealt with the problem relating to respect of the basic human rights and dignity of persons killed after the war. In 1995 we were already receiving applications regarding the issuing of death certificates for persons killed after the war. We proposed to the MNZ at that time that the Central Registers Act be supplemented so that death certificates could also be issued for these persons. The supplementation of this act was adopted in the National Assembly on 11 May 1995. Following the entry into force of the supplements we did not receive any applications from relatives that would indicate they had problems in obtaining death certificates.

The Correction of Injustices Act accords certain rights to persons killed after the war and their relatives. In addition to damages for the relatives, it also accords the right to the issuing of death certificates and the marking of graves if this has not already been done. The procedure and method for obtaining damages and marking of graves should be regulated by two other laws, which are unfortunately not yet passed. We have therefore ascertained that the relatives have still not been able to obtain damages, for the War Damages Payment Fund Act has not yet been adopted. Neither has the War Graves Act been adopted, this being the law which would regulate the issue of graves of persons killed after the war.

In dealing with such applications we base our approach on the conviction that the state must respect the right of every individual, even after death, to personal dignity. For this reason we propose that the state do everything necessary at the earliest opportunity to ensure the observance of this right to include persons killed after the war.

In our opinion this means in particular:
- marking of grave sites
- a symbolic funeral
- establishing a roll of persons killed after the war
- arranging the issuing of death certificates
- due reverence being accorded to remains that are found.

We have ascertained that activities towards the proper resolving of issues related to persons killed after the war area progressing slowly. In 1990 the then Executive Council of the Republic of Slovenia appointed a commission to address issues connected to the purpose and arrangement of grave sites in Kočevski Rog and other such grave sites. In all this time the work of this commission has not produced any proper results. For this reason on 20 August 1999 the Ombudsman met with the chairperson of the commission, in order to acquaint himself with the problems the commission was encountering. The chairperson of the commission explained that the position and status of the commission had not been settled and the commission was not working in its full composition, owing to the death of certain of its members. The chairperson went on to point out the incapacity of the commission for operative work and for gathering information on post-war killings. It was established that the jurisdiction and composition of the commission would need to be enhanced.

On 25 August 1999 the Ombudsman sent a letter in connection with this problem to the Minister of Labour, Family and Social Affairs, with whom he then met on 1 October 1999. It was established that the problems involved several ministries (MDDSZ, MOP, MNZ and MP). For this reason it was agreed that the work of the commission would have to be immediately put back on track, the commission would have to be brought up to strength and its jurisdiction expanded, including appropriate solutions being proposed by the Government. The Minister assured that he would propose an increase in the budget item for arranging the graves of persons killed after the war. The Ombudsman assured the Minister that within the remit of his jurisdiction he would push for the speedy adoption of the War Graves Act, which would provide a legal foundation for arranging the grave sites of persons killed after the war. In the meeting with the Minister it was also agreed that the Government commission would be reconvened at the earliest opportunity, and this was done.

We have already mentioned that in their applications certain relatives state that they wish to find out the fate of the persons killed. The problem is that the applicants claim they cannot obtain any information from state institutions on the fate of their dead relatives. In connection with this problem, regarding a specific case we sent a written enquiry to the institutions that might have kept such information. At the time of compiling this report we had not received all the replies.

The other applications in this area related primarily to the excessively slow decision-making on the demands of those eligible pursuant to the Correction of Injustices Act. We dealt with these applications by intervening to try to speed up the resolving of demands lodged. We have ascertained that in every case our intervention has been successful. We should mention that in one case we proposed to the commission that it study and decide for a second time on a demand which had produced a negative response, although all the legal requirements had been fulfilled for a positive decision, and despite a positive proposal from the expert service of the commission for implementing the Correction of Injustices Act. The commission accepted the proposal for a second look at the demand and accommodated the request of the eligible person.

Victims of war and military aggression

In 1999 we received 49 applications in the area of implementing 'war' laws, in particular pursuant to the Victims of War and Military Aggression Act (ZZVN). The majority of applications in this area related to the lengthy and as yet unfinished procedures pursuant to these laws, exceeding of the deadlines for issuing decisions and the lengthy review procedure, which we already pointed out in previous annual reports. On 25 May 1999 the National Assembly adopted the Act Amending and Supplementing the ZZVN. This new legislation (the fifth version - ZZVN-D) enlarged the circle of those eligible for protection. We anticipate that we will continue to receive applications in this area in the future, especially applications relating to the problems in procedures for exercising the rights pursuant to the ZZVN-D. The new legislation finally regulated the protection of family members of the victims of war and military aggression, this protection being provided to the same circle of family members and under the same conditions as according to the regulations on war invalids. The ZZVN-D also provides a shorter, six-month period for review. This period has been valid since 19 June 1999. We may expect that this will reduce at least to some extent the dissatisfaction of clients owing to the lengthy review procedure, while on the other hand, there may be an increase in the dissatisfaction of those for whose decisions the shorter review period does not apply. According to MDDSZ information of November 1999 the review decisions issued pursuant to the ZZVN-D are proceeding without any hold ups. Furthermore, the period within which the review of first instance decisions is conducted pursuant to the basic law is shorter still, and amounts to around 10 months. The exception here is just the files of those eligible for which the commission for resolving applications for priority review of decisions establishes whether they meet the spe-

cial criteria justifying priority treatment. A longer time frame (two years) applies to decisions on appeals lodged against negative first instance decisions. In all these cases the deadline from Article 247, paragraph one of the ZUP is clearly being exceeded.

In view of the long time frames for review pursuant to the basic law, applicants frequently doubt the punctuality of the review. The Ombudsman was approached by an applicant who in a decision by the Ljubljana administrative unit, Bežigrad office, of 23 January 1998 had been accorded the status of victim of war and military aggression. Upon review, the decision was overturned on 15 February 1999 by a decision of the MDDSZ. From the substance and explanation of the second instance decision it was not clear whether the review had been conducted within the one-year deadline, for which reason the applicant doubted the punctuality of the review. According to the provision of Article 103, paragraph two of the War Veterans Act, reviews are deemed to have been conducted within the legal deadline if the decisions issued following such reviews are despatched within the time limit to the administrative unit for handing over to the client. Another important element in the punctuality of the review is the date of receipt of the first instance decision for review. We have ascertained that there are numerous cases where considerable time elapses between the issuing of the first instance decision according the status of victim of aggression and the receipt of such decision for review. In the case of our applicant, 24 days elapsed between the issuing of the first decision and the receipt of that decision for review. The client cannot ascertain from the review decision when the Ministry received the first instance decision for review. All the client has is information on the date of issuing of the first instance decision and the date of issuing of the review decision, which often gives the impression that the deadline for review has been exceeded. The client has no information on the date the decision is despatched to the administrative unit for passing on to the client. Such a situation sooner or later leads to a state of legal uncertainty and mistrust in the work of state bodies. Our applicant also found herself in this situation.

We proposed to the MDDSZ that the second instance body should, in review decisions, provide information which would make it clear when the Ministry received the decision for review. Providing information from which it would be possible to compare to date of receipt of the decision for review and the date of issuing the review decision, which are usually within the one-year review deadline, would undoubtedly contribute to a higher degree of trust on the part of clients in the correctness of the work and punctuality of review by the second instance body. This would also reduce the dissatisfaction of clients who are in large part older people, from whom it would not be fair or justified to expect that they themselves should seek information on the punctuality of reviews from first or second instance bodies.

The Ministry first responded to this proposal with the explanation that in review procedures the second instance body cannot give the date of despatch, and for this reason cannot state in the review decision information which would make it possible to determine whether the review had been conducted within the deadline. This information is evident in every administrative file and can also be found in the reception rooms of the bodies of first and second instance, and for this reason is not stated specifically in decisions. Since we could not agree with this response from the Ministry, we renewed our proposal. The Ministry responded to it by stating that even if information was given in the explanation of the decision on when the first instance decision was received for review, and the date of issuing of the review decision, it would not be possible with certainty to ascertain whether the review had been conducted within the legal deadline, for several days could elapse between the date of issuing of the review decision and the date of its being despatched. Giving the date of receipt of the first instance decision in review decisions was therefore unnecessary, and would not reduce the dissatisfaction of clients. This view did not seem convincing to us, either. Explanations should contain all relevant information, including most certainly the date that the body received the matter for resolving. Giving the date in the case under discussion would indeed not 'cover' the entire period under doubt, but it would as a rule at least halve that period (covering the time from the issuing of the first instance decision to its receipt at the Ministry).

In procedures pursuant to the ZZVN we also dealt with a case of the procedure being held up when the administrative unit, upon having its decision overturned (for the second time) by review at the MDDSZ, could not decide again on the matter in line with the ZUP, because it had submitted the files via the MDDSZ to the Administrative Court as a result of an administrative dispute instigated against the (first) MDDSZ decision. We have described the principle involved in this problem earlier under 3.5.1. b), on page . For reasons stated in that section, we proposed that the MDDSZ investigate the possibility of immediately continuing the procedure at the first instance.

The Ministry replied that renewed decision-making at the first instance could turn out to be a Sisyphean task, if the Administrative Court alone - and differently - decided on the matter. (In practice this is almost impossible. In any case, in the first overturning upon review of the first instance decision the administrative dispute was not an impediment to renewed decision-making by the first instance body, which at that time clearly still held the files in question) They did not trouble themselves particularly over the obligation to come to a new decision in 30 days, pursuant to Article 242 of the ZUP. Moreover, they could only find reasons to wait for the ruling of the Administrative Court.

Unfortunately, as in every case so far, we have ascertained that the persons granted rights under the ZZVN cannot in fact exercise a major part of these rights, for the Payment of War Damages Fund Act has still not been adopted. We reiterate that such a state of affairs is unacceptable, particularly since those eligible, after enduring what are already lengthy procedures for being accorded these rights, must then wait upon the (mercy of the) legislators to pass a law which would provide the basis for these rights actually being exercised.

Civilian national service

In 1999 the issues deriving from applications received (five) did not essentially change. The greatest proportion was made up by complaints from applicants who were not given the chance of being directed to other services in the time provided by law. This may be ascribed to the steadily increasing number of requests for exercising the right to conscientious objection, the increasing number of critical generations which must be directed as a priority to civilian service, and the insufficient capacity in organisations where alternative civilian national service is carried out. The MNZ anticipates that a part of these problems will be solved through the selection of a larger number of new services and organisations where alternative civilian service can be conducted. Measures are also envisaged for the higher quality performing of tasks by the competent ministries (in addition to the MNZ and MO).

Two years have passed since the last tender for the selection of organisations and services. During this time the situation has changed, and some of the organisations no longer fulfil the conditions for carrying out alternative civilian service. The Ombudsman was approached by an applicant who was performing alternative civilian service at the PDT. This centre had acquired a concession in 1977. We cautioned the MNZ about the dubious continuation of alternative civilian service on the basis of this concession in the two units which had or would take over the tasks of the PDT (see section 3.5.3., page 55). This is particularly valid for the Centre for Removal of Aliens, where in view of the purpose for which it was set up, and the activities it is conducting, it is doubtful whether this is a suitable place for alternative civilian national service. We therefore proposed to the Ministry that it study these issues and in future ensure the conducting of alternative civilian service that will be in harmony with the valid legislation and that it will also be appropriate to the activities of the organisations and services where it is being carried out.

3.6. Employment and unemployment

On the basis of applications received we must state in this report, too, that the problems in the area of employment and unemployment have not changed. The number of applications in this area fell slightly in 1999 as compared to 1998 (an index of 95). The statistical decline is not important, however, and little difference can be traced in the content of the applications.

Several applications relate to illegal cancelling of employment, deployment in other jobs and disagreements in connection with setting the level of pay (determining the basic coefficient, promotion, determining of pay upon redeployment to other work). There has also been an increase in the number of written and especially telephone complaints owing to cavalier behaviour by employers and the creation of unhealthy and non-stimulative conditions in the working environment.

Unemployment and lack of success in finding work continue to be a component of many applications. Applicants are also frequently turning to the Ombudsman over difficulties encountered in obtaining the right to unemployment benefit.

There has been a slight fall in the number of applications from people complaining that work inspectors have not responded. There are also fewer applications relating to the rights pursuant to the Guarantee Fund Act, while more applicants cite violations in the procedure for establishing an individual's eligibility for a national or Zois grant.

Unemployment

The gradual fall in the number of registered job-seekers has not yet been reflected in the Ombudsman's work. It would appear that the fall is more a consequence of legislative changes or changes in the recording of unemployed persons, and a tightening of the criteria than any essential increase in the number of new jobs and employment.

Applications in this area have been the same for several years now. Applicants indicate grave personal hardship in seeking jobs in vain, jobs that of course represent for them the prospect of being able to maintain a level of social security and personal integrity and prevent social isolation. These hardships are particularly bad for what are termed older unemployed persons, that is, unemployed people over forty (in 1998 as many as 46.7 per cent of registered unemployed people were in this age group, and the trend is growing). Other major problems include the growing unemployment of women, the difficulty of providing employment for young women (first employment) and the illegal and discriminatory actions of certain individual employers already mentioned in the previous report.

Programmes of the active employment policy

Applications submitted to the Human Rights Ombudsman involve chiefly two orientations. The first involves protection of the basic right of unemployed persons to be included in programmes of the active employment policy intended to increase employment prospects, pursuant to Article 4b of the Insurance and Employment in the Event of Unemployment Act (ZZZPB). In these cases we have conducted enquiries and intervened at the Employment Office (ZRSZ). Upon investigation it turned out that not all the applications were justified, for there had generally not been any infringement of the applicants' rights as set out in the Rules on Implementing the Programmes of the Active Employment Policy. The applications do, however, point to the seriousness of what is sometimes almost irredeemable personal hardship. Without doubt the hardship that arises in long-term unemployment is of such a nature that we might speak of the emergence of a new social phenomenon, that is, a large group of people who - pushed to the margin of society - feel cheated, miserable, useless, listless or even aggressive towards the society which has pushed them into this situation. There is emerging, therefore, a new problem of social marginalisation, which must also be dealt with from the aspect of protection of human rights.

Despite the fact that as the provider of the active employment policy programmes the ZRSZ for the most part facilitates for applicants the right to be involved in the programmes, sometimes we may observe insufficient flexibility and insufficient readiness of the counsellors to deal creatively and with all possible commitment with the problems of individual unemployed persons, to encourage and motivate them and to present in an appropriate way the possibilities open to them, and thereby together with them to seek appropriate solutions. We have frequently observed that the counsellors only begin more intensive cooperation with the unemployed when we call on them to do so. So it often appears that employment opportunities open up more readily on our intervention. Our observations show that more attention should be given to those employed at the ZRSZ branches and to training them top deal with human resources. Checks should be made to see whether individual employment offices are properly and professionally staffed.

Employees in state bodies

There has been a significant rise in the number of applications addressed to us by people employed in state bodies (the index of 1999 over 1998 is 190). In line with our talks with those responsible at the MO and MNZ, in 1999 the responses to enquiries in such cases has been much more punctual. Yet there still remains a troubling lengthiness of procedures for dealing with requests for protection of rights at the MO, where in objective terms there is a very extensive team of staff in the organisation and personnel office relative to the number of employees and the number of complaints.

A large proportion of applications relate to dissatisfaction stemming from non-respect of the rights of those employed in education (e.g. recognition of teaching qualifications, the right to take annual leave after maternity leave).

Guarantee Fund

There have been few applications relating to the work of the Guarantee Fund. For the most part applicants complain about the arrangement which allows the acquisition of rights pursuant to this law only to those employees whose employers have become insolvent owing to the instigation of bankruptcy proceedings or upon the entry into force of a decision confirming forced settlement, but not in the case of a technological surplus of workers whose employer goes bankrupt later, for example. Such decisions by the Guarantee Fund therefore do not involve the violation of rights based on the law. There are almost no more applications regarding the lengthiness of procedures.

Grants

The number of applications in the area of grants is increasing. The applications relate primarily to the denial or termination of payment of a national grant. There is a problem clearly in identifying revenue in establishing the conditions for allocating grants and in not taking into account changes during the academic year. The mother of our applicant stated her disagreement with the decision that the means test should take into account all the family earnings from 1998 when the decision on the right to a national grant related to the 1999/2000 academic year, with the mother (as a family member) losing her job in 1999 and no longer receiving the salary which was included in the decision. Since this matter is now in the appeal stage, we have not taken any action for the time being.

Quite a few applications relate to the opaque nature of the criteria and procedures involved in deciding on the right to a Zois grant, although we have ascertained that the Rules on Grants, adopted in 1999, have rendered the criteria much clearer. The flaw that we have observed in the procedure is that in rejecting the right to such a grant an official decision is still as a rule not issued. The candidate simply receives a written notice against which no appeal is possible. In the regulations there is no evident basis for a different procedure such as that which applies in decisions on national grants. It is true that the ZZZPB explicitly provides for the (subsidiary) application of the ZUP only for exercising rights from unemployment insurance (Article 45), but according to the definitions in the ZUP (Articles 1 and 2) and the ZRSZ statutes (Articles 54-56) the same should also apply for other employment activities pursuant to the aforementioned law.

We received an application from three Zois grant holders, who envisage finishing their studies early, and who believe that the termination of the grant because of early graduation is not right and proper. Such an approach does not encourage students to finish their courses as soon as possible. We requested a view from the Ministry of Education and Sports (MŠŠ) and the MDDSZ regarding the possibility of the Zois grant being paid for the entire envisaged duration of study.

3.7. Pension and disability insurance

Last year we received 142 applications in the area of pension and disability insurance. There were slightly fewer applications in the area of disability insurance than in 1998 (index of 91.8), but more in the area of pension insurance (index of 117.8). Most applications were connected to the exercising of rights from pension and disability insurance. Apart from criticism directed at the disability commission that to the detriment of those insured it was not taking into account the results and opinions of specialists, there were also frequent accusations that the legal deadlines were being disregarded in decision-making on rights from pension and disability insurance.

At the end of last year the Pension and Disability Insurance Act was adopted. The new law, which represents a major intervention in the current system of pension and disability insurance, was urgently needed in order to provide appropriate social security to current and future generations for disability and old age.

Opinion of the disability commission accompanying the official decision

The decisions in which the ZPIZ determines the rights from pension and disability insurance often contain inadequate explanations. So based merely on the content of the decision received, the insured person cannot discern all the deciding factors involved in such or another decision from the Institute. The explanations are especially meagre in terms of the opinion of the disability commission, which participates in the decision-making process as an expert advisory body. The fact is that the majority of those insured who have not been successful in the procedure for exercising rights from pension and disability insurance, find fault with and challenge the opinion of the disability commission. This is not surprising, for the opinion of the disability commission is usually the main substantive basis which the Institute takes into account in deciding on granting rights from disability insurance.

Inadequate explanation of a decision that determines the rights from pension and disability insurance represents a violation of the right to appeal. If the explanation does not clearly set out the decisive actual and legal state of affairs, the insured person cannot in fact appeal in substance against the decision. In pointing out the frequently lacking explanations in decisions, we proposed to the ZPIZ that it should hand over to the insured person the opinion of the disability commission at the same time as the official decision on the rights from disability insurance. In this

way the insured person can be acquainted with all the information on their state of health which provided the basis for the decision of the Institute in the process of exercising rights from disability insurance.

The ZPIZ took into account the Ombudsman's proposal, and issued instructions to the Institute's regional units that in future they should hand over the opinion of the disability commission to the insured person at the same time as the decision on the rights from disability insurance.

Unjustified non-payment of pension

An applicant acquired the right to a pension pursuant to the Rights from Pension and Disability Insurance of Former Military Insured Persons Act. However, on the payment of the pension, after the decision had become final, the ZPIZ subtracted from the pertaining pension a sum which the applicant supposedly owed to the Institute. This debt supposedly derived from the payment of a military pension between 1991 and 1993 in the amount of 1,213,226 tolars. The applicant was indeed granted the right at that time to the payment of a military pension, but the final decision relating to that pension was later rescinded. The new decision halted payment of the military pension to the applicant from 1 August 1993, but it was not decided that the applicant should repay the amounts of military pension already received. Despite this situation the ZPIZ, while granting the applicant the right to a pension in 1999, paid him 1,213,226 tolars less than he was due, on the grounds that there had been an overpayment because from 1991 to 1993 he was not eligible to receive a military pension.

We advised the Institute that this was a mistaken approach, for they had clearly not taken into account the legal provision that a decision issued in a renewed procedure ex officio can only take effect from the first day of the month following the issuing of the decision. For this reason, for the time up until the issuing of the decision in the renewed procedure the applicant received no overpayment and for this reason was not bound to return anything. The ZPIZ gave due consideration to the opinion and recommendation of the Human Rights Ombudsman, paying the applicant the sum of pension due and at the same time offering a written apology for the inconvenience resulting from late payment of the due but unpaid pension.

3.8. Health care

Last year we received 19 applications in the area of health care, which is relatively few, although the number of applications more than doubled compared to the previous year. Meanwhile, public interest in the question of patients' rights is growing continuously. Individuals are becoming increasingly well aware of their rights as patients.

Health care is orientated towards improved health and a better quality of life. Constant improvements in the quality of health care is in line with the interests and rights of patients. The fundamental right in the area of health is the right to high-quality health care. And the highest number of applications received fall directly into this area: from confirmation of unprofessional treatment to criticism of the long waiting time for patients to be seen by specialist doctors. We are also continuing to encounter cases where patients or their relatives are not permitted access to health care documentation. These cases are usually connected precisely to the criticism of treatment that is unprofessional or performed in bad faith.

Does the son have the right of access to the medical records of his dead mother?

An applicant's mother died nine days after hospitalisation at the Ljubljana Psychiatric Clinic. The applicant requested access to the medical documents, but the Clinic denied his request with the explanation that the physician was bound to maintain doctor-patient confidentiality even after the patient's death. The Clinic responded to our enquiries by explaining that under certain conditions access to medical records can be provided to the patient alone, and after death this right does not pass to the patient's relatives. The Clinic recommended that the applicant try through the courts, taking the view that there were neither legal nor actual conditions for access to the medical records of the deceased.

The Constitution guarantees the right of every person to have access to collected personal data that relates to them. On this basis the ZVOP determines the right of the individual on their request to be given by an administrator of a database access to the catalogue of personal databases and

transcriptions of data. Personal data is any information that relates to a specific individual. So it is beyond doubt that a patient's medical documents are also personal data.

The method of realising the constitutionally provided right of access to personal data in health care is governed by the Health Care Activities Act (ZZDej) and the Health Service Act (ZZdrS). Article 47 of the ZZDej provides that individuals have the right of access to medical documents which relate to their state of health as a fundamental rule, and not simply "under certain conditions", as the Psychiatric Clinic explained. The only limitation established by the law, and this must in any case be interpreted restrictively (for it is a restriction of a human right guaranteed in the Constitution), relates to therapeutic privilege: only where a physician assesses that access to medical documents would have an adverse effect on the patient's health can the patient's request be denied. Of course, after the patient's death the restriction relating to therapeutic privilege becomes irrelevant.

Citing professional medical confidentiality only has a legal foundation in relation to the public or third persons, and not in relation to persons affected. The duty to safeguard professional medical confidentiality does not cease after the patient's death, but this does not then represent the basis for a physician denying access to medical documents to the closest relatives of the deceased, which undoubtedly includes the patient's children. Even when a patient is alive, there are explicit legal provisions in the ZZDej and ZZdrS that allow close relatives or carers to obtain information about the patient's state of health. There are no reasons why this should be even less valid after the patient's death.

From the legal aspect, universal succession arises on a person's death. Upon death the legal subjectivity of the deceased ceases, but there remains the need to settle that person's legal relations. There is no need here to delve into the theoretical question of whether the medical documents of the deceased (or at least their content) are estate and therefore in fact subject to inheritance. The treatment of the patient was carried out on the basis of an explicitly or tacitly (by conclusive actions) agreed contractual relationship, which is in legal terms a form of contract of mandate. In this the physician is not liable for the success of the treatment, but is liable for the treatment being conducted according to the rules of the profession. The relatives of the deceased, particularly those closest, such as children, clearly have a legal interest in accessing the medical documents of the deceased. This interest can be recognised simply by the fact that in this way they can familiarise themselves in the most direct way possible with the course of treatment and the cause of death of their close relative. This does not involve just satisfaction at knowing all the circumstances and reasons for death, but also that they are provided access to evidence on which basis it would be possible to assess whether treatment was conducted lege artis. Experience shows that relatives request access to medical documents as a rule when they suspect that death may have been a consequence of a medical error, unprofessional or negligent treatment.

The physician's duty to protect the professional confidence of data relating to a patient's state of health is not there to protect the physician. It is there to protect the rights and legally enshrined interests of the persons concerned, in other words the actual patient in particular, and also those close to the patient (e.g. children, spouses, parents). After the patient's death, in view of the universal succession following a person's death, as well as in view of the relatives' own position as those suffering damage (if we might use a term from law relating to damages), legally and in all fairness the relatives are justified in their right of access to the medical documents of the deceased. The relatives therefore have the right to familiarise themselves with the medical documents of the deceased, and in this way to verify whether there is any foundation to the suspicion of whether the patient has been given proper treatment.

Upon death, as has been stated, legal subjectivity ceases. Deceased patients can no longer exercise their rights (including in the case of unprofessional treatment). The most logical and natural continuation of the legal relations of the treatment is therefore that relevant requests, even if they relate entirely to personal satisfaction, are made by the close relatives. It is not just the legal norms that we have mentioned, but also fairness, which demand that close relative should have access to the medical documents of the deceased. The principle of confidentiality and privacy in connection with the rights of the patient cannot be understood in such a way that this right could be denied to the close relatives following the patient's death. The rights and legal interests of the patient following their death are indeed best and most justifiably represented by the patient's

close relatives - particularly those whom the law of inheritance places in the circle of legal inheritors of the first and second order.

Neither is there any need at all for the close relatives of the deceased patient to take the matter to the courts in order to get to the medical documents. The Slovenian courts are already heavily burdened with a large number of cases without having to deal with this. Being directed to the courts in order to exercise the right of access without any reasonable explanation passes on the duty of decision-making from the concerned subject to the judicial branch of power.

Familiarisation with the entire medical documentation is also a fundamental condition for any kind of complaint, if the close relatives believe that the rights of the person close to them as a patient have not been respected. Denying the right of access to medical documents in fact also denies the right to complaint. The close relatives of the deceased have the right to arrange for expert supervision and counselling and to propose administrative supervision. They may also address a complain to the Medical Chamber of Slovenia or apply for their arbitration. These legally provided possibilities for complaint and supervision also justify the right of the close relatives to have access to the medical documents of a deceased patient.

We therefore believe that there is no justification for the explanation that the son was denied the right of access to his mother's medical documents. An opposing view would be life-negating, and has no support in valid Slovenian legislation, nor in international instruments from the area of human rights and fundamental freedoms, or from the area of the rights of patients and their close relatives.

For this reason we proposed to the Psychiatric Clinic that they offer the applicant access to the documents of his deceased mother. In its reply the Psychiatric Clinic stated that while it agreed "in principle" with the proposal, since it also seemed reasonable to them, they believed that such a position should be adopted by a court in order for it to become legally applicable to them as the managers of a personal database. In February 2000 the Administrative Court ruled that the Clinic must allow the applicant to have access to the medical documents of his deceased mother.

This case is not isolated, so close relatives are often put in the position where a hospital will deny access to the health documents of a deceased patient. For this reason we propose that the right of close relatives to have access to a patient's health documents be specifically regulated by law, as this will not only be in the interest of the persons concerned by the death of the patient, but also in the interest of physicians and health care institutions.

Health care tariffs, taking account of public interest

The Rules on the Health Care Tariff determine the manner of evaluating and accounting for health care and dental services that do not fall under the rights deriving from compulsory health insurance. In the annual report for 1998 we pointed out that the Rules, as well as amendments and supplements, were adopted by the Medical Chamber without the consent of the Ministry of Health. The executive committee of the Medical Chamber also adopted, without the consent of the Minister of Health, decisions on changing (raising) the value of points, which is one of the elements for determining the health care tariff. The Minister of Health explained this arrangement with the fact that the need for consent is not defined in any regulation.

It is true that no regulation requires the Medical Chamber to adopt its rules on the tariff for evaluating and accounting for health care services with the consent of the Minister of Health. However, no law empowers the Chamber to adopt these rules. Neither does any law determine that the Medical Chamber itself could determine the price of health care and dental services.

The Statute of the Medical Chamber does list among the official instruments of the Chamber the rules on the health care tariff, but the determining of this tariff cannot be free and left simply to the physicians themselves or to their professional association. The right to protection of health is a basic human right. The state ensures health protection in the public interest. It is the Minister of Health who is bound to protect the public interest in this area and who should grant consent to the rules on the health care tariff, for the very reason that these rules are used to pay for services connected with tasks performed by the Medical Chamber as public authorisations.

We sent our opinion on this and a recommendation to the Minister of Health. In a reply sent to the Ombudsman after a nine-month wait, the Minister explained that a "legal basis for determin-

ing the price of health care services had been provided". Here he referred to the proposed law on the health service, which was at that time in its third reading in the National Assembly. Article 67 of this law, which was later adopted and entered into force in December 1999, empowers the Minister of Health on the proposal of the Chamber to determine the methodology for determining the price of health care services that are not a subject of compulsory health insurance. Unfortunately, this law (the ZZdrS) does not provide a deadline within which the Minister must adopt such an implementing regulation. It is in the public interest that this happens as soon as possible, for the users of health care and dental services that are not a subject of compulsory health insurance will be appropriately insured only with the establishing of public supervision of the prices of these services.

3.9. Social security

Every year we receive a significant number of applications relating to the area of social security. In 1999 we received 159 written applications, the common denominator of which was social hardship. The causes of this social threat are very diverse, and are often connected to the entirely personal situation of the individual, such as their state of health, old age or disability. Another frequent cause of social deprivation is long-term unemployment, particularly in old people, who have already lost hope of finding new jobs.

A state based on social welfare is bound to provide social security to those persons who through no fault of their own lack sufficient means to live and are therefore at risk. In the valid system of social security, the basic social security benefits are financial assistance as the only source of maintenance and supplementary benefit. However, the level of these social security benefits, as we have seen from the applications received, often prove to be inadequate relative to the actual costs of living required to provide the individual person with a sufficiently dignified life. One-off payments of supplementary benefit to help get through temporary hardship are of course welcome, but people in serious hardship cannot help themselves in this way over a longer period of time. Here we have also observed non-standardised treatment of cases of social risk by different social work centres (CSD). In deciding on the rights of those who are eligible, the CSDs clearly face the incompleteness of valid regulations, including from the social security institute (ZSV), and in the same or very similar cases takes differing decisions. Among those seeking social assistance this arouses mistrust and doubts about the objectivity and correctness of the decisions.

Among the applicants who through material hardship are living at serious risk, we have observed both a tendency towards depressive thinking and consequences for their mental state. Long-term unemployment leads to a loss of working habits as well as self-confidence. So the people affected are trapped in a vicious circle of poverty and see no way out of their hardship. They lose a sense of something upon which they might still build hope and derive strength to take new steps. In conversations they often say that their human dignity has been taken away, and that because they have been pushed to edge of existence their basic human rights have been violated. They cannot provide a standard of living for themselves that would be adequate to maintain human dignity, and they experience difficulty in the area of health care, particularly in buying medicines and orthopedic aids. There are not infrequent cases of individuals being completely broken psychologically as a consequence. In order to help I providing a way out of such grave personal crisis, a great deal of work and vision are needed for the affected person to at least find some sense in their life.

We have found that people are not well acquainted with their social security rights. Some feel that exercising these rights is degrading and for this reason do not want to exercise them. We also frequently encounter cases where the competent CSD is not acquainted with cases of extremely serious social hardship. We have also found that those eligible can give up too quickly their own efforts to improve their social situation and seek the assistance of the state, before doing everything in their power to resolve the social problems they face. With such applicants we do stress the duty of the individual as much as they are able to take care of themselves and those whom they are committed to maintaining. Social assistance as a duty of the state enters into the picture only as a second choice, when the individual truly cannot provide help for themselves.

In the 1996 annual report we wrote about social hardship faced by the owners of agricultural and forest land, who through old age or incapacity for work cannot themselves work their land, and cannot obtain any income from their sale, rent or lease. As a result of the formally registered cadastral income these persons were not eligible for social security benefit from the ZSV. With the amendment to the Rules on the methodology for taking into account income from agricultural activities for acquiring the right to social security benefits and supplementary benefit, which was brought into effect in July 1999, the CSD can in such cases that there is or has been no income from agricultural activities. The change to the Rules in this way opens the door for the circle of those eligible to be extended to those owners who through personal circumstances cannot themselves work their agricultural or forest land, nor can they obtain any income from it.

We are still encountering lengthy procedures regarding decisions on the right of a child who is separated from one of the parents to maintain personal contact with that parent. We present more on this in chapter two, where we discuss protection of the benefit of children in procedures linked to the relationship between parents and children, while here we illustrate the problem with a typical case.

Slow decision-making on personal contact between a father and daughter

In December 1994 the CSD issued a decision on termination of contact between an applicant and his daughter. In February 1995 the MDDSZ rejected his appeal. But the applicant's complaint was successful in an administrative dispute, for in September 1996 the Supreme Court accepted his complaint and overturned the decision of the second instance body. Later the applicant requested as a matter of urgency that the Ministry issue a new decision, but in vain. After enquiring as to why there was a hold-up, we received the answer that this was caused by personnel changes. At the same time in July 1998 the Ministry provided assurances that they would take the applicant's case in hand immediately.

A year later, in July 1999, the applicant complained again that he had not received a decision from the Ministry. Again we requested an explanation from the Ministry, and proposed an immediate decision on the case. This time the Ministry explained that they had not received the ruling issued by the Supreme Court in the applicant's administrative dispute. However, enquiries at the Supreme Court showed that the Ministry had received the Court's ruling back in December 1996. The cause of the hold-up was therefore an error in the Ministry's own administration. The Ministry then sent a written apology to the applicant for this error, and in September 1999 issued a decision with which it accepted the applicant's complaint, overturned the CSD decision issued in December 1994 and sent the matter back to the first instance body for renewed processing.

After several years of hold-up, the decision on the maintenance of contact between the applicant and his daughter was then in fact right back at square one with the first instance body. The dissatisfaction of the applicant was understandable, especially when he stated that he had last had personal contact with his daughter almost 12 years ago. In order to at least offer some help to the applicant and his daughter, given the lengthy delay in decision-making, with the agreement of the girl's mother we organised a meeting between father and daughter at the offices of the Human Rights Ombudsman. In this way we wished to ease the renewed establishing of personal contact between them.

3.10. The environment and physical planing

After a slight decline in recent years, the number of applications received in the area of protecting the environment and physical planning increased noticeably in 1999. The greater influx points primarily to the greater public awareness and concern for a better managed, healthy and peaceful environment. Applications were submitted chiefly by individuals affected, but increasingly organised in various regional committees and communities, societies and other civil associations, as well as in political organisations.

A more detailed analysis of applications received shows us that over the past year there have been relatively frequent applications connected to noise in its broad sense. Some have related to noise caused by busy thoroughfares and the associated requests for the installation of noise protection.

In individual cases some applications have been justified. But there are more cases where there is not a legally binding interest in additional noise protection, although the applicants cite unequal treatment, giving examples (e.g. along the Arja vas-Celje-Maribor motorway) where noise abatement protection has been provided in greater measure.

Several applicants complained of noise from manufacturing, workshop and catering establishments. Although pursuant to the Decree on Noise in the Natural and Living Environment the owners themselves or those causing the noise must see to the regular measuring of noise levels, such measuring is usually only carried out on the demands of the inspectors. The applicants often do not trust the results of the measuring, because they have been commissioned by those causing the noise. And the applicants are not acquainted with detailed results when they are not parties in a procedure, as is the situation in the majority of cases.

Noise disturbance is caused by the operation of catering and similar establishments, which particularly disturb neighbouring residents. The consequences of this can be dealt with by various bodies, including environmental, health and market inspectors as well as the police where it involves a violation of public order and peace. Yet many of the problems in this area could be avoided through appropriate actions by the responsible bodies during the actual decision-making on the construction of facilities or in issuing operating permits, and through the determining of appropriate operating times, which would consider the interests of local residents.

Air pollution is another of the problems aggravating an increasing number of applicants. A particular problem is presented by large farms and livestock production units, which cause pollution through the emission of odours and toxic materials through the breakdown of fecal matter and substances connected with this activity. This is especially disturbing in concentrated settlements. Resolving these problems is often ineffective, since we do not have the mechanisms to identify, supervise and limit odour. In individual cases bodies and services of the Ministry of Agriculture, Forestry and Food (MKGP), without previously defined conditions and supervision, permit and even encourage the building of various animal husbandry centres which have an environmental influence through the emission of odour. Such a situation demands the earliest possible adoption of a decree on limiting the emission of odour. For this reason the MKGP should also be collaborating with the MOP on drafting regulations in this area.

This is also linked to the question of access to information on environmental burdening. We devoted more attention to this area in the 1998 report. Last year we explained to applicants several times that in their requests for information on environmental burden they can quote the provision of Article 14 of the Environmental Protection Act (ZVO). However, our finding that this provision of the ZVO is not being implemented in practice, still holds true. Article 14 of the ZVO provides that public transparency of information on their own burdening of the environment must be provided by any person that in the performing of their business activity in whatever way or in whatever form burdens the environment. The condition for fulfilling public transparency of information on environmental burden is of course the established registers of polluters and the operation of services in local communities, which must provide this information if requested. Since the ZVO does not set out the conditions and procedure for providing this information, we renew our proposal that for these cases consideration should be given mutatis mutandi to the provisions of the UN Convention on Access to Environmental Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention). It would be even better if the National Assembly ratified this convention as soon as possible and thereby incorporated it into the domestic legal system.

Inspection supervision

The complaints about inspectors working for the Environment and Physical Planning Inspectorate of the MOP are often justified, especially since the work of inspectors is most frequently limited to issuing decisions, with little attention going to the implementation of declared measures, and even less going to executing decisions which would re-establish the former state following illegal environmental encroachments. Given the rarity of such execution, the suspicion of an unequal approach to offenders is therefore justified. Nevertheless, it must be taken into account here that the Environment and Physical Planning Inspectorate is just one of the factors involved in preventing illegal environmental encroachments. Particularly from the preventive aspect, in order to eliminate situations that lead to illegal encroachments, state bodies should do more through more rapid, better and less bureaucratic work, which would keep abreast of the demands of modern life and economic development. But whenever there are illegal encroachments, the inspectors should

act quickly and effectively, for in the majority of cases only this will re-establish the former state of affairs.

The poor attitude of the Government to the problems in this area is best demonstrated by the fact that throughout the operation of the Environment and Physical Planning Inspectorate, the Government has not taken the time to study any of its annual reports. The findings of these reports, which are also confirmed by dealing with our applications, indicate numerous problems that need to be resolved with the cooperation of several Government departments and also individual bodies of other branches of power. A disincentive for the work of the inspectors is the fact that the majority of their referrals to the misdemeanours judges lapse. And the possibilities of criminal prosecution for a criminal offence against the environment and natural resources, envisaged in chapter 32 of the Penal Code have not yet been used. All the accusations brought by the inspectors in this regard have been rejected at the public prosecutor stage. The reason lies chiefly in the difficulty of proving the harmful consequences for the life or health of a large number of people or destruction of the environment.

We have observed the non-coordinated working of state bodies especially in cases where an individual act that is harmful to the environment concerns several different inspectorates, for example the Environment Inspectorate, the Agriculture Inspectorate, the Mining Inspectorate and the Market Inspectorate. We have also encountered cases where the inspection measures in the same matter were different or even contradictory. In specific cases the measure of just one inspector cannot solve the whole problem. For example, in the case of an illegal car dump, the removal of fencing ordered by the urban planning inspector does not also mean the removal of vehicles from the farmland, for which the agricultural inspector is responsible.

Other circumstances also influence the effectiveness of inspection supervision. Whenever in an administrative procedure a decision is not complete or does not incorporate all essential information necessary for the precise definition of permitted works, supervision becomes difficult. Often there is also the problem that not all parties that should participate in the administrative procedure do participate, and this most often involves neighbours, which can cause lengthy procedures related to renewing an issued permit. And when there is an illegal encroachment on the environment or an exceeding of permitted encroachment, the removal of such encroachment can only be an extreme measure when all other mechanisms of the state's legal order have been exhausted. We reiterate, therefore, that such measures must be ruled and carried out sufficiently early, for it is harder to carry out such measures with the passing of time.

3.11. Comercial public services

In 1999 out of all the areas covered, the greatest relative increase in applications came in the area of commercial public services, although the absolute number (72) was not great. The greatest number of applications were in the area of the functioning of municipal services, transport and telecommunications.

In the area of municipal services applicants applied for the intervention of the Ombudsman most frequently as a result of various difficulties and disagreements in paying for municipal services. This involves problems in paying for water, including related construction of local water sources, and the paying of surcharges introduced as municipal bylaws. There are also constant applications, although usually unjustified, relating to the obligation to pay for the removal of household waste or the compulsory provision of funds for collection of municipal waste.

The relatively high number of applications regarding municipal services point to the need for the introduction of complaint mechanisms within the municipal services contractors or within local authorities for several or all municipal service activities. Although the public company for cemetery activities in Ljubljana, in connection with certain complaints about their services, did not accept our proposal for the creation of an independent commission which would deal with users' complaints, we still maintain that there is a need to introduce mechanisms for settling and out-of-court resolving of disputes in the area of municipal services. The courts, to which complainants are directed, are not always appropriate mean for resolving such disputes. They take a long time, are expensive and too formalised for disputes in this area, which contains ele-

ments of consumer complaints. We believe that in particular the municipalities should think about forming bodies to intervene in certain disputes between the users and providers of public services.

Last year there was also an increase in the number of applications in the area of telecommunications, most of them concerning the national provider of telephone services. The applications often indicate the impotence of individuals and also companies, who are in an unequal position in the exercising of their rights and interests in relation to what is still the monopoly supplier in this area. We might assess this state of affairs as being a disincentive for the more rapid development of information technology in Slovenia.

New applications have been submitted in connection with the issuing of radio licences and the allocation of frequencies. We also received some applications regarding the consideration of past investments of local communities and individual investors in the telecommunications network. We believe that it will be necessary at the earliest opportunity to adopt a law which will on the basis of Article 64, paragraph three of the Telecommunications Act regulate the manner of returning the investments of local communities and individuals made in the public telecommunications network.

Non-implementation of the Consumer Protection Act regarding billing for municipal services

An applicant who lives in a building divided into several apartments advised us of a problem in the billing for consumed water. Despite the guarantee in the Consumer Protection Act (ZVPot) she could not obtain water bills based on actual use.

Article 48 of the ZVPot provides that in concluding a contract for the supply of power and water the consumer must be billed according to actual use as indicated on the meter. The method of measuring actual power and water consumption is supposed to be determined by a special regulation from the minister responsible for power in agreement with the minister responsible for metrology. Although the six-month deadline for adopting the regulation passed back in 1998, there is no such regulation.

The Ministry of Economic Activities, as the body responsible for drafting this legal instrument, explained that the measuring of actual use of power is regulated by the general conditions for supply of electrical power. In its response on the method of measuring consumed water, hot water and gas, the Ministry cited Article 26 of the ZVO, according to which these issues should be left in their entirety to local communities. The Ministry also pointed out the questionable economic justification of installing measuring devices for consumed water in existing buildings. The costs of installation could be higher than the annual costs of the water consumed. The MOP held a similar view.

Regarding the explanations of the responsible ministries, it has been shown that implementing the aforementioned provisions of the ZVPot is indeed problematic. For this reason some thought needs to be given to a different system and the procedure for amending the law should be started. The Consumer Protection Office at the Ministry of Economic Relations and Development undertook to restudy the prospects of implementing the aforementioned article of the law, and gave an assurance that it would proceed from the fundamental principle of protecting consumer interests. Despite the assurance that this would be done in December 1999, the Government has not yet proposed amendments to the law.

3.12. Housing

The number of housing cases has been falling from year to year. In comparison with 1998, when we received 158 applications, the annual influx of such applications in 1999 (105 applications) fell by a third.

Based on the content of the applications received we could assess that one of the reasons for the reduced influx of housing cases lies in the fact that to a large extent the procedures for purchasing apartments under the conditions from chapter VIII of the Housing Act (SZ) have been conducted and concluded. We also dealt with numerous housing problems of applicants, particularly in connection with other social problems, under the area of social security. And last year the larger Slovenian municipalities did not publish tenders for the allocation of social or not-for-profit hous-

ing. Our experience indicates that in connection with the tenders and related procedures the number of applications has risen significantly. As in all previous years, there was a reduction in the number of cases linked to what are termed “military” apartments.

The cases in 1999 related particularly to:

- disputes between neighbours and between owners of different floors of apartment buildings over the use of common spaces and the management of apartment buildings;
- dissatisfaction of floor owners with the work of building managers;
- the division of common property of separated marital partners;
- the rights and duties of tenants of denationalised apartments on the one hand and those eligible under denationalisation on the other hand (declining to conclude tenancy contracts with new owners, disputes regarding the level of not-for-profit rent, disputes regarding maintenance of denationalised buildings etc);
- requests for assistance in obtaining welfare and not-for-profit housing;
- resolving issues of military apartments in line with the adopted Criteria and Methods for Resolving Cases of Illegal Occupancy of a Military Apartment.

From the above it is clear that on the basis of applications received this area did not differ essentially from those of previous years. The dealings and measures adopted by our office were also similar to previous years. Many of the issues have been more extensively presented in previous reports, so certain findings and proposals are not repeated in this report.

We have yet to see conclusive action taken regarding our proposals for providing a long-term stable system of financing of housing, particularly welfare housing. Practice shows that owing to a lack of funds for this purpose, municipalities are not able to carry out the tasks they are charged with under the SZ. The National housing programme, which should systemically resolve this question, was after its first reading in the National Assembly in September 1997 only sent for its second reading I October 1999. Applications received indicate that from year to year there has been an increase in the number of groups of people at risk, who have unresolved housing problems, for which reason the state should adopt at the earliest opportunity systemic measures for fulfilling the obligations from Article 78 of the Constitution, that the state would create the possibilities for citizens to obtain appropriate housing. Yet for many people the only prospect of resolving their housing problem remains obtaining welfare housing.

Among the proposals that were adopted last year, we should mention the amendments and supplements to the Rules on Criteria for Allocating Welfare Housing for Rent, adopted by the Minister of Labour, Family and Social Affairs with the agreement of the Minister of the Environment and Physical Planning. These amendments fulfilled some of our proposals which we sent to the two ministers and mentioned several times in our reports. These include our proposal that a different level of points should be given to the housing status of those seeking housing who are without housing; in respect of their actual housing situation. For example, someone without housing would qualify for 160 points, a subtenant 150, those in homes for single people 140 and those living with parents or relatives 130 points. Another proposal that was adopted was that special points should be given to persons with the status of victim of military or war aggression, as envisaged in the Victims of Military or War Aggression Act. Together with the changes to the rules, there has also been publication of the Explanation for implementing the rules and for allocating points for housing, material and welfare and health conditions, which are easing and facilitating a more standardised allocation of points in municipal tenders.

Resolving the problem of tenants in denationalised apartments

On the basis of a petition from the Association of Tenants of Nationalised Apartments the Government took a view in its session of 2 April 1998 in which it established the need for a legal definition of new instruments which would expand the possibilities which the SZ contains in connection with what is termed replacement privatisation. Measures for resolving the problem of those living in denationalised apartments were also demanded by the National Assembly in point 17 of the resolutions it adopted in its first reading of the national housing programme. In 1998 the Government also supported the establishing of a commission composed of legal and economics experts and representatives of the Association of Tenants of Nationalised Apartments and the Association of Owners of Appropriated Property, which should establish the legal possibilities for resolving this problem. On the basis of applications submitted to us by the Association of Tenants of Denationalised Apartments, we have ascertained that the ‘tripartite’

commission has not actually met and is thus not carrying out the Government resolutions for the drafting of supplements to the SZ "in that part which will expand the material incentives pursuant to Article 125 of the Housing Act in line with the material possibilities of the state". The Association of tenants also complained to us that it was not involved in the discussion of amendments to the SZ in 1999 which realised the decision of the Constitutional Court of 1998, which annulled the Rules on the methodology for calculating not-for-profit rent, although the amendment also affects tenants.

Last year we were also approached by individual owners of denationalised apartments, who expressed their disagreement with the level of not-for-profit rent which supposedly do not even cover the costs of maintenance. The solutions adopted are therefore a compromise between two opposing interests. One new feature is that a difference will finally be established between not-for-profit and welfare rents. Those eligible will receive the difference up to the level of not-for-profit rent from local authorities.

The gradual raising of not-for-profit rent brought in by the amendment to the SZ and the abrogation of what was called the third model of substitute resolving of the status of tenants in denationalised apartments, with the early purchase of another apartment, which was annulled by the Constitutional Court, demand the implementation of the Government and National Assembly resolutions with more stimulative solutions within the remaining models envisaged by Article 125 of the SZ.

Military apartments

As in previous years, in 1999 we also dealt with applications relating to the problem of what are termed military apartments, in other words apartments which were allocated or illegally occupied in the period of what was the military moratorium following 25 June 1991. After adopting a moratorium on evictions in 1995, it was not until 17 December 1998 that the Government, on the proposal of a specially designed commission, adopted the criteria and methods for resolving cases of illegal occupancy of military apartments. Together with these criteria the Government adopted a resolution with which it charged the MO with collecting all the necessary documentation and on that basis and in line with the criteria, resolve individual cases of illegal occupancy, draft a new proposal for forming an appropriate advisory body or supervisory authority, and every second month report to the Government on progress in resolving cases of illegal occupancy. The first criterion involved cases where evictions could carry on. These were cases where individuals had obtained several apartments, where they were not occupying the illegally allocated apartments themselves or where they had their former empty apartment waiting once they moved out. At the beginning of 1999 we enquired at the MO regarding the start and method of carrying out the adopted resolutions. To our surprise we learned that the Ministry had thus far not begun to tackle the implementation of the resolutions, with those responsible taking issue with the resolutions and pointing out that with their existing personnel they could not start implementing them. This was also a time of personnel changes at the highest levels in the Ministry. We therefore sent a letter to the new Minister of defence on 20 April 1999, setting out the entire process in resolving the issue of military apartments, and advised him that non-implementation of the adopted Government resolutions was seriously hindering the lives of several hundred families in Slovenia for the eighth year now. We proposed that the Ministry set about implementing the resolutions at he earliest opportunity, and ensure appropriate personnel and other conditions to do so. We also pointed out that for the proper carrying out of procedures they would need to obtain from the individuals concerned and also from other state bodies the necessary documentation allowing them the most objective possible establishing of the actual state of affairs and equal treatment of applicants.

We held a special conversation on this subject with the Minister of Defence on 26 May 1999. The Minister promised that he would ensure the possibility for the earliest possible start to implementation of the Government resolutions. We should stress that this indeed happened and the Ministry began rapidly resolving these cases, firstly those that were ranked according to the first criterion, and in the ensuing months the other cases. The Ministry also sent us a report on progress in resolving these cases and acquainted us with additional Government resolutions which more clearly defined in particular the application of the second and third criteria, that is resolving the situation by renting or purchasing apartments. Based on the small number of applications that we received following the start of implementation of the Government resolutions at the MO, we assess that during 1999 this work was undertaken properly and in line with the adopted resolutions.

Unjustified notice of eviction from military apartments

In 1999 we also encountered cases where the State Attorney had continued the execution procedure leading to eviction from military apartments, irrespective of the moratorium adopted and without the MO examining the case in line with the adopted criteria and methods for resolving cases of illegal occupancy of military apartments. In cases where we established that the notice of eviction had been hastily issued, we proposed to the MO that it intervene to revoke the eviction order and demand its postponement until a renewed examination of the individual housing case in line with the adopted criteria. On every occasion the MO observed our proposal and requested the State Attorney to propose a postponement of eviction.

4. Information on the work of the ombudsman

In this chapter we provide information relating to the methods and forms of work, the contacts maintained by the Ombudsman with state bodies and other institutions, the Ombudsman's operations outside the head office, public relations work, promotion of human rights, international cooperation, employees at the office, finances and education. Detailed statistics are presented on the work of the institution in 1999 and compared with previous years.

4.1. Methods and forms of work

The institution of the Ombudsman was established with the purpose of protecting human rights and fundamental freedoms in relation to state bodies. Its task is to prevent and identify violations of human rights and other injustices and to eliminate their consequences. It is therefore of decisive importance that the Ombudsman should be accessible to anyone who wishes to apply to this institution. This principle is observed in the range of systems governing our methods of work.

The reception office is open at all times during the working day (between 8 a.m. and 4 p.m.) for clients to submit applications and to talk to our duty staff, who can provide information. Discussions are held by prior appointment with the Ombudsman, his deputies and advisers. Soon after the institution began operations we set up a free telephone number (080 15 30) for explanations, advice and information on applications submitted, and since October 1998 it has also been possible to submit applications to the Ombudsman via e-mail on the Internet home page (**www.varuh-rs.si**). During visits to regional centres the Ombudsman also holds discussions with applicants and accepts applications in this way, too.

As a rule, in order to begin the procedure with the Ombudsman applications are submitted in writing. In urgent cases we also accept applications via telephone. Applicants can submit applications during personal discussions. Indeed some applications stem from talks held with detained persons during inspections of prisons and detention centres.

The Ombudsman's procedure is not formal and is free for clients. The application should contain the facts and enclose evidence that is important for instigating the procedure, and should state what legal means were used in the specific case.

Some applications are incomplete, lacking all the facts important for a description of the problem, or they do not enclose the necessary documentation. Depending on the type of deficiency we request supplementary material from the applicant, or we address an enquiry to the relevant body if it is shown clearly enough what procedure and what body is involved. In some applications we establish that it does not fall within the remit of the Ombudsman or that conditions are not fulfilled for it to be dealt with. In such cases we respond to the applicant with advice as to where they might turn, if other possibilities are available or if there are legal remedies that can be used before the Ombudsman can deal with the matter. The applications that do not fall within the Ombudsman's jurisdiction are often those involving disputes between individuals which cannot be resolved other than by agreement, and if this is not possible, then through the courts.

In order to obtain an explanation of all the circumstances in connection with an application being dealt with, we generally obtain the view of the other side. For this reason we conduct enquiries at the official body to which the application relates. Since the matters we deal with differ widely in content, the methods of conducting enquiries also differ greatly. As a rule we approach the competent body in writing, with a short summary of the claimed injustice or a description of the problem and request more detailed information. Sometimes, for example in confirming the lengthiness of a procedure, we already give an opinion at this stage, on the assumption that the applicants claims are entirely true. At the same time we set a deadline for a response, depending on the urgency and complexity of the matter. This deadline is no longer than 30 days. Sometimes where time is critical or in view of the nature of the problem we conduct enquiries by telephone. In some cases, where the official body avoids responding to our questions, we look into the complete files on the case to which the application relates. We invite the head or a representative of the body for talks, if it is necessary to clear up questions of a broader nature. In cases where detainees or prisoners complain about inappropriate procedures of the institution's management or about unsuitable living conditions, we conduct talks with the management at the same time as visiting the detainee or prisoner.

When we have gathered all the necessary information, we decide on how to proceed. Sometimes the response from the official body signifies a resolving of the applicant's problem, for example information on the continuation and conclusion of a procedure which the applicant believes is being unjustifiably delayed. In such cases we can conclude the procedure, and invite the applicant to contact us again if the body does not follow up on its own assurances of continuing the procedure. In other cases where the application is justified, we continue dealing with issues in dispute until an appropriate resolution is achieved.

In dealing with applications we are aware that for the applicant the most important thing is that we resolve their problem. This is our guiding principle in deciding on the use of the most appropriate measure from among those for which we are empowered. So in cases where a procedure is excessively lengthy without good reason, we can intervene with the body to speed up the matter, particularly if the reasonable or legal deadline for giving a decision has been exceeded and if it does not involve breaking the order in which matters are being dealt with. We may also propose to the body that the problem be resolved through some settlement, if the applicant also agrees with this. If the injustice can longer be eliminated, we propose to the body that it apologise to the applicant for the injustice committed. In all stages of whatever procedure we can offer official bodies recommendations for resolving a problem, an opinion from the aspect of respecting human rights and fundamental freedoms, proposals for improving their dealings with clients and proposals for compensating clients. If we establish that a given problem is exclusively the result of inappropriate regulations, we can recommend the amendment of such regulations. If such a regulation governs an important issue regarding protection of human rights and fundamental freedoms, and our proposal for amendments of a regulation has not been accommodated, we can lodge an application for a ruling on constitutionality and legality at the Constitutional Court. We can also lodge constitutional complaints at the Constitutional Court.

Contacts with state and other bodies

An important element in the success of the work conducted by the institution of the Ombudsman is appropriate cooperation with state and other bodies. We understand appropriate cooperation with bodies in the sense of observing the Ombudsman's proposals and opinions; in the correctness of the way they respond to the Ombudsman's enquiries and in the readiness of those in responsible positions to hold direct talks on problems in the area of protecting human rights. We

should mention that 1999 was marked by numerous working meetings with responsible persons in state and other bodies. We assess these meetings to have been useful, particularly since they promote a certain movement in resolving the problems that we deal with. They also facilitate a more rapid and better quality exchange of information on problems and on the possibilities for resolving them. At the same time they offer an opportunity for an encounter between possibly divergent positions on the method for resolving the stated problems.

Discussion of the 1998 annual report

Upon handing over the annual report for 1998 the Ombudsman met with the President of the Republic, the President of the National Assembly and the Prime Minister in May 1999. On this occasion the Presidents of the Republic and of the National Assembly were acquainted with the situation in the area of respect of human rights and legal safety in Slovenia, based on the applications dealt with. On the issuing of the annual report the Prime Minister organised a joint meeting with the ministers whose working responsibilities most frequently involve them in the area of work conducted by the Human Rights Ombudsman. The meeting was attended by five ministers and two state secretaries, who represented their respective ministers in their absence. They dealt in particular with systemic problems that feature repeatedly in the Ombudsman's reports.

The annual report was also discussed and entirely supported by the National Council. A meeting with the President of the National Council produced an agreement on closer cooperation in legislative matters. The annual report was also studied by the National Assembly Petitions Committee.

Meetings with ministers

We have already mentioned that 1999 featured numerous working meetings with responsible persons in state and other bodies. This involved particularly dynamic cooperation on the ministerial level. In addition to the previously mentioned meeting with certain ministers on the handing over of the annual report to the Prime Minister, the ombudsman held several separate meetings with individual ministers. He met twice with the Minister of the Interior, the Minister of Labour, Family and social Affairs and the Minister of the Environment and Physical Planning.

In talks with the president of the Supreme Court the Ombudsman reiterated the view that the situation regarding backlogs in the judicial system had not improved. He acquainted the President with a proposal given during discussions with the Minister of Justice for drawing up a special programme for eliminating the backlogs in the judicial system.

Alongside the Ombudsman, his deputies also held a range of talks with responsible persons in state bodies. We shall not mention the details here, for they are presented in other chapters of this report.

Survey of complaints possibilities in municipalities

A more broadly based form of communicating with local communities was provided by a survey which the Ombudsman conducted at the beginning of the year and which covered 29 Slovenian municipalities. A total of 23 municipalities responded to the questionnaire. In the covering letter addressed to local mayors, the Ombudsman explained his action with the finding that except for formal submissions and complaints against the decisions of municipal administrations, citizens approached municipal bodies with complaints, petitions, questions and requests which did not have the nature of applications in procedures that were within the municipality's jurisdiction. The Ombudsman had received a considerable number of such complaints.

Appropriate treatment and responses to such applications can most rapidly and effectively contribute towards resolving individuals' problems, and especially towards making clear the possibilities available to the individual. In dealing with such applications the Ombudsman identified a significant difference in the kind of response offered by municipalities, as well as a difference in the capacity and level of organisation for dealing with such cases within the municipalities themselves.

Through this survey, which covered all the urban municipalities and a representative sample of other municipalities, we wished to create the most objective picture possible of the actual state of affairs in this area, and on the basis of experience thus far to encourage a more effective non-formal treatment of complaints within municipalities. The Ombudsman also devoted considerable attention to this theme during visits to individual Slovenian municipalities.

Responsiveness of bodies under the Ombudsman's jurisdiction

We have observed that there are no major difficulties involved in carrying out our authorisations. State and other bodies for the most part heed our opinions, proposals and recommendations. We would also assess the response of bodies to our written communications as good, although this does not mean that we do not encounter individual cases of procrastinating or evasive responses, or even no

response at all. The ZvarCP binds official bodies to respond to the Ombudsman within the deadlines he sets. We identify certain bodies with which we encountered inappropriate responsiveness.

In one case we had problems obtaining a response from the Prime Minister's Office. At the Ministry of Culture we have also had difficulties gaining a proper response, particularly regarding treatment of denationalisation matters. In one case, at the time of this report being published we have yet to receive a response to a written enquiry made in May 1999, despite several insistent reminders. We experienced a similar situation in one case with the MDDSZ and in another case at the Ministry of Small Business and Tourism. We encountered a slow response, again despite reminders, in one case with the Ministry of Health, in two cases at the Circuit Court at Murska Sobota and in one case with the misdemeanours judge in Laško. We experienced similar problems in two cases with the Medical Chamber and with the Maribor housing fund. With the Ormož administrative unit we have found that in certain of our enquiries they do not respond to the questions posed, thereby avoiding a response.

Activities outside Ljubljana

Operations outside Ljubljana constitute part of the efforts to make the institution of the Human Rights Ombudsman as accessible as possible to anyone who because of distance or some other reason cannot come to the Ombudsman's office for discussion.

In 1999 we conducted business away from the central office in Celje, Jesenice, Koper, Maribor, Murska Sobota, Novo mesto, Nova Gorica and Ptuj. Owing to the great local interest the Ombudsman held discussions in Maribor twice, visiting the other centres once each. Together with his deputies and other staff he held 294 discussions.

Discussions outside Ljubljana are conducted in municipal premises, and the Ombudsman normally uses the occasion to meet with the mayor and other responsible persons, and in his talks with these persons he calls attention to the main problems falling within the jurisdiction of the local community that he deals with, obtaining information on the prospects for resolving them. During his visit to Maribor the Ombudsman visited the Maribor housing fund, where he was familiarised with the problems in this area and discussed several unresolved applications. After conducting business in Murska Sobota the Ombudsman visited the municipality of Ljutomer, where he met with the local mayor and participated in a public event entitled An Evening with the Human Rights Ombudsman.

On the invitation of the Regional Organisation of the Association of Free Trades Unions of Slovenia (OO ZSSS) in Velenje, in mid-April the Ombudsman took part in the eighth session of the Velenje OO ZSSS conference, which was held in Velenje in an expanded composition. By way of introduction the Ombudsman presented his work and the problems in exercising human rights, and he then took part in the debate, during which the greatest attention was devoted to exercising rights in the area of labour law. During his visit to Velenje he also met with the local mayor and toured the Velenje coal mine.

At the beginning of September the Ombudsman visited the municipalities of Bovec, Kobarid and Tolmin. In talks with the local mayors of the three municipalities and with the director of the National Technical Office in Bovec he was acquainted with the progress and problems involved in post-earthquake renovation. He concluded his all-day visit to that area along the Soča river, including a tour of Drežniške Ravne, with a round table in Tolmin, where he presented his work and findings and responded to questions from he participants.

In September the Ombudsman took part in a meeting in Kočevje of the heads of nine administrative units from the Dolenjska region.

Those at the meeting presented to the Ombudsman the difficulties they face in their work, and they also discussed the issue of expert and organisational cooperation between administrative units and ministries. The Ombudsman assessed the decentralised part of the state administration to be insufficiently well organised in the organisational aspect. Of the areas where administrative units have the most difficulty, denationalisation stands out particularly.

During a visit to Jesenice on 14 September the Ombudsman met with the mayor and the head of the Jesenice Administrative Unit. The meeting was also attended by the mayors of Kranjska Gora and Žirovnica, and representatives of other state bodies working in the area of the Jesenice Administrative Unit were also present. In connection with administrative services the Ombudsman

drew special attention to the problem of the lengthiness of certain procedures and set out proposals for improving the efficiency and quality of the work of the public administration and for improving the relations of public servants with clients. The Ombudsman reiterated his support for the creation of a code of ethics for administrative employees and pointed out the need to establish non-formal complaints possibilities in municipalities.

On 10 December the Ombudsman visited Prekmurje. In the municipalities of Kuzma and Kobilje the mayor and municipal councillors acquainted him with the most salient problems faced by local inhabitants. He spoke to young participants of a seminar in Kančevci on the subject of Democracy and Basic Human Rights, and in Bogojina he took part in a round table where he presented his work and responded to questions from participants.

Public relations

Ensuring the public nature and transparency of work, promotion and education regarding human rights and spreading awareness of them, thereby increasing the accessibility of the institution of the Human Rights Ombudsman, remain the main orientation of the Ombudsman's work in the area of public relations. The role of the media and relations with them in these efforts are very important, for in addition to providing information they also have the role of shaping public opinion and encouraging efforts for greater respect of human rights.

In 1999 the Ombudsman held six press conferences at his office. He spoke about his work and about specific problems at three other press conferences while conducting business away from the office. To this we should add numerous appearances on central, regional and local radio and television stations and interviews with various printed media. More than 200 articles dealing with the work and specific problems encountered by the Ombudsman were published in various Slovenian printed media in 1999.

Frequent visits have also been made to the Internet home page (www.varuh-rs.si), which presents a range of material, from annual and special reports, various speeches and papers, to public statements, material presented at press conferences and contributions from certain media. It is also possible to find on the Ombudsman's web pages the texts of certain basic documents on which the Ombudsman's work is founded, as well as direct links to related institutions around the world and other organisations from the area of human rights. Applications and other messages can also be sent to the Ombudsman via the Internet. We devote special attention on the web pages to the rights of children, to whom a special page is devoted, complete with a wide range of information (texts of international documents from this area, contributions, reports, links to other web pages etc) and the possibility of them also writing to the Ombudsman. From the beginning of November 1998 up to the end of 1999 more than 12,800 visits were made to the Ombudsman's web site.

In the area of international public relations an important contribution is made by the Human Rights Ombudsman in communication with other European ombudsmen. Indeed at the meeting of European national ombudsmen in Malta the Slovenian Ombudsman was entrusted with the task of editing the journal of the European national ombudsmen, the European Ombudsmen Newsletter. The idea for this publication was born in 1993, and it was first edited by the Dutch ombudsman Dr Marten Oosting. The journal is published three times a year in English (February, June and October), and the first issue, now the seventeenth in total, was prepared at the Ombudsman's office in February. In addition to European ombudsmen, the Newsletter is received by numerous other ombudsmen around the world, and is therefore published in approximately 130 copies. The entire publication can also be accessed on the Ombudsman's Internet site.

Promotion of human rights

In cooperation with the Information and Documentation Centre of the Council of Europe the Human Rights Ombudsman arranged for the publishing and financial support of a publication containing the Convention on Protection of Human Rights and Fundamental Freedoms and the pertaining protocols. The annex to this publication comprises the Rules of Procedure for the European Court of Human Rights. We provided financial support to a group of three students from the fourth year of the Faculty of Law in Ljubljana to take part in the Rene Cassin competition before the judges of the European Court of Human Rights in Strasbourg (from 22 to 27 March 1999). The team performed well and gained a high sixteenth place out of a total of 65 competing teams. This was the third time that students of the Ljubljana Faculty of Law took part in the competition. After the competition the students making up the team were received by the Ombudsman, who congratulated them on their success in the competition.

4.2. International cooperation

The Ombudsman and the law of the EU

From 6 to 8 June Ljubljana hosted a seminar entitled The Ombudsman and the law of the EU, organised by the Slovenian Ombudsman in cooperation with the European Union Ombudsman Jacob Söderman. In addition to representatives of the EU, the seminar was attended by representatives from Cyprus, Estonia, Latvia, Lithuania, Hungary, Malta, Poland, Romania, Slovakia and Slovenia.

In the two days seminar participants were acquainted with the experiences of the European ombudsman regarding the EU acquis communautaire, as well as with special aspects of the work of the ombudsman in EU membership candidate countries (problems of transition, the role of the ombudsman in harmonising legislation). European Court judge Leif Sevon presented the work and the judicature of the European Court and its influence on the national law of member states, while discussions also touched on the question of the Maastricht and Amsterdam treaties, their influence on the rights of EU citizens and the protection of these rights.

The central message of the two-day seminar was that ombudsmen in candidate countries for EU membership can play an important role in harmonising the legal system and in integrating into the EU.

Ombudsman at international round table in Tadzhikistan

On the invitation of the Organisation for Security and Cooperation in Europe (OSCE), on 23 and 24 June the Ombudsman took part in an international round table in Dushanbe, capital of Tadzhikistan, with the title Further development of human rights in Tadzhikistan, the role and activities of the ombudsman institution. The purpose of the round table, which was organised partly with the help of UN representatives, Switzerland and the competent departments in Tadzhikistan, was to prepare and promote the founding of the ombudsman institution in Tadzhikistan. On this occasion the Ombudsman met with the president of the parliament and certain ministers in the Tadzhik government.

Ombudsman on official visit to Romania

On the invitation of the Romanian ombudsman, Paul Mitroi, the Ombudsman paid an official visit to Romania from 24 to 27 September. He exchanged experiences with his Romanian colleague and spoke about the problems faced in his work, and he also presented to the staff of the Romanian ombudsman's office the work of the Slovenian Human Rights Ombudsman.

The president of the Romanian constitutional court presented to the Slovenian Ombudsman the position and work of the Romanian constitutional court, while the Ombudsman spoke about relations between the constitutional court and the institution of the ombudsman and about the role of both institutions in protecting human rights. He acquainted the president of the Romanian chamber of deputies with the importance of the Ombudsman's annual report and the connected parliamentary debate on this report. During their discussions they established that there were numerous similar problems in their two countries deriving chiefly from the conditions of transition.

During his visit to Romania the Ombudsman also met with the president of the supreme court, the deputy president of the Romanian senate and the justice minister.

Lecture at an international workshop in Kazakhstan

From 15 to 17 November the Kazakh city of Almaty played host to the fifth international workshop of the UN Development Programme on the institution of the ombudsman and institutions for human rights, organised by the United Nations. The Slovenian Ombudsman presented to workshop participants the experiences in setting up the institution of the ombudsman in Slovenia, the work of the European (EOI) and international (IOI) ombudsmen associations and the various forms of cooperation between ombudsmen. The workshop participants also debated the methods of strengthening the effectiveness of the ombudsman institution and its role in multi-ethnic societies. The UN organised the workshop in cooperation with the UN High Commissioner for Human Rights and the Organisation for Security and Cooperation in Europe.

Deputy Ombudsman in Sarajevo, Baku and Budapest

On 15 November Deputy Ombudsman Jernej Rovšek participated in a seminar in Sarajevo, organised jointly by the Venice Commission and the Ombudsmen of the Federation of Bosnia-Herzegovina. The seminar was intended to support the adoption of the law on the Ombudsmen of the Federation of Bosnia-Herzegovina and as an incentive to create an ombudsman in the Republika Srpska.

On 23 and 24 November, as a Council of Europe expert, he participated in a workshop in Baku (Azerbaijan) devoted to the establishing of a national institution for protection of human rights in that country, which is making efforts to join the Council of Europe. AT the seminar he presented a paper on the founding of institutions for the protection of human rights and ombudsmen in the Council of Europe member states.

From 13 to 14 December in Budapest he participated in the regional meeting of independent national human rights institutions, including ombudsmen, and headed the discussion on the practical effects of their recommendations. The meeting was organised by the Council of Europe under the aegis of the Stability Pact for South Eastern Europe, in cooperation with the office of the Hungarian ombudsman. The entire meeting, which saw the participation of more than 80 people from 25 countries, was intended primarily for gathering proposals, initiatives and projects which would be presented at working session 1 on human rights within the Stability Pact. The meeting of this working session was in the second half of January 2000 in Budapest.

Other international activities

The numerous delegations received by the Ombudsman included a delegation of the international relations committee of the Irish parliament, headed by the chairman of the committee, and a delegation from the Romanian legislative council, also headed by its chairman. The Ombudsman was also visited by various diplomatic representatives, including from the embassies of the European Union, Canada, Germany, the Netherlands, Sweden and the USA, and by representatives of international non-governmental organisations. In addition to this the Ombudsman participated in several sessions of the European ombudsmen association (EOI) and the international ombudsmen association (IOI). The Slovenian Ombudsman participates in both associations as a member of the select leadership.

4.3. Employees, finance, education

Employees

As at 31 December 1999 a total of 23 staff were employed at the Ombudsman's office (not counting the Ombudsman and the three deputies), one more employee (a trainee) than in the previous year. Sixteen of the staff have a university education, with four of them holding a master's degree (one each in law and economics and two in the field of personnel training). Four employees hold higher professional qualifications and three hold secondary. During the year two trainees completed their traineeship at the Ombudsman's office, and a third-year student from the Faculty of Social Sciences in Ljubljana completed her three-week obligatory work experience at the Ombudsman's office.

Finance

On the proposal of the Ombudsman, for the work of the institution in 1999 the National Assembly determined financing from the national budget in the total amount of SIT 235.4 million (US$ 1.20 million at the Bank of Slovenia exchange rate on 31 December 1999). The funds required for salaries were determined in a total amount (total salaries, contributions and other personal income) of SIT 172.3 million (US$ 0.88 million), for material costs SIT 49.3 million (US$ 0.25 million) and for investments SIT 13.2 million (US$ 0.07 million). On the basis of a plan to sell state property - vehicles - with which the Government agreed, we also obtained a further SIT 1.5 million (US$ 0.01 million). These funds were specifically allocated, and in line with the provisions of the Decree on Selling Off, Leasing or Exchange of Immovable and Movable Property Owned by the Republic of Slovenia, we used the funds for the purchase of a new vehicle. Taking account of the above, in 1999 we disposed of a total of SIT 236.9 million (US$ 1.20 million).

Total spending for the work of the institution in 1999 amounted to SIT 234.6 million (US$ 1.19 million). This was two million tolars less than the legally determined amount.

On the orders of the Minister of finance, the budget inspection office at the MF conducted an inspection at the Human Rights Ombudsman of the use of funds from the national budget for the period from 1 January 1999 to 30 September 1999. The records of the inspection show that in the Ombudsman's operations no irregularities were evident. In her conclusion to the notes on the inspection of use of national budget funds, the inspector especially emphasised that the inspected documentation of the budget user was kept in an exemplary fashion.

Information system

We gave special emphasis to this area in 1999, in order to coordinate and ensure unimpeded work, with the application of computer supported office management in 2000. We carried out the necessary modernisation, and replaced inappropriate, functionally obsolete information technology with more modern systems.

Education

Education and training of staff was conducted both at home and abroad. Employees took part in several professional meetings, workshops and seminars organised by other institutions and educational organisations. Some of our employees also participated actively in providing contributions towards the educational process for a variety of professional circles, both at home and abroad. As

part of the EU pre-accession process running under the Phare programme, one of the Ombudsman's professional staff participated in two week-long modules relating to the work of the police. The modules were conducted in Budapest and Prague, through the organisation and financial support of the European police training association, the AEPC.

The regular two-day working consultation and workshop, which are held every autumn for all employees by the Ombudsman's office, were also held in 1999 at the Gotenica teaching centre. At the consultation the new features of certain laws adopted anew and relating to the Ombudsman's work were presented, plus a detailed presentation of the envisaged new features of the information system at the office and certain of its main overviews. At the workshop the Ombudsman gave a detailed presentation by individual stages (from receipt of an application to the conclusion of its handling at the office) of the progress, resolving and conclusion of applications and the use of measures provided by law for the Ombudsman. The working consultation and workshop, which are obligatory for all the office's staff, were also attended on the invitation of the Ombudsman by three senior advisers from the office of the Croatian Human Rights Ombudsman. The workshop was also used for a mutual exchange of experiences. The Croatian colleagues were grateful for the opportunity to participate in this kind of training, and expressed the desire to participate in future workshops.

Miscellaneous

In 1999, with the intention of presenting the work of the Slovenian Ombudsman to the ombudsmen of other countries, related institutions and other professional circles working in other countries in the area of protecting human rights, we again produced an abridged version of the annual report in English. This publication was sent to 487 addresses.

On international human rights day the Ombudsman held a traditional reception. It was attended by the leading representatives of government, the church, universities and the sciences, plus representatives of non-governmental organisations involved in human rights. Several accredited diplomatic representatives of foreign countries in Slovenia also attended the reception.

International Ombudsman Institute (IOI) Board of Directors Meeting, Pretoria (South Africa), November 1999

Handing over the annual report to the Prime minister of Slovenia, May 1999

Seminar on Ombudsman and the Law of the European Union, June 1999

Reception by Ombudsman on international Human Rights Day, December 1999

Discussion of the annual report 1998 in the Slovene National Assembly, March 2000

Printed media on the work of the Ombudsman

Ombudsman talking to the complainant

4.4. Statistics

This subchapter includes statistical data on complaints opened and processed by the ombudsman in the period from 1 January to 31 December 1999.

Definitions of individual statistical categories

1. **Complaints opened in 1999:** complaints opened by the ombudsman from 1 January to 31 December 1999.
2. **Complaints processed in 1999:** in addition to complaints opened in 1999, they include:
   - *Complaints brought forward from 1998* - complaints opened in 1998 which had not been resolved by the end of 1998 and were therefore dealt with the ombudsman in 1999.
   - *Reopened complaints* - Cases which as at 31 December 1998 were resolved but which due to the emergence of new facts and circumstances continued to be processed in 1999. Given that new procedures were introduced for the same cases, no new records were opened. In view of this, reopened cases were not counted as complaints opened in 1999 but only as complaints processed by the ombudsman in 1999.
3. **Resolved cases:** This includes all complaints processed in 1999 whose procedure of processing by the ombudsman was concluded by 31 December 1999.

Complaints opened

Table 4.4.1. shows the number of complaints opened in 1999 by individual area. For the sake of comparison, the table also shows data for individual years for the period between 1995 and 1998.

From 1 January to 31 December 1999 the ombudsman **opened a total of 3,411 complaints** (2,352 in 1995, 2,513 in 1996, 2,886 in 1997, and 3,448 in 1998), which is a **1.1 per cent decrease** on 1998.

As in previous years, the largest share of all complaints opened in 1999 referred to the following areas:
- court and police procedures: 946 or 27.7 per cent;
- other matters: 711 or 20.8 per cent; and
- administrative affairs: 635 or 18.6 per cent of all complaints opened.

The table clearly shows that the number of complaints opened in 1999 increased most substantially in the following areas relative to 1998:
- public services: from 37 to 72 complaints, which is an increase of as much as 94.6 per cent; and
- environment: from 56 to 97 complaints, which is a 73.2 per cent increase.

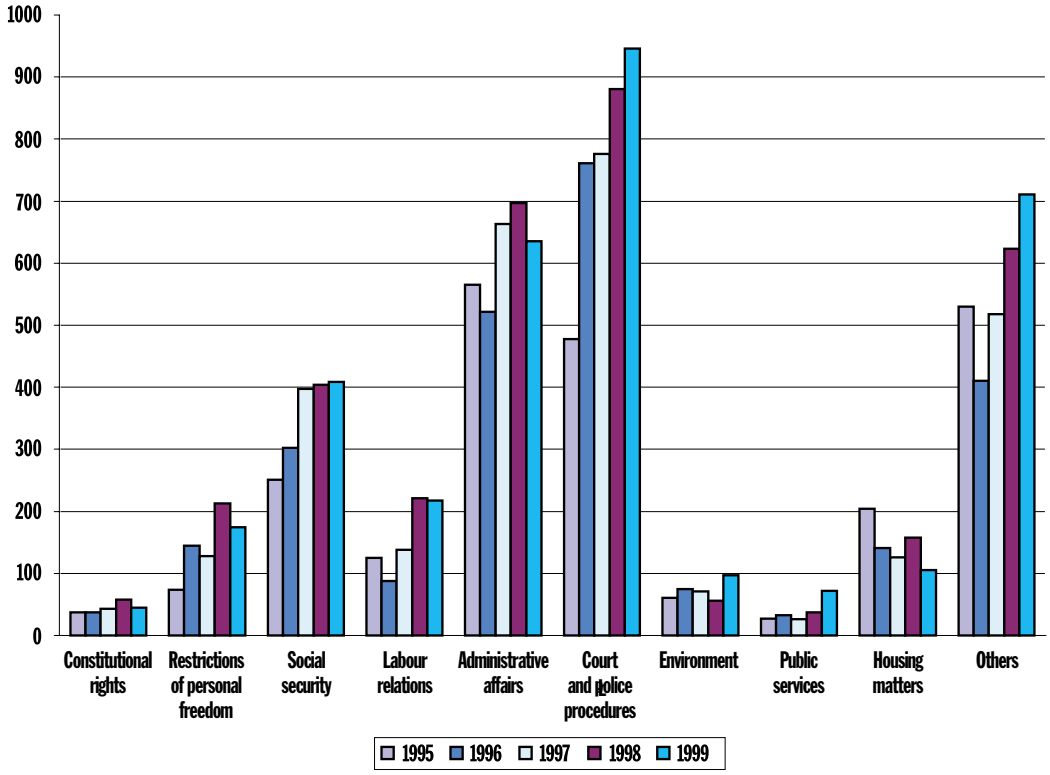
The number of complaints opened in 1999 relative to 1998 decreased most substantially in the following areas:
- housing: from 158 to 105 complaints, which is an decrease of as much as 33.5 per cent;
- constitutional rights: from 58 to 45, which is a 22.4 per cent decrease; and
- restrictions of personal freedom: from 213 to 174, which is a 18.3 per cent decrease.

Figure 4.4.1 includes a graphic display of the comparison between the numbers of complaints opened by individual area in the period between 1995 and 1999.

Table 4.4.1.

AREA OF	COMPLAINTS OPENED										Index
OMBUDSMAN'S WORK	1995		1996		1997		1998		1999		(99/98)
	Numb.	Share	Numb.	Share	Numb.	Share	Numb.	Share	Numb.	Share	
1. Constitutional rights	37	1.6%	37	1.5%	43	1.5%	58	1.7%	45	1.3%	77.6
2. Restriction of personal freedom	74	3.1%	145	5.8%	128	4.4%	213	6.4%	174	5.1%	81.7
3. Social security	251	10.7%	302	12.0%	397	13.8%	404	12.1%	409	12.0%	101.2
4. Labour relations	125	5.3%	88	3.5%	138	4.8%	221	6.6%	217	6.4%	98.2
5. Administrative affairs	565	24.0%	521	20.7%	663	23.0%	697	20.8%	635	18.6%	91.1
6. Court and police procedures	478	20.3%	761	30.3%	776	26.9%	881	26.3%	946	27.7%	107.4
7. Environment	61	2.6%	75	3.0%	71	2.5%	56	1.7%	97	2.8%	173.2
8. Public services	27	1.1%	33	1.3%	26	0.9%	37	1.1%	72	2.1%	194.6
9. Housing matters	204	8.7%	141	5.6%	126	4.4%	158	4.7%	105	3.1%	66.5
10. Others	530	22.5%	410	16.3%	518	17.9%	623	18.6%	711	20.8%	114.1
TOTAL	2,352	100%	2,513	100%	2,886	100%	3,448	100 %	3,411	100%	98.9

Figure 4.4.1.



Complaints processed

Table 4.4.2. shows data on the total number of complaints that were processed by the ombudsman in 1999 by individual area. As already mentioned, the group of complaints processed incorporates complaints opened in 1999, complaints brought forward from 1998, and cases reopened in 1999.

The table shows that in 1999 **a total of 4,074 complaints were processed,** of which:

- 3,411 complaints were opened in 1999 (83.7 per cent);
- 475 complaints were brought forward from 1998 (11.7 per cent); and
- 188 cases were reopened in 1999 (4.6 per cent of all complaints processed).

The area of court and police procedures (27.4 per cent), the area of other matters (20.4 per cent) and the area of administrative affairs (19.3 per cent) account for the largest shares of complaints processed in 1999. The table below shows in greater detail the number of complaints processed in 1999 by individual area.

Table 4.4.2.

AREA OF OMBUDSMAN'S WORK	COMPLAINTS BEING PROCESSED				Processed
	Opened	Brought forward	Reopened		by area
	1999	from 1998	cases	Total	
1. Constitutional rights	45	8	0	53	1.3%
2. Restriction of personal freedom	174	34	19	227	5.6%
3. Social security	409	49	20	478	11.7%
4. Labour relations	217	12	4	233	5.7%
5. Administrative affairs	635	165	31	831	20.4%
6. Court and police procedures	946	114	58	1,118	27.4%
7. Environment	97	18	6	121	3.0%
8. Public services	72	8	4	84	2.1%
9. Housing matters	105	24	12	141	3.5%
10. Others	711	43	34	788	19.3%
TOTAL	3,411	475	188	4,074	100%

Table 4.4.3 shows a comparison of the numbers of complaints processed by the ombudsman by individual area in the period between 1995 and 1999.

The table shows that relative to 1998, **2.4 per cent more complaints were processed** in 1999. The number of complaints processed increased most significantly in the following areas:

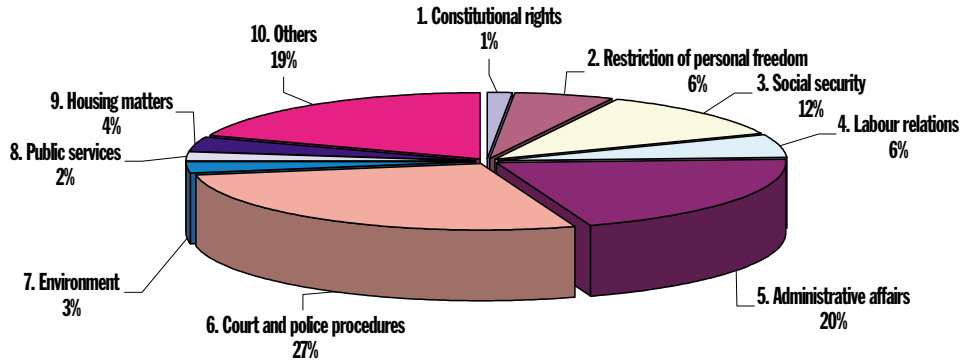
- public services: from 46 to 84 complaints, which is a 82.6 per cent increase; and
- environment: from 83 to 121 complaints (45.8 per cent increase).

Figure 4.4.2. shows the shares of complaints processed by the ombudsman by individual area in 1999.

Table 4.4.3.

AREA OF OMBUDSMAN'S WORK	COMPLAINTS BEING PROCESSED										Index
	1995		1996		1997		1998		1999		(99/98)
	Numb.	Share	Numb.	Share	Numb.	Share	Numb.	Share	Numb.	Share	
1. Constitutional rights	37	1.6%	63	1.6%	54	1.4%	65	1.6%	53	1.3%	81.5
2. Restriction of personal freedom	74	3.1%	200	5.0%	179	4.6%	260	6.5%	227	5.6%	87.3
3. Social security	251	10.7%	469	11.8%	528	13.7%	487	12.2%	478	11.7%	98.2
4. Labour relations	125	5.3%	157	3.9%	181	4.7%	246	6.2%	233	5.7%	94.7
5. Administrative affairs	565	24.0%	868	21.8%	855	22.2%	852	21.4%	831	20.4%	97.5
6. Court and police procedures	478	20.3%	1.036	26.0%	1.086	28.2%	1.073	27.0%	1.118	27.4%	104.2
7. Environment	61	2.6%	122	3.1%	119	3.1%	83	2.1%	121	3.0%	145.8
8. Public services	27	1.1%	49	1.2%	38	1.0%	46	1.2%	84	2.1%	182.6
9. Housing matters	204	8.7%	264	6.6%	178	4.6%	185	4.6%	141	3.5%	76.2
10. Others	530	22.5%	753	18.9%	636	16.5%	683	17.2%	788	19.3%	115.4
TOTAL	2,352	100%	3,981	100%	3,854	100%	3,980	100%	4,074	100%	102.4

Figure 4.4.2.



Complaints by stage of processing

Stages of processing of complaints

1. **Resolved cases:** complaints whose procedure of processing was concluded by 31 December 1999;
2. **Complaints being processed:** complaints whose procedure of processing was in progress on 31 December 1999;
3. **Scheduled complaints:** complaints to which on 31 December 1999 we were expecting a reply to our inquiries, and other procedural actions.

Table 4.4.4. shows a comparison between the stages of processing at the end of the years 1995 to 1999.

In 1998 **a total of 4,074 complaints were processed,** of which **3,727, or 91.5 per cent** of all complaints processed in 1999, **were resolved** by 31 December 1999.

The remaining 347 complaints, or 9.5 per cent of all complaints, were in procedure of processing, of which:

- 160 were scheduled complaints; and
- 187 were complaints being processed.

Table 4.4.4.

STAGE OF											Index
PROCESSING	1995		1996		1997		1998		1999		(99/98)
COMPLAINTS	Numb.	Share	Numb.	Share	Numb.	Share	Numb.	Share	Numb.	Share	
Resolved	1,875	79.7%	3,282	82.4%	3,442	86.7%	3,505	88.1%	3,727	91.5%	106.3
Being processed	399	16.9%	535	13.4%	308	8.0%	261	6.6%	187	4.6%	71.6
In the diary	78	3.3%	164	4.1%	204	5.3%	214	5.4%	160	3.9%	74.8
TOTAL	2,352	100%	3,981	100%	3,854	100%	3,980	100%	4,074	100%	102.4

Resolved cases

Table 4.4.5. shows the number of resolved cases by individual area in the period between 1995 and 1999. In 1999, **3,727 cases were resolved** (1,875 in 1995, 3,282 in 1996, 3,442 in 1997 and 3,505 in 1998), which is a **6.3 per cent increase in the number of resolved cases** relative to 1998.

On the basis of a comparison between the number of cases resolved (3,727) and the number of cases opened in 1999 (3,411), we can conclude that in **1999 9.3 per cent more cases were resolved than opened** by the ombudsman, which can be seen to be the result of regular processing of cases.

Table 4.4.5.

AREA OF OMBUDSMAN'S WORK	RESOLVED COMPLAINTS					Index
	1995	1996	1997	1998	1999	(99/98)
1. Constitutional rights	22	54	48	57	50	87.7
2. Restriction of personal freedom	60	165	144	226	210	92.9
3. Social security	202	374	466	438	439	100.2
4. Labour relations	98	124	157	234	216	92.3
5. Administrative affairs	418	717	718	687	730	106.3
6. Court and police procedures	397	824	931	959	1,009	105.2
7. Environment	36	86	93	65	108	166.2
8. Public services	21	39	30	38	79	207.9
9. Housing matters	175	223	156	161	132	82.0
10. Others	446	676	599	640	754	117.8
TOTAL	1,875	3,282	3,442	3,505	3,727	106.3

Processing of complaints by areas of work

In sector **1. Constitutional rights** 53 cases were processed in 1999, which is 18.5 per cent less than in 1998 when 65 cases were processed. In particular there were less cases relating to 'other constitutional right' (46 in 1998, 27 in 1999 - index 58.7)

The number of cases processed in sector **2. Restrictions of personal freedom** fell by 12.7 per cent in 1999 with respect to 1998 (from 260 in 1998 to 227 in 1999), which was to be expected given the 45.3 per cent increase in the number of cases from this sector in 1998 with respect to 1997 (from 179 in 1997 to 260 in 1998). The fall in the number of cases processed in 1999 is the result of a 22 per cent fall in the number of cases from convicted prisoners (from 153 in 1998 to 119 in 1999), while the number of other cases relating to restrictions of personal freedom (psychiatric patients, soldiers and children's homes) remained at roughly the same level in 1999 as in 1998.

In sector **3. Social security** the number of cases dealt with in 1999 remained at a similar level to 1998 (487 in 1998 and 478 in 1999 - a fall of 1.8 per cent). The greatest share among these subsectors is taken up by cases relating to the provision of social care (198 cases or 41.4 per cent). We note a great increase in the number of cases relating to health insurance (from 47 in 1998 to 73 in 1999 - index 155.3) and health care (from 20 in 1998 to 25 in 1999 - a 25 per cent increase). The biggest fall was in cases relating to other areas of social security (56 in 1998 and 31 in 1999, or a fall of 44.6 per cent).

In sector **4. Labour law matters** the number of cases processed in 1999 (233) was 5.3 per cent down on 1998 (246). The greatest reduction in the number of cases processed were in the areas of labour relations (from 85 in 1998 to 58 in 1999 - a 31.8 per cent fall) and unemployment (from 87 in 1998 to 63 in 1999, a reduction of 27.6 per cent). Cases from these subsectors represent the largest proportion of cases in this sector. The number of cases relating to persons working in state bodies rose from 20 in 1998 to 38 in 1999.

Sector **5. Administrative matters** accounts for a good fifth (20.4 per cent) of all cases processed by the ombudsman in 1999. It is worth drawing attention to the almost twofold increase in the number of cases relating to denationalisation procedures (76 in 1998 and 146 in 1999 - a 92.1 per cent increase) and the 42.3 per cent drop in the number of cases relating to obtaining Slovenian citizenship (from 194 cases in 1998 to 112 in 1999), which remains means a continuous reduction in the number of cases processed in this area since 1996 (381 in 1996, 244 in 1997, 194 in 1998 and 112 in 1999).

In 1999 as in all previous years the ombudsman dealt with more cases from sector **6. Judicial and police proceedings** than from any other sector (1,118 cases or 27.4 per cent). This sector includes cases relating to police proceedings, pre-trial proceedings, criminal and civil proceedings, proceedings in labour and social disputes, administrative judicial proceedings and administrative offence proceedings. From the index of movement in the number of cases processed in 1999 compared to 1998 (104.2) it is evident that 4.2 per cent more cases were processed in 1999 than in 1998 (1,073 in 1998 and 1,118 in 1999). The largest proportion of all cases processed from this sector are cases relating to civil proceedings (575 cases or 51.4 per cent of all cases from this sector in 1999).

In sector **7. Environment and planning** we note that unlike in 1998, when 30.3 per cent fewer cases were processed in comparison to the previous year (119 in 1997, 83 in 1998), in 1999 there was a large increase in the number of cases processed in comparison to 1998 (from 83 in 1998 to 121 in 1999), above all in cases concerning 'other matters' from this sector, where there was a 166.7 per cent increase (from 18 in 1998 to 48 in 1999).

The greatest increase in the number of cases processed in 1999 compared to 1998 was in sector **8. Commercial public services** (from 46in 1998 to 84 in 1999 - index 182.6), in practically all subsectors (municipal services sector, communications, power supply, transport and other commercial public services).

The biggest fall in the number of cases processed in 1999 compared to 1998 was in sector **9. Housing matters** (from 185 to 141 - a 23.8 per cent drop), particularly in housing commerce (from 38 to 11, which is a fall of 71.1 per cent), and also in tenant-landlord relations (from 142 to 110 - a 22.5 per cent drop). There was however a fourfold increase in the number of cases relating to other housing matters (from 5 in 1998 to 20 in 1999).

Section **10. Miscellaneous** contains those cases which cannot be placed into any of the other sectors. In 1999 we processed 788 such cases, which means a 15.4 per cent increase over 1998 (683 cases processed). The largest share of these cases is represented by cases sent to the ombudsman for information only (290 or 36.8 per cent) and explanations (211 or 26.8 per cent).

Justification of complaints

Of the 3,727 cases concluded in 1999:
- 725 were justified (19.5 per cent);
- 462 were partially justified (12.4 per cent);
- 677 were unjustified (18.2 per cent);
- 1,285 did not meet the conditions for processing (34.5 per cent); and
- 578 fell outside the ombudsman's jurisdiction (15.5 per cent of all concluded cases).

The proportion of justified and partially justified cases in 1999 (31.8 per cent) is considerably higher than in the period 1995-1998 (26.0 per cent in 1995, 26.1 per cent in 1996, 21.9 per cent in 1997 and 22.0 per cent in 1998). We find that this proportion is very high in comparison to kindred institutions.

Resolved cases by individual departments

Table 4.4.6. shows classifications of resolved cases by departments (the classification by departments was carried out in accordance with the Government Act) in 1999. Individual cases are classified into an appropriate department on the basis of the nature of the problem which prompted people to turn to the ombudsman.

The table clearly shows that the largest shares of cases resolved in 1999 fall under the departments of:
- justice (1,188 complaints or 31.9 per cent);
- labour, the family and social affairs (697 complaints or 18.7 per cent); and
- environment (605 complaints or 16.2 per cent of all cases resolved).

The number of resolved cases in 1999, including departments whose share of all concluded cases in 1999 is at least one per cent, showed the greatest increase with regard to 1998 in the following departments:
- transport and communication: from 31 to 58, which is a 87.1 per cent increase; and
- environment: from 389 to 605, which is a 55.5 per cent increase.

Table 4.4.6.

DEPARTMENT	RESOLVED COMPLAINTS				Index
	1998		1999		(99/98)
	Number	Share	Number	Share	
1. Labour, the family and social affairs	698	19.9%	697	18.7%	99.9
2. Economic relations and development	26	0.7%	32	0.9%	123.1
3. Finance	103	2.9%	95	2.5%	92.2
4. Economy	13	0.4%	23	0.6%	176.9
5. Agriculture, forestry, food	32	0.9%	24	0.6%	75.0
6. Culture	5	0.1%	4	0.1%	80.0
7. Internal affairs	366	10.4%	455	12.2%	124.3
8. Defence	63	1.8%	50	1.3%	79.4
9. Environment	389	11.1%	605	16.2%	155.5
10. Justice	1,139	32.5%	1,188	31.9%	104.3
11. Transport and communications	31	0.9%	58	1.6%	187.1
12. Education and sport	63	1.8%	53	1.4%	84.1
13. Health	85	2.4%	103	2.8%	121.2
14. Science and technology	4	0.1%	1	0.0%	25.0
15. Foreign affairs	8	0.2%	7	0.2%	87.5
16. Government services	3	0.1%	2	0.1%	66.7
17. Local government	135	3.9%	108	2.9%	80.0
18. Others	342	9.8%	222	6.0%	64.9
TOTAL	**3,505**	**100%**	**3,727**	**100%**	**106.3**

LIST OF ABBREVIATIONS

A. Regulations

ECHR	European Convention on Human Rights and Fundamental Freedoms
KZ	Penal Code
SZ	Housing Act
UZITUL	Constitutional Act Implementing the Basic Constitutional Charter on the Independence of the Republic of Slovenia
Zazil	Asylum Act
ZDDV	Value Added Tax Act
ZDavP	Tax Procedure Act
Zden	Denationalisation Act
ZDRS	Citizenship of the Republic of Slovenia Act
ZKP	Criminal Procedure Act
ZNDM	Control of the National Border Act
ZP	Administrative Offence Act
Zpol	Police Act
ZPP	Civil Procedure Act
ZSV	Social Welfare Act
Ztuj	Aliens Act
ZTuj-1	New Aliens Act
ZUP	General Administrative Procedure Act
ZUS	Administrative Dispute Act
ZUSDDD	Act Regulating the Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia
ZVarCP	Human Rights Ombudsman Act
ZVO	Environmental Protection Act
ZVOP	Protection of Personal Data Act
ZVPot	Consumer Protection Act
ZZDej	Health Care Activities Act
ZZdrS	Health Service Act
ZZVN	Victims of War and Military Aggression Act
ZZZDR	Marriage and Family Relationships Act
ZZZPB	Insurance and Employment in the Event of Unemployment Act

B. Institutions, others

CSD	Social Services Centre
DURS	Tax Administration of the Republic of Slovenia
MDDSZ	Ministry of Labour, Family and Social Affairs
MF	Ministry of Finance
MK	Ministry of Culture
MKGP	Ministry of Agriculture, Forestry and Food
MNZ	Ministry of the Interior
MO	Ministry of Defence
MOP	Ministry of the Environment and Physical Planning
MP	Ministry of Justice
M[[	Ministry of Education and Sports
MZT	Ministry of Science and Technology
PDT	Transit Centre for Foreigners
SKZG	Agricultural Land and Forest Fund
SOS	Slovenian Indemnity Fund
UE	Administrative Unit
UIKS	National Prison Administration
ZPIZ	Institute for Pension and Disability Insurance
ZRSZ	National Employment Office

5. Description of selected cases

In this chapter we present a description of some of the more interesting cases we dealt with in 1999. Some are typical problems which we encountered in numerous cases. These problems are described in more general terms in the chapter Issues Dealt With. This additional description of a concrete case is intended to acquaint readers with the progress of the procedure and with our arguments for proposals and recommendations. This method of presenting our work is clearly of interest to the public, since many lamented the omission of this chapter in our previous report.

1.7-12/99 - Use of archive material for private ends

An applicant was aggrieved by the publication of a newspaper article in which the writer used data about the applicant obtained from a historical archive. The applicant requested our help and directions as to how to prevent abuses of data contained in archives.

The protection of archive material, the conditions for its use and the responsibilities and tasks of archives are governed by the Archive Material and Archives Act. Article 38 of this Act stipulates that public archive material can be used for scientific/research, cultural and journalistic purposes, for the presentation of archive material and for education. Legal persons and natural persons may also use public archive material if they demonstrate a legal interest. More detailed conditions and the method of keeping records of the use of public archive material are set out in the Regulations on the Use of Public Archive Material and Archives.

The use of public archive material for non-permitted purposes is (also) an administrative offence. Supervision of the implementation of this Act and the executive regulations deriving from it is carried out by the National Cultural Heritage Inspectorate. Since we do not deal with the actions of individuals, we directed the applicant aggrieved by the publication of an article based on an archive document to this body.

2.1-26/99 - Maintenance of facilities and equipment in prisons

The building which houses Koper Prison has been returned to its previous owners as part of the process of denationalisation. For this reason the construction of a new prison in a different location is planned. The move is unlikely to take place for some years. Nevertheless it is necessary to ensure suitable living conditions for persons in custody even during this transition period. Even if major investments are no longer expedient, this does apply to running repairs such as whitewashing the rooms and other premises used by detainees and convicted prisoners. Persons in custody must not be allowed to suffer the consequences if the future of the prison is at another location.

During a visit to Koper Prison we criticised the use of a detention cell nicknamed 'the pigeon loft' because the outer part of the window opening is used by pigeons, whose droppings cause an unpleasant smell. In another cell two detainees drew our attention to the toilet and sink which had been broken for a long time. The consequences of leaking were clearly evident on the floor. The cells of convicted prisoners in the closed block of the prison were damp, dark and poorly ventilated. We noticed that the plaster was coming off in some places. The convicts complained that a bad smell comes from the toilets in the cells and that they sometimes see rats. The requests of detainees and convicted prisoners for the situation to put right have clearly been unsuccessful.

Only after our intervention did Koper Prison see to it that the window in the detention cell was cleaned and protected in a such a way that pigeons cannot reach the window. Following our visit the problem with the toilet in the other detention cell was also put right. All the rooms in the detention block were repainted, as were most of the premises where convicted prisoners live. New neon lights were fitted in the closed block, improving the lighting in the living premises and thus living conditions.

We also noted poor maintenance of buildings and equipment at Dob Prison. The administration explained that damage to buildings and equipment often occurs as a result of the behaviour of the prisoners themselves. A set amount of money is available each year for repairs; if the costs are greater it is not possible to carry out all repairs. In response to the accusation that there is a delay in carrying out repairs, the administration explained that as a rule a list of repairs has to be communicated to outside contractors by the 20th of each month. Moreover, so many incidents occur in the prison each week which result in damage that they would need a 'flying squad' to carry out urgent repairs.

The principle of careful management requires that damage to buildings and equipment is repaired as soon as possible. Waiting and delaying only causes more damage. We proposed to Dob Prison the setting up of a special register of reported damage and rectified damage. In this way it will be possible for at least the most urgent repairs to be carried out within a reasonable deadline.

2.1-42/99 - Detention order with inadequate indication of legal remedy

The applicant was held in police detention on the basis of the provisions of the ZKP. Since the detention lasted more than six hours he was served

a detention order notifying him of the reasons for his deprivation of liberty. In issuing the detention order the Maribor Police Administration used a detention order form containing empty sections which an authorised official fills in a specific case of detention. Not all of the sections of the applicant's detention order were filled in. The 'indication of legal remedy' section did not contain the name of the court to which the applicant could appeal against the detention order.
A person deprived of his liberty has the right to appeal against a detention order during the course of the detention. The indication of the right to appeal, which in this case was missing, is a constituent part of the order. We drew attention of the MNZ to the deficiency. They replied that the 'indication of legal remedy' section was not filled in because of a technical mistake by the police officer who when filling in the form overlooked the fact that he had to insert the name of the court competent to rule on the appeal. The police officer's attention was drawn to the mistake and he was told the proper procedure for issuing an order.

2.2-93/99 - Cutting down a tree for security reasons

In November 1999 all the trees in the outdoor exercise area of Dob Prison were cut down. The prison administration justified this action on security grounds: removing the trees enables them to keep a better watch on the walking area. We pointed out to the administration that now there is no shade in the walking area, or any type of cover in case of bad weather. We proposed that the loss of shade previously afforded by the trees should at least by compensated by suitable roofing, which will protect prisoners from the sun and also protect them in rainy weather. The principle of proportionality also applies to security measures: it would not be correct if in order to ensure better visibility in the outdoor exercise area the conditions for prisoners exercising out of doors should be disproportionately worsened.

2.2-93/99 - Prisoners 'behind two sets of bars' - until our next visit

During a visit to Dob Prison in July we notices that the windows of the living spaces and sickbay of the first block were not only covered by metal grills but also by a metal mesh. The meshes are of sheet metal, with openings of just 6 x 12 mm. Because of the metal meshes on the windows the light in the rooms was poor: during our visits lights were on in the middle of the day in all rooms. Prisoners also drew attention to the poor ventilation, particularly in the sickbay. The dense iron mesh also meant that in cells where the toilet is not partitioned off from the rest of the cell and no special ventilation is installed, bad smells took longer to disperse.
We therefore proposed that Dob Prison remove the metal meshes and in this way provide prisoners with more normal light, ventilation and visibility. By the time of our December Visit to the prison the metal meshes had been removed. The prisoners told us that this had only been done the week before our visit. The prison administration explained that they had removed the meshes gradually, several of them only recently.

3.5-116/99 - Assistance in solving a housing problem

Following a divorce, the applicant had to move out of her former marital home. For several years she lived at various addresses, ending up in a temporary wooden shack on the outskirts of Koper. The imminent demolition of the shack meant that she was threatened with eviction even from this last shelter, which afforded her at least a humble roof over her head. She asked the Human Rights Ombudsman for help.
We told the mayor of the municipality of Koper about the applicant's housing problem and suggested that the municipality should help resolve her difficulties.
Following our intervention the applicant's hosing problem was settled satisfactorily. The municipality of Koper allocated her a rented room with bathroom.

3.5-130/99 - Assigning points to 'unemployable person' status in the allocation of rented social housing

The applicant put himself forward for the allocation of rented social housing in the municipality of Kranj. In the process he encountered difficulties because he had been unable to obtain confirmation of his status as an unemployable person. He felt that because of his personal circumstance he should have been given additional points for this status, which would have given him real possibilities of being allocated social housing. It was evident from the enclosed documentation that the municipality of Kranj, in accordance with the regulations, envisaged a score of 30 points for the status 'applicant with a family member considered unemployable under the regulations on employment'. This possibility was enabled by the fourth indent of Article 6 of the Regulations on the Criteria for the Allocation of Rented Social Housing (Official Gazette of the Republic of Slovenia, No. 18/92).
The applicant was told at the employment office that regulations governing employment do not allow the possibilities of issuing a confirmation that an unemployed person is unemployable or hard to employ. In the applicant's case all they could do was give the opinion that given the length of this unemployment (9 years and 9 months), his profession and his disability, his employment possibilities were limited. In the light of the fact that the employment office did not have a legal basis for assessing employability, and taking into account the fact that the fourth indent of Article 6 of the regulations was deleted after the call for applications by the changes and additions to the regulations (Official Gazette of the Republic of Slovenia, No. 53/99), it was not reasonable to expect the office to be able to issue the confirmation mentioned to the applicant.
Since however this criterion was included in the regulations which were in force while the call for applications for the allocation of rented social housing in the municipality of Kranj was in progress, we proposed to the municipality that in this case it should itself formulate criteria under which it will be possible to award points for 'unemployable person' status in accordance with Point 7 of the municipality's scoring system.
The municipality of Kranj notified us that they had taken our opinion into account and granted the applicant the status of unemployable person on the basis of the opinion of the Regional Unit of the National Employment Office in Kranj. The allocation of an additional 30 points meant that the applicant had enough points to be allocated rented social housing.

3.5-135/99 - Re-awarding of points for a place in a hall of residence

An applicant with three children found herself with serious social and housing difficulties. Her oldest daughter started studying in Ljubljana in autumn 1999 but had not succeeded in getting a room in a hall of residence. A CSD report showed that the applicant would not be able to pay additional costs for her daughter's accommodation in Ljubljana for the duration of her studies.
We drew the attention of the University of Ljubljana Halls of Residence Office to the social difficulties of the applicant and her daughter. We suggested that they look once again into the possibility of admitting the applicant's daughter to a hall of residence. We found out that the Halls of Residence Office was not sufficiently acquainted with the material difficulties of the applicant and her family. On the basis of a special CSD report the Halls of Residence Office re-scored the applicant's daughter's application for a place in a hall of residence. The number of points awarded was sufficient for her to be given a place in a hall of residence, and thus she was able to continue her studies in Ljubljana.

4.3-17/99 - Enforcement of the judgement of a labour court

On 15 April 1999 a final judgement ruled that in 1992 the MZT had issued the applicant with an unlawful termination of employment order; it was therefore obliged to summon her back to work and to acknowledge her all labour rights for the period from the termination of employment up to her return to work. At the end of May the applicant notified the ombudsman that the Ministry had not yet enforced the final judgement of the court.
We invited the Ministry to enforce the final judgement of the labour court; we opined that in a state based on the rule of law, state bodies in particular should respect the final judgements of courts.
The Ministry notified us that after receiving our suggestion the enforcement of the final judgement had been commenced and that the applicant had already been invited back to work.

5.2-53/98 - Threat to national security

The applicant has lived in Slovenia since 1979. In 1991 he left the country as an officer of the Yugoslav People's Army (JNA). In 1993, after retiring

from the army, he returned to his family. He is married to a Slovene citizen and they have two children (both minors). He has had difficulties in putting his status in order, or in other words in obtaining a temporary residence permit. In the procedure, which was already under way in 1993, the Administrative Unit (UE) in Logatec issued a negative decision two years after the lodging of the application. Following an appeal to the MNZ and a Supreme Court action the procedure came to the Constitutional Court, which at the time at which the application was being dealt with had still not ruled on the constitutional complaint. It was evident from the content of the explanations of all the rulings issued that the reason for refusing to issue a temporary residence permit was the existence of reservations from the point of view of a risk to national security. When serving in the JNA the applicant held the rank of Captain, Grade I, and worked in technical services, where he looked after radar equipment. He never commanded or worked for any of the JNA's security services. Following the Supreme Court ruling the applicant resubmitted his request for a temporary residence permit.
We have already said on several occasions that the opinion of the Legislation Service from 12 January 1999 regarding the admissibility of analogous use of the Decree on the Criteria for Establishing the Fulfilment of Specific Conditions for Obtaining Citizenship of the Republic of Slovenia when tackling matters relating to the status of foreigners should not be allowed to mean that in these procedures the differences in their nature and regulation in comparison to the procedure for the granting of Slovene citizenship are not taken into account. In the case in question we suggested to the Logatec UE, in accordance with Article 7 of the ZVarCP, that in establishing the grounds for the refusal of a (temporary) residence it is necessary to establish and assess the concrete circumstances and concrete actions of the applicant which point to his past and current danger to national defence, while the existence of such a danger should be demonstrated in the discretionary decision-making process by concrete facts and not merely presumed. The UE responded to this suggestion with the explanation that the applicant is one of those persons who are still on the MO list, and therefore they are still waiting for the MO's opinion. Following our intervention at the MO (OVS), the latter issued a positive opinion.

5.2-46/99 - Entry into the country refused

The applicant is a Croatian citizen who came to Slovenia in 1978 and whose official place of permanent residence is in Slovenia. In 1993 he was found guilty of a criminal offence and sentenced to prison. He was also sentenced to the safety measure of expulsion from the country for five years, from 1993 to 1998. Once this measure had run its course he returned to Slovenia, where his partner and son live; both are citizens of the Republic of Slovenia. He stayed in Slovenia on the basis of a tourist visa, valid until 5 February 1999, when he left the country at the Secovlje border crossing. On 8 March 1999 he wished to re-enter the country but was refused entry by the border guards. He later managed to enter the country but when he wished to declare temporary residence he was told at the UE that 'next to his name on the computer it says that he is still prohibited from entering the country, from March 1999 for six months.'
We obtained from the MNZ the explanation that the applicant was refused entry to the country on the basis of Point 3 of Article 10 of the ZTuj, under which a foreigner is not permitted to enter the country if the competent body finds that his residence in the country could be a financial burden to the Republic of Slovenia. In this regard we pointed out to the Ministry that neither the previous ZTuj, which applied at the time that the applicant was refused entry, nor the current ZTuj-1 specify the standards and criteria according to which the amount of financial resources necessary for a foreigner to support himself is assessed. The Ministry also explained to us that the measure of refusing entry to the country is a one-off measure which does not have a time limit and that a foreigner is permitted entry when the grounds for refusing it cease to apply. The measure is input into the records under Article 63 of the ZTuj, but the computer application is set up in such a way that the end of validity of the measure is automatically input with a validity of six months, after which it is automatically deleted.
We found, and pointed out to the Ministry, that the measure of refusal of entry was pronounced on the applicant at a time when the ZTuj still applied, and that Article 63 of that Act does not provide a basis for entering the measure of refusal of entry into records. The basis for keeping records on foreigner who have been refused entry to the country is only provided by the 15th indent of the first paragraph of Article 85 of the new ZTuj-1, which however was not in force at the time that the measure was pronounced on the applicant. Given that the measure of refusal of entry to a foreigner carries no time restriction and ceases to apply when the grounds for refusal cease to apply, the mere fact that the computer application is set up in such a way that the end of validity is input automatically and also deleted automatically is not enough. Likewise, operational grounds designed to ensure the security of the country's citizens, to which the Ministry appealed in its explanations, cannot be a reason for setting a time limit on this measure. Notwithstanding the fact that the ZTuj did not envisage the keeping of records on measures of refusal of entry into the country, and that thus there was no basis for setting a time limit on them, not even the ZTuj-1, which does envisage the keeping of such records, contains provisions which would give a time frame to the measure of refusal of entry to the country.
In its final reply the Ministry explained that a basis for keeping records on the use of the measure of refusal of entry to the country is contained in Article 59 of the ZPol (as well as in Article 85 of the ZTuj-1), while there is a basis for setting a time limit to this measure in Article 63 of the same Act. Article 63 stipulates that data from the records under the fourth indent of Article 59 (records of identifications!) shall be kept for one year after the inputting of data. The Ministry further told us that during the preparation of the ZTuj-1 it proposed that the records of foreigners to whom entry is refused should be defined separately in the Act. Since a time frame is not provided for the keeping of the records, the Ministry will ask the preparer of the Act to explain whether the time frame was deliberately omitted and whether an analogy can be used with records on safety measures, notice of termination of residence and the deportation of foreigners, to give a time frame to the storage of data in these records.

5.2-47/99 - Suspension of the procedure for issuing a work permit

A limited liability company (d.o.o.) requested the issuing of work permits on the basis of the employer's application to employ three foreigners. In all three cases the regional unit of the ZRSZ issued an order to suspend the procedure until the examining justice ruled on a criminal denunciation against the co-founder of the d.o.o. In its explanation the regional unit justified its decision with the fact that criminal proceedings (an investigation) are in progress against the co-founder of the d.o.o. and that there are grounds for doubt regarding an essential condition that an employer has to fulfil in order to employ a foreigner. For this reason the body conducting the procedure has to suspend the procedure if a preliminary point of law relates to a criminal offence. Appeals were lodged against the orders.
The basis for suspending the procedure seemed questionable since it did not involve a preliminary point of law in the sense of Article 144 of the ZUP. While we were waiting for an explanation from the MDDSZ the applicant notified us that the procedure had continued with the issuing of work permits to all three foreign citizens. It is clear from the response of the ministry that current legislation (the Employment of Foreigners Act) does not contain a basis for suspending the procedure on the grounds stated in the suspension orders.

5.3-80/99 - Unjustified delay of a denationalisation procedure while waiting for the person liable to return the property to state his view

At the beginning of 1992 the applicant a claim for the denationalisation of nationalised property; the party liable to return the property was a commercial company based in Maribor. On 13 May 1994 the Slovenska Bistrica UE ruled on part of the denationalisation claim with a partial decision, on the basis of which the nationalised property would be returned in kind. Following an appeal from the liable party, the MOP overturned the partial decision on 2 March 1994 and returned the matter to the first-instance body for completion and readjudication. The administrative dispute against this ruling was not completed until 10 July 1998. Meanwhile bankruptcy proceedings had been initiated against the liable party in 1996 and in the course these proceedings the property which was the subject of the denationalisation procedure had been sold. The first-instance administrative body had still not ruled on the denationalisation claim in the readjudication procedure.

In response to our inquiry of 8 November 1999 the Slovenska Bistrica UE informed us that the lodger of the claim had completed his claim and subordinately claimed compensation for the nationalised property in the form of National Compensation Fund (SOS) bonds. On 15 April 1999 the administrative body of the first instance invited the SOS as the new liable party to state its position with regard to the denationalisation claim. It failed to do this, and so the administrative body sent two further letters inviting it to state its position - without success (the liable party had in fact sent its response on 21 July 1999 but did not state its position on the claim). A decision will be made on the claim as soon as the SOS sends the administrative body its view on the case. On 17 November 1999 we sent the Slovenska Bistrica UE our opinion, which we had already presented in the annual report for 1998: if a liable party does not make a statement on the claim within a set deadline this does not present the procedure from continuing.
On 2 December 1999 the UE replied informing us that they will take our opinion into account and continue with the denationalisation procedure.

5.5-82/98 - Speeding up proceedings for the writing-off of late-payment interest

At the beginning of November 1998 an applicant informed us about the length of time taken to settle his application to have late-payment interest written off in accordance with Law on the Writing-Off of Claims Deriving from Late-Payment Interest. The application was lodged on the basis of this law on 12 June 1998 at what was then the RUJP, škofja Loka Branch. The application was not sustained. On 18 June 1998 the Main Office of the DURS sustained the applicant's appeal, overturned the contested order and returned the case to the first-instance body for readjudication. Readjudication did not however take place.
Since the škofja Loka Branch did not respond to our inquiry of 25 November 1998 or our urgent letter of 6 January 1999, we contacted the Main Office of the DURS on 22 February 1999 asking them to check the circumstances of the case and any potential hitches because of which we had not still received a reply to our inquiries. On 28 March 1999 the Main Office informed us that the first-instance tax body had readjudicated the applicant's application for the writing-off of late payment interest and issued a ruling on 13 March 1999.

5.5-33/99 Speeding up appeal proceedings at the Main Office of the National Tax Administration (DURS) in Ljubljana

In May 1999 an applicant informed us about the length of time needed to settle his appeal of 30 June 1996 against a ruling on his income tax assessment from 1995.
We addressed an inquiry to the main office of the National Tax Administration (DURS) in Ljubljana with regard to the time involved in settling the applicant's appeal and at the same time appealed to the office to begin dealing with the appeal as soon as possible provided there were no legal obstacles.
Our intervention was successful and a week later we received a reply informing us that our appeal had been followed and that the taxpayer's appeal against the ruling on his income tax assessment for 1995 had already been settled.

5.7-158/98 - Removal of illegal building

The applicant reported a neighbour's illegal building to the inspection services in March 1998, expecting that they would take rapid action, but this did not happen. Only in June 1999 after writing several urgent letters did the applicant receive notification that the inspectorate had begun the inspection procedure, though the procedure is not yet complete.
We made an inquiry at the inspectorate, which shortly afterwards issued a ruling according to which the investor must remove his auxiliary building.

5.8-1/99 - Irregularities in the allocation of teaching hours at a secondary school

An applicant asked for help in speeding up a case at the schools inspectorate. She alleged that the headteacher of the secondary school where she worked had incorrectly allocated her teaching hours. She appealed against the allocation at the school's council but the appeal was rejected without explanation. She sent a report to the schools' inspectorate but did not receive a reply.
Following our intervention the inspectorate carried out a special inspection at the school and found that the headteacher had violated the Order on Norms and Standards in General and Technical Grammar Schools. Since however the applicant had initiated the appropriate procedure before the competent court, and taking into account the interests of the pupils, who were on the point of finishing their course, the inspector decided that in this case he would take no action, notifying the applicant of his decision.

6.1-33/99 - Unprofessional conduct of a police officer

An applicant alleged that in February 1997 her husband, whom she was at the time in the process of divorcing, locked her in the flat and threatened her with a knife. She reported the conduct of her husband to Ljubljana Bežigrad Police Station but the police did not take any steps.
The MNZ confirmed that the applicant called at Ljubljana Bežigrad Police Station on the day in question and reported a breach of public order and peace. She reported that her husband had throttled her but did not state that he had also threatened her with a knife. She rejected the police officer's suggestion that she go for a medical examination. On the basis of the information collected the police officer judged that there was not sufficient evidence of a breach of public order and peace. He therefore merely compiled an official note of the incident and advised the applicant to settle the contentious relationship in court.
Following our intervention the police looked at the case again and found that the applicant's complaint was justified. The Ljubljana Police Administration considered that the police officer who handled the case should have, in the light of the applicant's statement, have put together a proposal to initiate proceedings before the administrative offences judge. However at the time of this finding, the statute of limitations meant that administrative offence proceedings were no longer admissible. The MNZ agreed with the opinion that the police officer had behaved unprofessionally.

6.1-45/99 - Incorrectly collected fine returned by the police

The applicant received an order from the tax office on the forcible collection of an unpaid fine and costs arising from an administrative offence. He applied to the ombudsman with the claim that he had lodged an appeal in the proceedings conducted by Ljubljana Center Police Station. He claimed that he had not received notification of the administrative offence with an order to pay and that in this way he was deprived of the right to object or the possibility of voluntarily paying the fine.
We found that the Internal Affairs Administration (UNZ) Ljubljana had already dealt with the applicant's appeal against the way the police had proceeded. It resulted from the reply of the UNZ Ljubljana received by the applicant that the Ljubljana Center Police Station had also counted his appeal as an objection to the notification of the administrative offence and the order to pay. The UNZ Ljubljana thus announced that in accordance with Article 241 of the Administrative Offences Act the applicant's case would be assigned to the administrative offences judge, who would issue a suitable decision. This however did not take place. It was in fact evident from the tax office's forcible collection order that the Ljubljana Center Police Station had not sent the lodged objection to be ruled on by the body competent for administrative offence proceedings.
Following our intervention the MNZ found that the Ljubljana Center Police Station had acted unprofessionally in the applicant's case because it failed to send his appeal, which contained all the elements of an objection, to be ruled on by the administrative offences judge. Instead of this it incorrectly assigned notification of the administrative offence and the order to pay to the tax office, for forcible collection. The MNZ apologised in writing to the applicant for the mistake and assured him that the amount of the unfairly collected fine would be returned to him as soon as possible.

6.4-297/99 - Three years for a decision after an objection

An enforcement proposal for the forcible collection of a claim of a lawful maintenance payment under Job No. I 56/95 of the County Court at

Slovenska Bistrica was lodged on 15 February 1995. The party liable to pay the alimony lodged an objection to the enforcement order. In enforcement and protection proceedings the court must proceed quickly. Speed is particularly emphasised when the proceedings involve the collection of a maintenance payment for the benefit of children. Despite this the judge did not rule on the objection until three years later, in September 1999, and only after our intervention.
The court sought the reasons for this delay in staffing difficulties and in the large number of unsettled cases. But naturally an individual who expects judicial protection from the court is not interested in the number of unfilled positions for judges and the quantity of unsettled cases. He justifiably expects a judicial decision in a reasonable time. This applies in particular in cases where the judicial proceedings involve the protection of the interests of children.
The court wanted to shift at least part of the responsibility for the delay onto the children or rather their legal representative, on the grounds that the claimant had not urged the speeding up of the proceedings. Such an accusation overlooks the fact that in the case of enforcement an application from a party is only important for the commencement of proceedings. The Enforcement and Protection Act does not require the claimant to send urgent letters in order to ensure fast, fluent and concentrated treatment of a case.

6.4-329/99 - Heirs are waiting for a legacy

In probate proceedings relating to the estate of someone who died in 1990 the former Maribor Basic Court, Maribor Unit, issued a decree of distribution two years later. This decree was annulled after one of the heirs appealed, and in May 1992 the probate file was returned to the court of the first instance for readjudication.
The heirs waited patiently for the procedure under Job No. D 679/92 at Maribor County Court to be continued, but to no avail. The judge who was assigned the case had not set a date for the probate hearing by the time she retired in 1999. Following our intervention the judge who is now conducting the probate proceedings explained that it is not clear from the data in the court file why there has been a delay of over seven years in proceedings. He assured us that a date for the probate hearing could 'even be set this year'.
Article 165 of the Inheritance Act stipulates that throughout probate proceedings the court must see that the rights of the parties are established and guaranteed as soon as possible. When dealing with the application we proposed to the president of the court that through measures based on court administration he ensure the regular, prompt and concentrated treatment of these long-running probate proceedings.

6.5-70/99 - Third year of waiting for an appeal ruling in a dispute over the termination of employment

The applicant's employment was terminated in August 1993 as the result of a disciplinary measure. He did not agree with the employer's decision and requested judicial protection. The court of the first instance ruled on the labour dispute in April 1997 and sustained the applicant's claim in full. Following the lodging of an appeal by the employer the case was submitted to the Superior Labour and Social Court in Ljubljana in June 1997. The wait has already dragged on into the third year without the court of the second instance ruling on the appeal.
As a result of the slow adjudication by the court the applicant was concerned that lengthy litigation would have no final result, although the ruling of the court of the first instance shows that his claim is grounded. Without success he has pointed out in his request to speed up proceedings that the employer is on the point of bankruptcy, that practically all his immovable property is mortgaged and the rest has already been sold. Once the dispute over the termination of employment is completed the applicant still has to face judicial proceedings relating to the payment of overdue salaries for the period since the (unlawful) termination of employment in 1993.
In response to the intervention of the Human Rights Ombudsman the Superior Labour and Social Court reported that the applicant's case will be dealt with as a priority and will be probably on the court schedule by the end of 1999. We were not entirely satisfied with this response: it is not possible to overlook the fact that waiting for an appeal ruling in the dispute over the termination of employment is already in its third year. The state is bound to ensure adjudication in a reasonable time-frame, something which applies in particular to a dispute over the termination of employment when as a result of the contested decision of the employer the employee is unemployed and without any kind of compensation.
Unfortunately the assurance of the president of the court proved to be false, since by the beginning of March 2000 no decision had been made on the applicant's case.

6.6-15/99 - Administrative offences judge unlawfully withheld passport

Police officers of Trži~ Police Station temporarily withheld the applicant's passport in order to ensure his presence at administrative offence proceedings. The passport was not returned to the applicant even after he had been questioned by the administrative offences judge.
In response to our intervention the administrative offences judge in Trži~ explained that the applicant's passport had been temporarily withheld in order to ensure the fulfilment of his liabilities, viz. the payment of a fine and the costs of the administrative offence proceedings. As a legal basis for this action he cited Article 61 of the ZTuj in force at the time of the hearing.
We did not agree with the position taken by the Trži~ administrative offences judge. We pointed out that until the currently valid ZTuj-1 entered into the force the administrative offences judge did not have a legal basis for withholding the passport of the accused in order to ensure the fulfilment of his liabilities in the procedure of enforcing the administrative offences ruling. The provision of the previously valid Article 61 of the Foreigners Act, on the basis of which the Trži~ administrative offences judge temporarily withheld the applicant's passport can only be understand as referring to the phase when an authorised official person of an internal affairs body is dealing with the suspicion of an administrative offence, and not to the phase of enforcing a final ruling of the administrative offences judge. Only the provisions of the now valid Foreigners Act (especially Articles 23 and 75) allow such a measure in the case of ensuring the enforcement of a final ruling of an administrative offences judge.

7.1-25/99 - Failure to observe the deadline for adaptation to the requirements of the Decree on Noise in the Natural and Living Environment

The applicant lives by a very busy road and therefore some years ago requested anti-noise protection to be placed in front of the building in which she lives. The Public Roads Company agreed that her request was justified and on 8 August 1997 proposed to the Roads Directorate that it measure the noise and place anti-noise protection and suitable protection for the building along the carriageway. Despite numerous urgent calls from the applicant to have the problem addressed, the Roads Directorate has not replied. Since the applicant has not received a reply as to when she can expect this issue to be settled, she turned to us. Her criticisms of the inappropriate response of the responsible employees of the Roads Directorate have proved to be well-founded.
As a result of our request for a reply we received a rather unusual letter which was evidently intended for another party. In the letter we were advised that a person causing excessive (noise) is obliged to modify existing infrastructure facilities and plants to the requirements under Article 7 of the Decree on Noise in the Natural and Living Environment within four years, i.e. by 29 August 1999, which means that they are not yet liable to settle this issue.
Disregarding the fact that the deadline for modifications is quoted wrongly (the decree came into force on 19 August 1995, and the four-year deadline for modifications actually expires on 19 August 1999), and that the administrator could actually begin settling such claims before the expiry date, we were later able to realise for ourselves the justifiability of our applicant's comments regarding the operations of the directorate. Since the roads administrator had not tackled the problem despite the expiry of the deadline for modifications, we turned again to the directorate on 9 September 1999 and again on 15 December 1999. We invited them to explain to us why the matter in question has still not been settled.

7.1-33/99 - Municipality does not issue a ruling on the assessment of the municipal services contribution

Two applicants wanted to convert an existing extension and attic space into living space. They obtained a location permit and were approved a housing loan. Before requesting a building permit they wished to settle the payment of the municipal services contribution, which is a condition for obtaining a building permit. Instead of a decision on the assessment of the municipal services contribution, the responsible municipal service offered them a contract to sign with the explanation that the calculation had been made on the basis of previously valid regulations because the municipality had not yet managed to pass new regulations. Why the obligation was specified by contract, the municipality did not explain. Because the applicants felt that such conduct was contrary to statute, they appealed. The mayor, as the appeal body for their complaint, did not wish to make a decision. They appealed to the MOP, which passed their appeal on to the Administrative Court. Because of these complications they have missed the deadline for the issuing of a building permit and thus the possibility of obtaining a loan.
The mayor explained to us the reasons why the municipal services contribution was assessed on the basis of previously valid regulations and cited the practice of other municipalities which apparently also set the contribution by means of a contract.
Regardless of the difficulties cited by the municipality in its response, there are no grounds for deciding on the municipal services commission except by a ruling. The Building Land Act passed in 1997 stipulates that the municipal services contribution is set by a ruling and not by a contract, as was done in the case in question. The applicants also requested a ruling. Last but not least, this is a matter of a decision on a liability, with regard to which the possibility of giving an opinion on the correct assessment of the contribution and the level of the contribution must be guaranteed. Because the applicants did not wish to sign the contract they were deprived of the possibility of building. The mayor's decision not to rule on their appeal violated their right to judicial protection.
On 22 February 2000 the mayor informed us that a decree on the management of building land in the municipality was being discussed. Among other things this will regulate the procedure for assessing and paying the municipal services contribution in the municipality of Postojna.

9.1-4/98 - Evasion of fulfilment of a liability acknowledged by a court

The applicant exercised her right to purchase a flat under the Housing Act. Kobilarna Lipica was obliged by a final judicial decision from 1994 to allocate her another suitable replacement flat and conclude a contract of sale with her for the purchase of this flat under conditions pursuant to the Housing Act. Kobilarna Lipica has not fulfilled the liability deriving from the judicial decision.
In response to our summons dated 18 September 1998 in which we called for it to meet the liability deriving from the judicial decision from 1994 Kobilarna Lipica replied that it is not entitled to do this since following the implementation of the Kobilarna Lipica Act all of its property has passed into state ownership. Thus in their opinion the Republic of Slovenia is responsible for the meeting of the liability deriving from the judgement in question. On 9 October 1998 we appealed to the Office of the Prime Minister and acquainted them with the position of Kobilarna Lipica and asked them to ensure the implementation of the judicial decision. We had to ask several times for a reply, finally receiving it on 7 June 1999. In its reply the Office of the Prime Minister claims that the fact that the state is the owner of the property managed by Kobilarna Lipica does not mean that the state has taken over its liabilities. Kobilarna Lipica must therefore settle its liabilities from the resources which it manages.
On this basis we once again requested Kobilarna Lipica to implement the judicial decision: after several more urgent letters we eventually received, on 21 October 1999, a short reply of one sentence: '…We have handed the case over to our lawyer…' We contacted the lawyer but have not received a reply.
Since Kobilarna Lipica has still not implemented the judicial decision and since we consider this to be evasion of a liability acknowledged by a court, we proposed to the government that it take suitable measures against the responsible persons at Kobilarna Lipica.

9.1-28/99 - Settlement of a housing problem and the related exercising of rights deriving from health insurance

The applicant is a Slovenian citizen who was living in Belgrade when Slovenia gained independence. In 1991 she moved from Belgrade to Ljubljana, moving into a flat where she lived with her mother who, from 1992 until her death in February 1999, was the tenant of a flat owned by the ZPIZ. The applicant only declared temporary residence at the flat in question. Until 1997 her permanent residence was a flat in Belgrade where she had the right to tenancy, but this right lapsed the same year because of long-term disuse of the flat. Because she did not have permanent residence in Slovenia she was unable to exercise the rights deriving from health insurance.
We proposed to the ZPIZ Housing Fund that they look into the possibility of resolving the housing problem of this Slovenian citizen and pensioner within the framework of the Housing Fund, which would at the same time contribute to settling the problem of exercising her rights deriving from health insurance.
The ZPIZ followed our proposal and concluded a fixed-period tenancy agreement with the applicant.

9.1-32/99 - Regulation of the residential status of the residents of a MO apartment building in Podgrad

One of the residents of an apartment building in Podgrad which is the property of the MO drew our attention to the unregulated residential status of the residents of the building. The applicant does not have a valid tenancy agreement, but also wishes to buy her flat under the favourable conditions offered by the SZ
The applicant's flat, which she has occupied since 1970, is in a building which, before the Republic of Slovenia gained independence, was part of the housing fund of the Yugoslav People's Army (JNA). The applicant was allocated the flat by her employer - at the time this was DO Plama Podgrad, today Plama-pur, d.d., Podgrad. DO Plama Podgrad rented the building from the JNA and sublet the flats to its employees. The tenancy agreement between DO Plama Podgrad and the JNA expired on 31 July 1991. A ruling dated 8 July 1777 assigned the applicant the right of tenancy for an indefinite period. On 10 May 1999 Plama-pur d.d. informed us that for a long time they have been trying to reach agreement with bodies of the Slovenian Army over the housing issues of other users of military flats located in apartment buildings at Podgrad 103 and Podgrad 107, but to no avail.
We invited the MO to begin resolving the residential status of the users of military flats in Podgrad as soon as possible and before the final settlement of their residential status to regulate tenancy arrangements with the residents. We pointed out that we cannot see any reason why the matter should not be settled in favour of the residents, who undoubtedly gained the status of holder of the right to tenancy under the housing regulations then in force - notwithstanding the contentious agreements between DO Plama Podgrad and the bodies of the JNA.
On 13 October 1999 the MO replied that they had asked a housing company in Ilirska Bistrica to prepare a contract of sale for the flat in question in Podgrad, which it will send to the applicant to sign. They blamed judicial law, which till then had not been formulated, for the amount of time taken to settle the residential status of the applicant.
Our intervention was successful since it was only on this basis that the status of residents in the buildings in Podgrad, which had been unsettled for several years, began to be settled.

0.5-130/99 - Handing over an employment card

The applicant asked us to intervene her employer was unwilling to hand over her employment card following the termination of her employment, although she needed to take employment elsewhere. We immediately informed the labour inspectorate in Kranj, who requested the employer (Trži~ Cotton Spinning and Weaving Mill) to send the applicant her employment card with a receipt and to inform them when they had done so. Since this was not done we intervened again at the inspectorate, who again requested the employer to hand over the employment card. This time the intervention was successful.