REPUBLIC OF SLOVENIA

HUMAN RIGHTS OMBUDSMAN

Seventeenth Regular Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for the Year 2011

Abbreviated Version

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Ljubljana, September 2012

REPUBLIKA SLOVENIJA
VARUH ČLOVEKOVIH PRAVIC

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NATIONAL ASSEMBLY OF THE REPUBLIC OF SLOVENIA
Dr Gregor Virant, President

Šubičeva 4
1102 Ljubljana

Mr President,

In accordance with Article 43 of the Human Rights Ombudsman Act I am sending you the Seventeenth Regular Report referring to the work of the Human Rights Ombudsman of the Republic of Slovenia in 2011.

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

Yours respectfully,

Dr Zdenka Čebašek - Travnik
Human Rights Ombudsman

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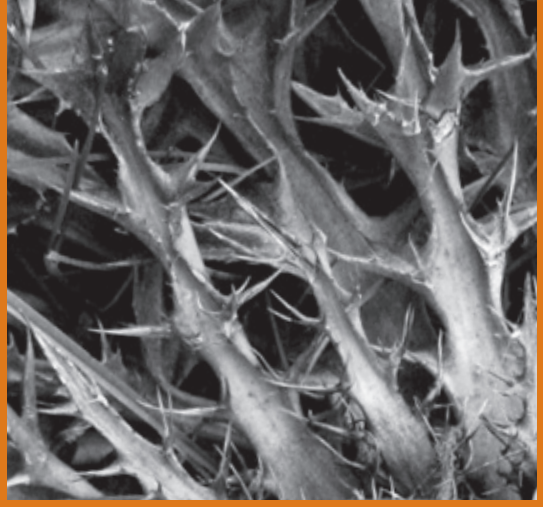


The Ombudsman’s findings, opinions and proposals

1. THE OMBUDSMAN'S FINDINGS, OPINIONS AND PROPOSALS

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

In spite of five years of experience in the position of Human Rights Ombudsman, writing these introductory comments poses a great challenge to me. Until now, I have tried to maintain a reserved and detached perspective on the current condition and situation in our society. This year, however, I have consciously crossed this notional barrier since our findings from the previous period are reflected in every day issues.

The questions highlighted in the previous annual reports mostly remain without a clear answer. Thus we are still discussing whether Slovenia is still a state governed by the rule of law and is a social state, and we are still dealing with the issue of control. Similar topics are also dealt with by the European Union which is why the European Union Agency for Fundamental Rights (FRA) carried out several projects on the topic regarding accessibility to legal protection (http:// fra. europa.eu/fraWebsite/research/projects/proj_accessingjustice_en.htm).

The Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") is engaged in international cooperation in various ways, and without this cooperation the continued protection of human rights would be difficult to imagine. Since the Ombudsman simultaneously functions in at least three roles: as the (Parliamentary) Ombudsman, as the National Institution for Human Rights (B status) and as a National Prevention Mechanism (NPM) under the Act of Ratification of the Optional Protocol to the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment and Punishment, the Ombudsman is a member of various associations, unions and forums. Among other matters, this means that documents with which we enter the

international arena should also be available in the English language. In 2011, some English and some bilingual (Slovenian and English) publications were issued and English translations are also needed for publications in international networks and forums where the Ombudsman's Institutions exchange experience and information, and opinions of related institutions are obtained. We have discovered that some acts, which are important for the implementation of human rights, are not translated into English (for example, the Mental Health Act) and thus they are not accessible for international comparison studies carried out by the FRA. It has also been discovered that, in the past, some ministries have not answered invitations for cooperation in such survey projects which means that an opportunity for an objective benchmark analysis regarding some important statutory provisions has been lost.

It is also significant that Slovenia has still not taken into account some recommendations made by supervisory bodies functioning under ratified conventions of the United Nations and the Council of Europe. The unfulfilled legal prohibition of physical punishment of children (Convention on the Rights of the Child) is at the forefront, while the supervision over the implementation of the Convention of the Rights of Persons with Disabilities remains ambiguous, and the same applies to the Framework Convention for the Protection of National Minorities by the Council of Europe. However, it needs to be emphasized that in February 2011, the National Assembly adopted the Declaration of the Republic of Slovenia regarding the Situation of National Communities of Members of Nations of Former SFRY in the Republic of Slovenia. Pursuant to this document, the Government of the Republic of Slovenia adopted the Decision on the Establishment, Composition, Organisations and Duties of the Council of the Government of the Republic of Slovenia for issues of national communities of members of nations of former SFRY. It should be possible to see the effects of the operation of this Council as soon as 2012.

In relation to international monitoring mechanisms, I have noticed that the government fails every time to be aware of the fact that the reputation of Slovenia is decreasing not only as a result of its less successful economy and increasingly greater budget deficit but also due to warnings and recommendations of international monitoring mechanisms and Court Decisions. Hence, for example, the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment and Punishment (the CPT), the European Court of Human Rights (the ECHR), the Committee of Independent Experts under the European Social Charter, the European Commissioner for Human Rights and other monitoring mechanisms under international conventions have determined violations of rights provided for by international treaties which have also been adopted by Slovenia. For the most part, it is a matter of ambiguities in the legal order or inefficient implementation of rights ensured by laws. It is my expectation that the legislator will do everything for Slovenia to ratify the already signed treaties, especially those related to the rights of the child, such as the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and the Convention on Contact concerning Children. The same also applies to the decisions by the European Committee for Social Rights at the Council of Europe that with regard to the lessees in denationalised apartments Slovenia is violating their rights arising from the European Social Charter. The Government has not yet made a serious attempt towards the solution of the conditions which it has created.

Many institutions for the protection of human rights have proved and are issuing warnings by way of their surveys that efficient legal assistance and social justice have become inaccessible for an increasingly larger number of people. The same is determined by the Ombudsman during his work and also in all his annual reports. That is why I am particularly highlighting a question which is reasonably linked to the previous ones: How will the state, by way of its mechanisms, enable assistance to a rising number of affected people and protect them against the suffering brought along by the poverty of the modern time and related problems? It can be noticed that neither does the operation of non-governmental humanitarian organisations, which have strongly increased their aid, satisfy any longer all the needs of people in social distress.

Every day, the employees in the Ombudsman's office, are in contact with initiators, experiencing direct human contact, when we look at the desperate faces and listen to stories which should not have occurred or are happening. These stories mainly show the helplessness of an individual, their social hardship and a request for actual material or legal aid. The Ombudsman has professional knowledge but he does not have either the means nor the authority to give material aid which is why we can only provide them with advice on where to turn. But we have already been there, they tell us. "You are our last hope," is what is increasingly more often said or written. Stories are thus created, similar to those presented by the media, stories which have become a part of the protection of human rights, which is why, their messages are carried forward in our Annual Report.

Messages from stories

- To say that "children need and deserve out greatest care" sounds like a worn-out phrase. But in the case of lengthy proceedings before Courts where it is decided with which of the parents children will live, it seems that children are the least important factor and that this phrase is not even heard any longer. *As a matter of fact, the practice pursued by responsible authorities which allow one parent absolutely and illogically to alienate a child from the other parent has already occurred.* This all is within the framework of the law. Obviously, with the assistance of attorneys-at-law and courts which sometimes do not understand what is really in the best interests of a child (or children). A real fight takes place between one parent and the other whereby the state carefully monitors that everything is conducted according to the rules (laws) however the true desires of children, and their voices, remain in the background. The Family Code which would put the child in these "tug of war games" at the forefront has been rejected by a referendum.

- In particular, children with special needs should receive our greatest care, and their parents should have been assisted by the state in their efforts to have these children grow up in a caring domestic and family environment. *But the regulations we have adopted do not make the work of parents any easier. On the contrary, in addition to their every day worries, they have to deal with various administrative procedures which are unnecessarily lengthy* – so that their child does not even obtain the right to an assistant, to additional studying assistance, to special disability equipment.

- Numerous questions related to foster care have remained open: national authorities believe that this field is well regulated whilst foster parents persistently point out the shortcomings of current arrangements. Children wish to know at all times who they belong to, who they can turn to, who will take care of them. But it happens that foster care is a "temporary" solution lasting up to until they fulfil their age of majority. Long-lasting uncertainty during the period of growing up leaves permanent consequences on these children which have not yet been disclosed by the official data.

- It is known that the level of poverty is the highest among the elderly, it affects as many as a quarter of people above 65 years of age. Where and how do these people spend their old age? *Increasingly more of them are leaving old peoples' homes or do not even dare to move into them since they cannot cover the costs of their residence there out of their pensions and they do not wish or do not even dare to burden their closest relatives.* There are almost no waiting lists for acceptance into care homes any longer. That is why it is so much more important that we develop and enable the services of home help at affordable prices.

- Under the Mental Health Act, elderly people and others being deprived of their capacity to exercise their rights by themselves have been revoked of their right to have their residence at a secure location decided by the Court. Now, the signature of their guardian is enough. *It was determined in some cases that such a statutory arrangement is the*

source of potential abuses of elderly persons, but the ministries (Ministry of Health and Ministry of Labour, Family and Social Affairs) hesitate to make urgent amendments to the above mentioned Act.

- It may be considered good news that pensioners – also following the Ombudsman's intervention – have received their own card with which they may prove their status without being forced to disclose the amount of their pension.

- Environment. Similarly to the Ombudsman, the Director of the Slovenian Environment Agency (ARSO) has established that the environmental legislation is not transparent, that it is very extensive and incomprehensible. The transposition of EU legislation into the legal order of our State was not thought through well and has not been prudent enough. In the attainment of goals of the National Environmental Action Programme 2005 – 2012 Slovenia was only partially successful and it is not apparent that the Government is too worried about this fact. This may be concluded from cases dealt with by the Ombudsman in 2011 and from media reports. Individuals and groups of people united in civil initiative associations and non-governmental organisations are demanding in an increasingly adroit manner that Government bodies respect their rights. These government bodies, however, are equally strong and work hard on "discouraging them from initiating procedures". We know that the environment is becoming more and more damaged but do we truly recognise how important a healthy living environment is? Only a healthy population will be able to successfully maintain our country along its route to progress.

- Values. We discuss them at large. We hope that values – as closely similar to our values – will be adopted by all others, particularly those who make decisions about our future. Those, who should be independent, should have internal regulatory independence which would enable them to make decisions that are good for all of us. That is why I have mentioned judicial proceedings which in 2011 dealt with prosecutors and judges and which bring forward two messages, contradictory in terms of their content. On one hand, the trust in the rule of law is additionally shaken, and on the other hand, precisely as a result of these proceedings, it is again strengthened. Maybe, to enhance the trust, a more up-to-date work of the Disciplinary Committee of the Bar Association of Slovenia could make a contribution. But I still can not overlook opinions expressed also by initiators that, in fact, here the law does not have the same significance for everybody. This is what has been written by an initiator, an attorney-at-law by her profession: "*/…/ it may be said that the rule of law is (and has remained to be) more a kind of an ideal which we strive to attain gradually, rather than a tangible reality, in short – that it is still more a theory than practice and more an idea than an institution which functions efficiently.*"

- We have all learned to use terms and expressions such as "hate speech", "minorities", "disabled persons" correctly. I have found that we have become more attentive and sensible, that we notice and take care not to use words which may very much hurt other people. Numerous initiatives which we receive through public information on such thoughts and words show that people are becoming increasingly more aware of the fact that it is vitally necessary to act, immediately and within the context or medium where the hate thought or words were created.

- The current Government expects us and requires from us to save, and to spend less than we have been previously doing. This is urgent, there is no doubt about that. But at the same time, the valid legislation punishes those who have saved even before these measures. Some are saving "for their death", as a matter of fact, for their funerals. "I could not pay the electricity bill. Within a year, both of my parents died. They contributed something to my upkeep from their pension before, and I have put the money aside to have enough funds for their funerals. Now this is counted against me. If I had known that,

I would have rather spent it there and then or hidden it at home in a stocking." It needs to be added to such stories that the new legislation has brought many new hardships and injustices. The pressure on Centres for Social Work have increased and following the first considerations of initiatives to the Ombudsman in this year it should be reported that the new legislation is weak in too many places, and the same holds true for the computer system with which it is implemented. Both will have to be improved as soon as possible.

- Not only at Social Work Centres, but also in other offices more and more over-bureaucratic and impolite conduct has been noticed from individual officials who are not enough aware of the fact that in their work they have to be led by regulations and principles of good governance. Public officials should be a model for respectful and tolerant behaviour.

- We have found that some initiators are well informed regarding administrative procedures and hence very attentive to the non-observance of deadlines for decision making. They are interested in how a public official who misses (delays with) a deadline, for example, regarding the issuing of a decision (particularly at ministries), has been sanctioned together with how the submission of any complaint to the second-instance body, to service the decision on a complaint to the client was delivered.

- Unemployed. Many unemployed people have turned to the Ombudsman with their questions. That is why we also deal with how to help job seekers who have been out of work for many years. An initiator has written to us: "Reasons for continuing unemployment are found directly at the Employment Service where advisors are extremely bureaucratic. This bureaucracy hides the unfair preferred employment of "friends and family". Employment Service Agencies seek ("develop") and implement various forms of assistance or consulting for the unemployed in a hundred and one different ways. "There are newer and newer offices and agencies, ever growing in number". This must be stopped. People seeking employment are capable and innovative in finding employment that is why many times they feel degraded by the requirement of compulsory attendance at such workshops." Similarly there are fewer funds for public works which are already modestly remunerated. This is why we cannot be surprised at the proposal that we also set up an Ombudsman for the Unemployed.

- Here, at the Ombudsman's Office we also encounter questions regarding ill-treatment, bullying, or rather mobbing. I am repeating the findings from the previous year that there is more and more psychological fear in workplaces and its prevention and the punishment of violators is not adequately regulated. Much in this regard is seen from the data which was reported to us by the initiators, that, as a matter of fact, attorneys-at-law, as a rule, are not even willing to take on such cases. Have you ever heard of anybody who would stand for persons with disabilities who are exploited in the so-called social enterprises? And these, on their account, generate profits while extorting and intimidating disabled persons. Evidence? Every labour inspector could find it if he/she committed himself to it. If only the media would report on this topic.

- The Roma. The time has arrived when we may also present some stories of their success, actually stories of their cooperation with national authorities and local community authorities, with non-governmental organisations and civil society, regarding their inclusion in national and international projects. The time has arrived when we can (also) be proud of our Roma. That, however, does not discharge us from obligations adopted in relation to the Roma, nor from the obligations which they themselves have adopted to improve their conditions. Our pieces in the mosaic can be added to this success story: a leaflet on the Ombudsman was issued in four Roma languages (dialects) spoken by members of the Roma community living in Slovenia.

- Parents, teachers and others caring for the future of youth have been warning us of the growth of the influence of extremist nationalistic and other movements. When dealing with such cases the incapability of the legislation and national authorities in restricting their operation has been determined. We can only watch and wait for an incident to happen or maybe something tragic. Maybe then the time will be right for the adoption of the appropriate legislation.

The Ombudsman's tasks are clearly stipulated by the Human Rights Ombudsman Act. Pursuant to this Act, I am also giving some recommendations to national authorities and local community authorities in my introductory thoughts. The order of the topics discussed is randomly selected and it does not signify the order in the sense of the level of the violation of human rights.

There is a lot of work in the statutory field awaiting the Ministry of Health in this mandate. It is unconscionable that the urgently needed amendments of the Mental Health Act have not been prepared for several years, and, even more urgent, that we challenge the legal basis for the use of special security measures (such as strapping a patient to a bed or a chair in institutions which are not intended for patients with mental disorder). Hence it still happens that at a department of general and nursing hospitals and homes for the elderly, helpless patients are strapped to their beds without a medical decision and also without additional supervision of the staff. It has come to our knowledge that institutions wishing to settle this problem internally, come across the lack in legal bases. The Ministry has already acknowledged this in the beginning of June 2011 when it replied to our inquiry regarding the legal regulation of special security measures outside the field regulated by the Mental Health Act.

Neither can Slovenia pride itself in the fact that it prevents doctors who wish to deal with homeopathy from doing so in addition to their regular work. It is still unclear who will set clear boundaries between the complementary medicine carried out by doctors and other healing methods carried out by alternative medicine practitioners without medical education, and when they will do so. If the Ministry does not want to comply with the doctors who are homeopaths by means of a more decisive intervention in this field, it might at least help patients who seek help from the practitioners of complementary methods of treatment. Along with (expensive) medical services that are becoming inaccessible to people paying for the services by themselves (particularly those who are not capable of paying contributions for health insurance), many of these people turn to alternative medicine practitioners. The Ministry will also have to take a stand regarding outpatient clinics for persons without health insurance. If the State is not capable of ensuring access to medical services for all of the population, it should have to, according to my strong belief, regulate the status of these outpatient clinics.

When we speak of children, particularly those in need of child and adolescent psychiatric aid, every year we are confronted by the same problem: children who should have been hospitalised in departments under special supervision, that is those, who really are the most affected, remain without adequate treatment. They are still hospitalised together with adults: a disgrace which the state of Slovenia has been hiding from itself and from international supervisory bodies. This surely is not and cannot be in the best interests of children.

An extremely difficult mandate is before the Ministry of Labour, Family and Social Affairs. A very few people may remember that I warned of the upcoming poverty and its related problems as early as in the second year of my mandate (Poverty and Human Rights, the Newsletter of the Human Rights Ombudsman of the Republic of Slovenia, No. 12, May 2008). Everything written then is still valid today, only the problem has become much larger. Questions regarding poverty and how to get out of it have become the every day work of people employed at the Ombudsman's Office.

With the failed Family Code, a lot of work is awaiting the Directorate for the Family where numerous problems will have to be attacked which would have been otherwise regulated by this Act. Have we not already realised that, with this referendum, the human rights and in particular the rights of the child have been completely neglected? And what I mean here is not the referendum outcome but the paltry turnout of voters. It is as if the majority of voters do not even care about these rights.

I also have to make a warning this year about a consistent implementation of the so-called labour laws and the urgency that they be amended in some fields: there are way too many unpaid salaries and contributions. Initiators also turn to the Ombudsman since all other free-of-charge forms of aid to settle their problems have already been exhausted. We have determined that referral to the judicial path for exercising rights is inefficient and too costly and it also takes too long. This path is generally absolutely out of the question for people who have been left without their own funds and thus the question regarding their legal protection and the rule of law has again been raised.

I will again mention people mobilised into the German Army and the fact that several of their claims are still unsolved. Their testimonies on how they were additionally hurt as a result of the treatment by the Slovenian authorities have lifted another veil from our history. Even though the majority of them are more than 80 years old, they are still waiting for the Government of the Republic of Slovenia to initiate the procedure to conclude an agreement between Slovenia and Germany on compensation for the mobilised soldiers (those from France succeeded with their demands back in 1996). It is also their wish that those among them who are disabled should obtain the status of disabled war veterans. They fight for their right to set up war memorials; in some municipalities they have experienced problems with Mayors in obtaining a consent for this. And last but not least, they have never yet been invited to any national commemoration. And in school books there are no actual records of the fact that they were also a part of our history.

Even less understanding has been shown by the state with regard to the rights of some people from the Primorska region who have not received the desired status by the amendment of the Act on Victims of War Violence (2010). As a general rule, these were young people from Primorska, then 16 and 17 years old, who were arrested by the fascist authorities and sent as forced labour to camps, but our Ministry of Labour, Family and Social Affairs rejected their applications to recognize them as victims of war violence.

The claims made by persons who suffered material damage during the Second World War have remained unsolved although past Governments have promised them the adoption of the appropriate legislation. This was also discussed in the National Assembly.

The need to conclude judicial proceedings in reasonable time was again the subject of a warning given to Slovenia by some decisions of the European Court of Human Rights. For several years, similar warnings have also been submitted by the Ombudsman since, in such cases, it is not only the matter of an individual's constitutional right to a trial by Court in a reasonable time but also the prolongation of personal distress. This particularly applies to disputes in the field of social affairs and labour disputes involving children (for example, owing to sexual abuse). You may read among the cases presented how, to the disadvantage of a person with a mental deficiency, in one criminal case, almost seven years have passed from the receipt of information regarding the criminal offence to the calling of a trial (see case 33). Also owing to such cases, we need to insist on the elimination of the backlog of cases and end all cases which have been waiting in the long term for the initiation of judicial decision-making by way of various measures. It would make sense to determine time periods within which judicial proceedings should be concluded as is stipulated in other countries.

Several times we have emphasized the importance of good quality judicial decision-making, also in the Report for 2010 (pp. 104–105). And yet we have repeatedly encountered numerous

initiatives in which initiators claimed that the issued Court Decision is incorrect or they have reported other irregularities in the work of Courts. Such an opinion was also shared by attorneys-at-law who reported to us about such Decisions. We repeat again this time that the judiciary itself is the one body which may contribute the most to its reputation: by issuing Court Decisions of quality, by providing trial without undue delay, and with regard to everybody else (a warning is particularly made to the state) by respecting and fulfilling the final Decisions.

The Ministry of Justice and Public Administration will have to deal with the over occupancy of prisons even more attentively than until now. As the Ombudsman I have been issuing warnings every year that a more active approach will have to be taken towards the arrangement of living conditions. This is also dictated by the Decision of the European Court of Human Rights ("the ECHR") in the case Mandić & Jović vs. Slovenia and Štrucl & others vs. Slovenia. The ECHR has also determined that our legislation does not provide for an efficient and accessible legal remedy with regard to complaints about living conditions in which applicants served their detention or prison sentence. The ECHR has also observed that the respondent state must organise its system concerning the serving of prison sentences in such a manner as to ensure the respect of dignity of prisoners irrespective of financial or logistic problems. But it needs to be pointed out that in 2011, a (partial) progress towards the improvement and enlargement of spatial capacities within the extent of current prisons (Dob pri Mirni Prison) has nevertheless been made. We have emphasized several times that a more frequent use of alternative sanctioning methods would contribute the most to solving the issue regarding the overcrowding of prisons.

The Ministry of Justice and Public Administration will undoubtedly easily detect from our Annual Report what sorts of problems individuals encounter when dealing with judicial and administrative authorities. People communicate to us that they lack the possibility of free-of-charge advice and legal aid with relatively simple cases for which an attorney-at-law would not necessarily be engaged. Hence they do not receive correct information and this is why they do not use suitable legal remedies or they are too late in pursuing them. Frequently they lack money to file a complaint or a lawsuit and the problem regarding costly lawyers' and notarys' services is not insignificant, and similarly applies to administrative and judicial fees.

The Ombudsman insists that authorities adopt additional measures in order to observe instruction deadlines within which a body must carry out a procedural action (for example, issue an administrative decision ex officio). In order to eliminate the length of procedures and disobedience of statutorily stipulated time periods and thus a violation of the right to the access to an authority, fair trial and particularly the right to a decision in reasonable time, actual steps will have to be taken. In any case, the time period to finalize administrative procedures and inspection procedures will have to be determined. It can be revealed from the considered initiatives that public officials wait too often for the last deadline before making a decision (in fact, it is often a question of the very latest permissible deadline). Such conduct is quite common in practice, as is also the exceeding of these deadlines. We have no data on whether public officials are "sanctioned" as a result of work which is too slow and inefficient.

The former Ministry of Environment and Spatial Planning received a new organisational structure with the current Government, covering work within the framework of two ministries. Since the Annual Report refers to 2011, our comments relate to the previous composition of the Ministry. Problems owing to the non-response of authorities under their responsibilities have been reported on our web page as well as at a press conference. This weakness in terms of formal organisation was accompanied by many errors and shortcomings in terms of content.

The pollution of the environment to a larger extent, such as can be noticed in the area of Zasavje, Celje basin, Mežica Valley, Pomurje Plain, has remained at the forefront of the Ombudsman's attention. We are verifying how the State takes precautions for the implementation of monitoring and their correct interpretation since the legislation allows for the Ordering Party (and the Paying Party) of monitoring to be the polluter himself, and he

also owns the data obtained in this manner. In general, too little information is given to the people living in a given area about the environment and the level of pollution and the level of risk to which they are exposed. We have opened a question regarding the operation of institutions of public health which must (also) obtain funds for their operation in the market. Do we truly believe that with a combination of responsibility for public service and their operation in the market they can really take care of public health?

When examining initiatives we have come across numerous systemic questions related to issues concerning applications for the use of water and the arrangement of ownership relations in land with water use. Some applications by clients are more than 30 years old, overall there are more than 600. What will the Ministry do for their faster, professional and, in particular, transparent resolution? Measures adopted in the past, obviously, have not been efficient enough.

The housing policy is still not suitably defined; there are neither efficient solutions, nor incentives for the young or socially deprived individuals. The role and the significance of the Housing Fund of the Republic of Slovenia will have to be changed since it is more than obvious that its functioning does not bring about the set goals. Municipalities (except for rare exceptions) do not perform their role in this field: to follow the needs, interests, requirements and wishes of their citizens and help them in their distress by means of residential units and not-for-profit apartments.

Also in 2011, the Ministry of the Interior and the Police responded to our requests and findings and mainly took into account our proposals, opinions, criticism or recommendations. This year, too, the main part of initiatives referred to the work of the Police as the minor offence authority. We ourselves have determined in this regard that the Police are dealing with complaints of offenders in a far too casual manner and practically do not carry out the confirmatory procedure but, several times, only findings of a police officer and the statement of an offender are summed up. On the other hand, though, the Police are one of rare national authorities which apologize to affected individuals for errors made. This is worthy of praise and is to be recommended.

In our opinion, the Police have advanced as regards the provision of safety in areas of multi-ethnic communities. Recently, they have been actively carrying out duties under the national action programme for the Roma made by the Government of the Republic of Slovenia. Individual Police Directorates have prepared special plans with regard to their work in these areas which are adapted to the issues of the area.

The last part of my Introduction is dedicated to the activities of the Ombudsman which are presented in detail in Chapter 3 of this Report; I wish to point them out here in terms of their content. These activities are: work of the Ombudsman outside its seat, the functioning of the National Prevention Mechanism, the cooperation with civil society and the Advocate – Child's Voice Project.

Work of the Ombudsman outside its office is a method of operation enabling direct encounters with initiators in cities across Slovenia. Every working visit is carefully planned and takes place in three parts: firstly, a short interview of the Ombudsman and her co-workers takes place with the Mayors of these municipalities, which is followed by the central part of the operation: these are personal interviews with initiators (everybody is allocated half an hour) and the concluding part includes a press conference for the local media. We were well received in all the visited municipalities and were given optimum conditions for our work for which, upon this occasion, we would like to extend our special thanks.

While our operation outside the main office has also been carried out in the past, the other three activities have developed into their present form in the past five years, that is, in my six-year term of office in the capacity of the Ombudsman lasting until 22nd February 2013. It is characteristic of all three activities that they are an innovation founded on the additional and in-depth work of employees.

The **National Prevention Mechanism** is founded on a legal basis but implementing regulations had to be made for its functioning, invitations to tender needed to be made for the participating non-governmental organisations, humanitarian organisations and experts, the methodology of visits in places of arrest and reports about them needed to be written. Since 2008, special bilingual (Slovenian and English) publications have been issued with regard to the operation of the National Prevention Mechanism. Publications are accessible at the website: www.varuh-rs.si.

From the beginning of its operation, the **Advocate – Child's Voice Project** has been striving to establish its legal basis. In spite of many efforts of everybody participating and the Ministry of Labour, Family and Social Affairs, no further move has been made other than the proposal of such an Act. But there are more than 80 qualified advocates already operating who report about their work and at the same time they improve their qualifications during expert supervisions. The described cases will surely convince you how much children need advocates willing to listen to their voices and their messages and transfer them to the adults, to those, who make decisions regarding the future of these children. The Ombudsman is preparing a special Report for the National Assembly concerning this Project.

The cooperation with the non-governmental organisations and civil society, entitled the **Open Door Days**, is the least formal method of the Ombudsman's operation but it is nevertheless receiving an increasingly clearer structure. This is most marked in the cooperation in the field of environmental protection, in the form of more than 20 regular monthly meetings, in the preparation of two expert conferences with international participation and issuing of publications. It is precisely such types of cooperation that importantly enrich the operation of the Ombudsman and enable the participating parties a direct contact with state authorities whose representatives respond to the Ombudsman's invitation and take part in these meetings. Other groups of civil society are also welcomed by the Ombudsman; more on cooperation with them can be read in Chapter 3 of the Annual Report. I have also mentioned that all these meetings are concluded by way of notes produced; their most important messages are submitted to the responsible ministries together with the request for them to make a stand with regard to them.

Every year I also dedicate some words to the media and the journalists. They report on human rights and also on our work which is an important building block for raising awareness of the people. That is why we are particularly attentive to journalistic freedom, their conditions of work, freedom of speech and attempts to limit it. A journalist who has fought for the rights of the co-workers has remained without a job; not only without a job (allegedly owing to "at-fault" grounds) but also without her journalistic work. She who has warned about injustice for the major part of her career as a journalist has now experienced it herself. Should this be understood as a warning to those journalists who have insisted too much on maintaining their integrity?

And finally I would like to invite the readers to view our website since we have had a special website for children (www.varuh-rs.si and www.pravice-otrok.si) functioning since 2010. Both, website as well as numerous visits to schools, institutions and similar establishments and events where together with co-workers we actively promote human rights, have remained a constant part of our work and possibilities provided for direct contact with people. All this is only possible with the assistance of a good team of co-workers who are devoted to their work and believe that by revealing irregularities and injustice and persistent warning about them we contribute importantly to the improvement of conditions in the field of protection of human rights and fundamental freedoms in the Republic of Slovenia.

Slovenia in Brief

SLOVENIA IN BRIEF

The Republic of Slovenia lies at the heart of Europe where the Alps and the Mediterranean meet the Pannonian Plain and the mysterious Karst. To the north is Austria, to the east Hungary, to the south Croatia, and to the west Italy. Two million people live here on just over twenty thousand square kilometres.

Slovenia became an independent state in 1991.

- **State:** Democratic parliamentary republic since 25 June 1991
- **Member** of the European Union since 1 May 2004
- **Capital:** Ljubljana, 272.220 inhabitants (2011)
- **National flag:** Horizontal stripes in white, blue and red with Slovenian coat of arms on its left upper side
- **Coat of arms:** Three six-pointed yellow stars are symbols of the Counts of Celje with Triglav as a symbol of Slovenehood and underlying two wavy lines symbolizing Slovenian rivers and the sea
- **Anthem**: The seventh stanza of Zdravljica, a poem by France Prešeren, set to music by Stanko Premrl
- **State holidays:** June 25 - Statehood Day, December 26 - Independence and Unity Day
- **Official Language:** Slovenian, in some nationally mixed border areas also Italian and Hungarian

Geography

- **Size:** 20,273 km²
- **Length of borders:** 1,370 km: with Austria 318 km, with Italy 280 km, with Hungary 102 km, with Croatia 670 km
- **Length of coastline:** 46.6 km
- **Neighbouring states:** Austria, Italy, Hungary, Croatia
- **Largest towns:** Ljubljana, Maribor, Kranj, Celje
- **Highest mountain:** Triglav 2,864 m
- **Longest river:** Sava 221 km
- **Landscape:** The territory of Slovenia is geographically divided into four basic types of landscape - Alpine in the north, Mediterranean in the south-west, Dinaric in the south and Pannonian in the east.

Slovenia

- **Climate:** There are three different types of climate in Slovenia: continental in the central part, Alpine in the north-west and sub-Mediterranean along the coast and its hinterland.

Population

- **Inhabitants:** 2.054.741 (1 October 2011)
- **Population density:** 101.2 inhabitants per square kilometre (1 July 2011)
- **Nationalities (2002 census):** Slovenian 83%; Italian 0,1%; Hungarian 0,3%; Croat 1,8%; Serbian 2,0%; Muslim (including Bosniacs) 1,6%; others 2,2%; unknown: 8,9%
- **Births:** On average 1,57 children per woman (2010); 1,51 children per woman (2011)
- **Life expectancy:** 78.30 for men and 82.65 for women (2010)
- **Urbanization:** Approximately one third of the population live in towns with more than 10,000 inhabitants, the rest live in nearly six thousand smaller towns and villages.
- **Religions:** According to the 2002 census the most of population (58 %) are Catholics. Together there are 43 religious communities registered in Slovenia. Among the oldest is the Evangelical Church, most widely spread in the northeastern part of Slovenia.

Political system

- **Legislation:** Under the Constitution, Slovenia is a democratic republic and a social state governed by law. The state's authority is based on the principle of the separation of legislative, executive and judicial powers, with a parliamentary system of government. The highest legislative authority is the National Assembly (90 deputies), which has the right to enact laws. Elections to the National Assembly are held every four years.
- **The National Assembly and the National Council:**

  The National Assembly is a representative and legislative body. Ninety deputies of the National Assembly are elected by direct, secret ballot on the basis of universal and equal suffrage. The two representatives of the Italian and Hungarian national communities are each guaranteed a seat in the National Assembly. The term of office of a deputy of the National Assembly lasts four years.

  The National Council is the representative body for social, economic, professional and local interests; it represents the functional interests of different interest organisations and the interests of the local communities. Forty members of the National Council are elected by indirect suffrage, in the relevant interest organisations or local communities by electoral bodies. The National Council comprises four representatives of employers, four representatives of employees, four representatives of farmers, crafts and trades, and independent professions, six representatives of non-commercial fields and twenty-two representatives of local interests. Members of the National Council are elected for a term of five years.
- **Suffrage:** According to the Constitution, the right to vote is universal and equal. Every citizen who has attained the age of eighteen years has the right to vote and stand for office.
- **President:** Dr Danilo Türk since 2007
- **Prime Minister:** Janez Janša (SDS) since 10 February 2012
- **Parties represented in the National Assembly, elected on 4 December 2011:** Positive Slovenia, Slovenian Democratic Party, Social Democrats, Gregor Virant's Citizens' List, Democratic Party of Slovenian Pensioners, Slovenian People's Party, New Slovenia and one representative each of the Hungarian and the Italian national communities.

Source: http://www.vlada.si/en/about_slovenia/

Content of work and review of cases handled

2. CONTENT OF WORK AND REVIEW OF CASES HANDLED

2.1 CONSTITUTIONAL RIGHTS

GENERAL

In 2011, in the field of constitutional rights the Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") again received more initiatives than in the previous year. This time there were 165 initiatives (and in 2010, 150). The number of initiatives increased in the fields of: the ethics of language used in public statement, the enforcement of the right to vote and the right to access information of a public character, while it decreased in the fields of: the freedom of conscience, freedom of assembly and association and protection of privacy and personal data. The number of new cases in the field of the ethics of public statement language again increased the most. This was the most contributed to by initiatives which we received in relation to disputed public publications and where a response was expected from the Ombudsman.

2.1.1 Ethics of public statement language

In 2011, the number of initiatives received in this field nearly doubled (from 55 to 107 in 2011). Such an increase can be explained mainly with the fact that many have recognized the Ombudsman as an institution which should hold a special responsibility in the field of "hate speech" and which should or even could respond to individual cases which people come across in the public and in media discourse.

The Ombudsman disapproves of all forms of publicly stated hatred and intolerance directed against individuals or individual groups as a result of their personal circumstances. We at the Ombudsman's Office have found that there is a great lack of clarity and there are many unrealistic expectations. It is particularly difficult to explain to the public that not every case of "hate speech" is not already the criminal offence of public incitement to hatred, violence or intolerance as defined by the Criminal Code. Due to the protection of the freedom of expression and particularly the freedom of the media, the conditions for criminal prosecution of a spoken or written word are justifiably very strict. In Slovenia, there is so little case-law in this area that it is very difficult to speak about it.

Limiting the public incitement to hatred, violence and intolerance

In his recommendations in the 2010 Annual Report in this field, the Ombudsman recommended that the Police and Office of the Prosecutor should consistently implement all statutory powers in limiting public incitement to hatred, violence or intolerance and thus made a contribution to a gradual compiling of case-law in this field. In its response report, the Government has stated that the Police deal seriously with cases of public incitement to hatred and intolerance and consistently prosecutes them. It is clear from the Government's response report that the Ministry of Justice and the Office of the State Prosecutor General of the Republic of Slovenia ("the OSPG") agree with the findings and proposals of the Ombudsman with regard to limiting public incitement to hatred, violence and intolerance. In this regard, the OSPG has pointed out that in Article 145 of the State Prosecutor Act imposes on the State Prosecutor General the requirement to adopt prosecution policy within the extent to which the stand will have to be made for the prosecution of criminal offences under Article 297 of the Criminal Code.

As regards this field, the Ombudsman has also recommended to the Government that it examines the possibility for public incitement to hatred, violence or intolerance to be sanctioned as an offence. It is evident from responses of the Government that the recommendation of the Ombudsman for the Government to examine the possibility to also sanction public incitement to hatred, violence or intolerance as an offence was justified and received a response although the Government did not directly take a position with regard to this proposal.

Initiatives and public responses of the Ombudsman as regards the ethics of the public statement language

The Ombudsman received an initiative of a non-governmental organisation regarding the removal of an information board of the Society for Sustainable Development of Pomurje and stickers with the slogan “Roma Raus” which appeared in the vicinity of their office. In her public statement, the Ombudsman expressed her disapproval and condemned this act committed by the then still unknown perpetrators directed against members of the Roma community. She evaluated that it was a matter having elements of “hate speech” and expressed her belief that the Police will do everything necessary to trace the perpetrators.

Later, we addressed an inquiry to the Ministry of the Interior. The Ministry replied that on the basis of determined facts, data and evidence against the three suspects, a criminal charge as a result of a reasonable cause for suspicion of an offence of public incitement to hatred, violence and intolerance had been brought by the Police. The Ombudsman then addressed an inquiry to the responsible Office of the Prosecutor which replied that the responsible prosecutor had decided on a suspended criminal prosecution. A suspended criminal prosecution is an alternative settlement of criminal cases out of Court. The Ombudsman did not detect any violations of human rights and fundamental freedoms in the procedure carried out by the Police and Office of the State Prosecutor.

In 2011, the Ombudsman also received several initiatives with regard to banners which appeared at the traditional Pride Parade in Ljubljana. The initiators claimed that, as believers, they were offended by offensive images of Jesus Christ showing the middle finger. In our public response we pointed out that every form of expression of intolerance or hatred on the basis of whatever personal circumstance is unacceptable. The group striving for tolerance on the basis of one personal circumstance should by no means express intolerance to individuals or groups identifying themselves with any other personal circumstance. Hence, the Ombudsman called on all social groups and activists to exercise tolerance in their public activities.

2.1.2 Assembly and association

The number of initiatives received in this field decreased in 2011. We received only four new initiatives. Among these initiatives, there were two related to compulsory membership in the Chamber of Agriculture and Forestry of Slovenia. Much was written on this topic in the Report for 2010. The initiators have stated arguments questioning whether it is really necessary to stipulate compulsory membership for the presentation and enforcement of certain interests, and whether it is possible to enforce these interests in another manner, on a voluntary basis.

Obtaining the status of a humanitarian organisation for institutions

The 2010 Report mentioned a question regarding the alleged discriminatory nature of the Humanitarian Agencies Act which enables the obtaining of the status of a humanitarian organisation exclusively by societies and not also by institutions. As a result of such

regulation, an initiator (an institution) is excluded from some benefits deriving from the status of a humanitarian organisation, such as, for example, applying to public calls to tender and invitations to tender by the FIHO foundation, tax advantages and similar.

The Ombudsman agreed with the statement of the Institution that Article 2 of the Humanitarian Agencies Act ("the ZHO"), which stipulates that the status of a humanitarian organisation may only be obtained by societies and not also institutes may be contrary to Article 14 of the Constitution. This, among other matters, ensures that all persons who are in the same position are equally treated by a legislator. The status of a humanitarian agency, as a matter of fact, does carry some advantages when applying to public calls to tender and similar.

The Ombudsman believes that there are no justified grounds for the fact that conditions stipulated by the ZHO could not have been fulfilled by the institute. Limited funds, in the Ombudsman's opinion, can neither be the reason for an advance exclusion of institutions from the possibility of obtaining the status of a humanitarian organisation. It has also been determined that even now, pursuant to Article 2, Paragraph 4 of the ZHO, the status of humanitarian organisation may be obtained by those organisations which are established by religious communities to carry out their humanitarian activities, regardless of their legal form. This has strengthened our belief that making a difference between societies and institutes in relation to the obtaining of the status of an humanitarian agency is arbitrary and is not founded on laws, constitutional grounds, and reasons based on the nature of the cause.

The Ombudsman addressed a request to the Constitutional Court of the Republic of Slovenia to control the constitutionality of Article 2, Paragraph 1 of the ZHO in the part which refers to the limitation of the obtaining of the status of a humanitarian agency only to societies and associations of societies. The Ombudsman proposed to the Constitutional Court that it should determine the unconstitutionality of the contested Article and impose on the National Assembly of the Republic of Slovenia a requirement to eliminate the determined unconstitutionality in a specified time period.

2.1.3 Voting right

In 2011, the Ombudsman again received more initiatives (13) in relation to the exercising of voting rights than in the previous year (11). This was mostly contributed to by the early elections of the National Assembly and the referendums carried out. For several years the Ombudsman has been issuing warnings regarding the problem of voting by post for those voters who, on election day, are not in their place of permanent residence and they are not residents in a home for the elderly or in a hospital. In its response report the Government mentioned that the Proposal of the Act Amending the National Assembly Elections Act had been adopted and submitted to the National Assembly. In the proposal the problem was settled in such a manner that the introduction of voting by post without the requirement of a justified reason was proposed. But the Proposal of the Act, which, in accordance with the Constitution of the Republic of Slovenia, has to be adopted with a two-thirds majority of votes cast by the Deputies, was rejected in the National Assembly of the Republic of Slovenia at its first hearing, hence the proposed solution was, unfortunately, not accepted.

Early elections to the National Assembly

The Ombudsman received five initiatives related to the early elections. Even before the forecasted early elections were called, an initiative by a private person, a member of a political party, was received, expressing his concerns that on the day when the forecasted early elections and on the day of the commencement of the election procedures would take place the implementation of all statutory election activities would not be possible, particularly the collection of support given by voters by way of their signatures. An inquiry was made to the

National Electoral Commission in this regard. In his public statement on 28 September, as a matter of fact, the President of the Republic of Slovenia foretold that the National Assembly would be dissolved on 21 October 2011 and at the same time an early elections would be called on 4 December 2011. Article 16, Paragraph 2 of National Assembly Elections Act ("the ZVDZ") stipulates that time periods for electoral activities start running with the day determined as the day of calling the elections. But Article 46 ensures that the support by way of signatures of voters may be given from the day determined as the commencement of electoral activities to the day determined for the submission of lists of candidates. The concern of initiators was based on the abovementioned forecast: whether on the first day which will be determined as the day of the commencement of electoral activities, the provision of support to candidates on the prescribed forms before the responsible administrative authorities will be enabled. The National Electoral Commission replied that the Instructions regarding forms to express support to candidates had been adopted even before the formal calling of the early elections and that the Commission's activities were constantly coordinated with the Ministry of Public Administration and Ministry of the Interior so that it would be possible to give support to candidates immediately upon the day of calling the elections. According to our information this also took place and thus it was possible to give support to the candidates immediately on the day when elections were called.

Enabling the voting right of members of the Slovenian Army on a mission abroad

Three days before the elections for the extraordinary National Assembly elections, an initiative was received from members of the Slovenian Contingent in the KFOR forces in Kosovo informing us that they could not vote at the early National Assembly elections even though they had supposedly accurately fulfilled their applications in time. Soldiers also added that the reasons why they could not cast their votes were not wholly explained by their Commander. In particular the members of the Contingent had not been not informed about why all other Slovenian units in Kosovo could cast their votes by post.

The Ombudsman decided that the initiative could have been justified but, owing to the time pressure, did not specifically verify the reality of the statements made by initiators but assumed them and directly addressed a proposal to the Ministry of Defence of the Republic of Slovenia ("MORS") and the General Staff of the Slovenian Armed Forces. We particularly proposed to the addressees that they examine the possibility of the soldiers enforcing their active voting right at elections in spite of the difficulty mentioned. If this was not possible, it was proposed, with regard to the created irregularities, that the persons responsible should apologize to the soldiers for the violation of their voting right.

MORS explained to us that voting by post was not made possible to thirty-one members of the Slovenian Armed Forces as a result of complications in the submission of applications for voting. The reasons were supposedly of an objective nature since this group of soldiers is carrying out their duties outside the Villagio Italia base. The communication was slower owing to the soldiers' carrying out of their duties in various locations and thus errors were created when sending the applications for voting from Kosovo to Slovenia.

The Slovenian Armed Forces enabled the thirty-one soldiers to have another option for voting in the National Assembly elections. They could cast their votes directly at the diplomatic and consular post in Skopje on the day of elections where they were brought by the Slovenian Armed Forces from Kosovo.

We considered the initiative as justified although the violation of the voting rights of Slovenian soldiers had not (yet) occurred. The fast intervention by the Ombudsman and the action by MORS which wholly respected the proposal of the Ombudsman prevented the violation of the voting rights of thirty-one persons in time.

Pre-election debates on RTV Slovenija (TV and Radio Slovenia)

During the electoral campaign taking place before the first extraordinary parliamentary elections, an initiative was received warning about a dubious implementation of electoral broadcasts forecasted on Radio Slovenia. As a matter of fact, two confrontations of candidates on the basis of criterion regarding the "recognition in public opinion polling" were envisaged in the schedule of election programmes on Radio Slovenia. The initiator believed that such criterion is ill-founded and discriminatory to non-parliamentary parties and contrary to the provisions of Article 12 of the Radioelevizija Slovenija Act ("the ZRTVS-1"). In Paragraph 3, this Article stipulates that non-parliamentary parties must have "together available one third of the total time dedicated by the RTV Slovenija to all parliamentary parties and candidates participating in elections". It was determined that the initiative was justified. Pursuant to Article 12 of the ZRTVS-1, the Public Institution RTV Slovenija has published Rules and Instructions of the RTV Slovenija regarding the electoral campaign for the National Assembly Elections in the Republic of Slovenia on 4 December 2011 ("Rules"). The Rules have not included the criterion of "recognition in public opinion polling" among the criteria for designing confrontations of candidates but they have referred to the principle of equal rights of candidates running for office in the National Assembly and to the statutory principle that one third of all the programme time must relate to the lists of candidates of non-parliamentary parties.

The Ombudsman determined that the practice by which the introduction of additional criteria, as a whole and even bypassing Rules and Instructions of RTV Slovenija regarding the electoral campaign, is left to individual editors of the Information Programme, is not in compliance with the principles of legal protection, legality and equality regarding a passive voting right. Specifically, it could have led to a non-equal treatment of non-parliamentary parties on the basis of criterion which is not founded in law. In the Ombudsman's opinion it would have been more appropriate that the frameworks of the permissible differentiation among political parties with regard to their actual political weight be regulated by the law in a more accurate way.

Withholding the implementation of elections for the municipal bodies of Koper City Municipality

The citizens of Koper City Municipality ("MOK") addressed an initiative to the Ombudsman owing to a violation of the voting right referred to in Article 43 of the Constitution. The Constitutional Court of the Republic of Slovenia, by way of its Decision No. U-I-137/10-47, in practice, annulled the Decree on the Calling of Regular Elections for the Municipal Councils and Regular Elections of the Mayor in the part referring to the elections in MOK and imposed on the National Assembly an obligation to call the elections for the municipal bodies only after the time when the non-compliance of the Establishment of Municipalities and Municipalities Boundaries Act ("the ZUODNO") with the Constitution would be eliminated and the Ankaran Municipality would be established in (at the latest) two months following the adoption of the Decision U-I-137/10-47.

Usually, the Ombudsman cannot assess the constitutionality, legality or regularity of Court decisions, especially not Decisions by the Constitutional Court. However, the Ombudsman may, pursuant to Article 25 of the Human Rights Ombudsman Act, submit his/her opinion on a case considered from the perspective of the protection of human rights and fundamental freedoms, regardless of the type or the level of the proceedings.

In the Ombudsman's opinion, in spite of several attempts, the National Assembly failed to ensure the implementation of the operative part of the decision of the Constitutional Court with regard to the establishment of the Ankaran Municipality. The non-observance of the decision of the Constitutional Court of the Republic of Slovenia is, therefore, in the Ombudsman's opinion, a new fact which the Constitutional Court could not have taken into

account in its Decision. This new fact, however, has an important influence on the provision of a periodical cycle of elections as one of the more important elements of the voting right and the principle of democracy. In its Decision, the Constitutional Court found that the two months which were determined to harmonize the unconstitutionality of the ZUODNO signify only a shorter delay of elections which does not represent an unacceptable interference with the voting right. In the Ombudsman's opinion, with the use of the "a contrario" argument, every day of non-observance of the time period to harmonize the ZUODNO of not being in accord with the Constitution means a longer delay in elections which means an unacceptable interference with the voting right. Specifically, with every new day the time lapse for the implementation of elections is being prolonged and thus, in a dilemma between providing for the implementation of local self-government, on one hand, and the right to periodical elections, on the other hand, the scales are tipped in favour of the latter. The Ombudsman submitted the above mentioned opinion to the initiators and also to the Presidents of the Constitutional Court and the National Assembly for information.

2.1.4 Protection of personal data and privacy

The Ombudsman has named the classification field 1.6 "The Protection of Privacy and Personal Data" since 2010. Before that, this field only included the protection of personal data. The extension of this field has proved to be justified; this is demonstrated by the number and diversification of initiatives which opened questions with regard to which the Ombudsman has not yet made a stand. The number of initiatives received in 2010 and related to this topic slightly decreased (from 47 to 29) but the content of these initiatives was very interesting and diverse. In most cases, we submitted to the initiators explanations of their rights and provided instructions regarding the use of legal methods for the protection of their rights and interests. On most occasions we referred them to the Information Commissioner ("the IC") or to the national supervisory bodies for the protection of personal data.

Protection of privacy in reports on pupils in primary school

The Ombudsman dealt with an initiative of a father of girl pupils at a primary school who stated that, with its reports on pupils, the primary school had over extensively and unjustifiably intervened in the privacy of his family. The primary school prepared the reports under the order of the Centre for Social Work which was interested in all data that might point to the potential endangerment of children in the family. The initiator submitted to the Ombudsman reports which were written and signed by pedagogical workers and which included data for which, on the first site, it was not clear for which purpose they were supposed to be used. These were, for example, data on the smoking of the father, shopping of girls with their grandmother, and similar. The Ombudsman was of the opinion that the initiative might be well-founded which is why it addressed an inquiry to the primary school.

The primary school did not state the relevant legal bases in its reply. The Ombudsman's Office examined the existence of legal bases within the framework of the investigation, and determined, that, pursuant to Article 95 of the Primary School Act ("the ZOsn") the primary school, among other matters, also keeps a data base on pupils who need help or counselling. This data base also includes data on the family and its social conditions. Article 95, Item 7 of the ZOsn also stipulates that the data on children who need help or counselling must be protected by education counsellors as a professional secret.

Pursuant to Item 7 of Article 95 of the ZOsn, the Ombudsman determined that the data on family and social conditions may only be collected by education counsellors and not pedagogic workers. In the Ombudsman's opinion, only the school's counselling service is qualified to collect and process personal data on children and their families to the appropriate extent for the statutory determined purposes in accordance with the rules of the discipline. In

the Ombudsman's opinion it is impossible to assume in advance which actual data belong to such a data base which is why a general rule applies that only those data are collected which are necessary to achieve the purpose of helping or counselling pupils, that is all data which would speak about the adequate care for children or would point to their endangerment.

We explained to the initiator that the Ombudsman, on the basis of her power, cannot give a final decision on the violation of fundamental rights. We pointed out to him that it was possible to require the administrator of personal data to delete or correct of any personal data which are incomplete, inaccurate, not up to date or collected contrary to the law (that is, also too extensive with regard to the purpose). And if the primary school would not accede to the initiator's complaint, the possibility regarding the legal protection of rights was explained to him. Only in such proceedings and upon the assessment of all circumstances of an individual case may it be determined whether personal data were appropriate in terms of their extent and with regard to their purpose and processed in accordance with the law.

When dealing with this case, the Ombudsman detected errors both in terms of the content (for some data from reports, the purpose of their collection was not evident) as well as in terms of the procedure (reports were formulated by pedagogical workers) which may be of a systemic nature. Hence we proposed the primary school keep the data bases in the future with greater diligence, particularly in a such a way that these activities are carried out by the school's counselling service within the framework of Article 95 of the ZOsn. The Ombudsman believes that such a method of processing personal data may prevent an over-extensive collection of personal data. The primary school thanked us for our intervention and assured us that they would take the Ombudsman's proposal into account.

Minister required data on membership in civil associations (called civil initiatives)

The Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") received an initiative from a person employed at the Ministry of Environment and Spatial Planning informing us that some employees received a request from the Minister to submit information regarding their potential membership in civil associations. The Ombudsman determined that the collection of data on the membership of employees in civil association means a disproportional and unacceptable intervention into the protection of privacy and personal data of employees. The Ombudsman proposed to the Minister, on the basis of these findings, that this controversial instruction to the employees be cancelled, that all potential records of the already obtained data on the membership of employees in civil associations be destroyed, and that it must tread more carefully and avoid potential conflicts of interests of employees. It was proposed that the Ministry should address a warning to the employees referring to Paragraph 7 of Article 100 of the Public Officials Act ("the ZJU") stipulating that "an official that believes a situation has arisen in which his personal interests may have an effect on the impartiality and objectivity of the performance of his tasks, or where the circumstances of the situation might cast doubt as to his impartiality and objectivity, he must, immediately or as soon as practical under the circumstances, notify the principal and act in accordance with his instructions:" Only after our repeated request did the Minister respond to our opinion and proposals but he assured us that he would wholly take them into account.

Request for control of constitutionality of Article 46 of Integrity and Prevention of Corruption Act

In 2010, the Human Rights Ombudsman of the Republic of Slovenia dealt with several initiatives in which initiators had expressed their disagreement with the provision of Article 46, Paragraph 1, of the Integrity and Prevention of Corruption Act (OG RS, No. 45/2010, hereinafter referred to as "ZIntPK"). Pursuant to this provision, data on income and assets of persons responsible for public procurement are also publicly accessible. The Ombudsman

determined that the provision of Article 46, Paragraph 1, of ZIntPK is too great an interference with the privacy and protection of personal data of initiators which is why it filed a request for the control of constitutionality of this provision with the Constitutional Court of the Republic of Slovenia.

In regard to this request to control the constitutionality of the ZIntPK and the proposal for a temporal suspension of the implementation of the above mentioned provision, at its session on 7 April 2011, the Constitutional Court of the Republic of Slovenia issued Decision No. U-I-36/11-8 (OG RS, No. 30/11) by way of which it suspended the implementation of the provision of Article 46, Paragraph 1, of ZIntPK in the part referring to persons responsible for public procurement until the final decision of the Court. The Constitutional Court of the Republic of Slovenia did take into account the argument of the Ombudsman that consequences which arise from the implementation of the contested provision are worse than the consequences arising from its temporary suspension.

Following the adoption of this Decision of the Constitutional Court of the Republic of Slovenia concerning the partial suspension of the implementation of the contested statutory provision, the Act Amending the Integrity and Prevention of Corruption Act ("the ZIntPK-B") was proposed by the Government to the National Assembly. A modification of the provision of Article 46, Paragraph 1, of the above mentioned Act was proposed by way of this amending Act so that persons responsible for public procurement and officials of the National Review Commission are determined as exceptions for whom the regulation in Article 46 of the ZIntPK regulating the publicity of data does not apply.

By means of the above mentioned modification of the provision of Article 46, Paragraph 1, of the ZIntPK, included into the Amending Act ("the ZIntPK-B"), adopted by the National Assembly at its session on 24 May 2011 (OG R, No. 43/11), grounds which were the justification for the Ombudsman's initiative to control the constitutionality and the proposal for a temporary suspension of the provision of Article 46, Paragraph 1, of the ZIntPK were thus eliminated. Similarly, the alleged disproportional intervention into the privacy and protection of personal data of persons responsible for public procurement was thus removed.

2.1.5 Access to information of public character

As regards the field of access to information of a public character, more initiatives (7) were received than the year before (3). The majority of initiators sought information from the Ombudsman as to the method and procedure for obtaining information at the disposal of or at the supposed disposal of various bodies of the public sector. There were some initiatives related to the intervention by the Information Commissioner with regard to the procedure underway before this authority making decisions on complaints pursuant to the Act on the Access to Information of Public Character ("the ZDIJZ") The majority of initiatives were concluded with relevant explanations and instructions.

Confidentiality of procedure before the Ombudsman and the ZDIJZ

We have written several times in our annual reports of the grounds due to which we believe that the existing exceptions in the ZDIJZ do not provide for the protection of the principle of confidentiality of a procedure before the Ombudsman as defined by Article 8 of the Human Rights Ombudsman Act ("the ZVarCP"). The principle of confidentiality of the procedure is a very important principle for the efficient work and integrity of an institution such as the Ombudsman's. This principle does not only include initiators who turn to the Ombudsman with the expectation that the content of their written documents will not be accessible to the public or to anyone who, by way of a request pursuant to the ZDIJZ, would turn to the Ombudsman, but it also includes the national authorities which, similar to the expectation of respect for the

confidentiality of the procedure, perhaps submit to the Ombudsman more information than otherwise. In this manner, the Ombudsman ensures the trust both in relation to initiators as well as to the authorities under its responsibility. The principle of the confidentiality of the procedure defined in Article 8 of the ZVarCP is explained in detail in Article 8 of the Rules of Procedure of the Human Rights Ombudsman. Under this Article it is possible to make an inspection of the case documentation, on the basis of a special application, allowed by the Ombudsman or the Deputy Ombudsman. Similarly, as an exception, an inspection as a result of study or research reasons is also possible.

In the Ombudsman's opinion, the ZDIJZ with the exceptions in Article 6, currently does not enable the observance of the confidentiality of the procedure before the Ombudsman since it is not possible to define exceptions in all cases which would make it possible to reject an application for access to the data from the case files of the Ombudsman. The Ombudsman has been holding firmly to the standpoint from the very beginning that the inspection into its case files, on the basis of the consideration of initiatives under the ZVarCP, will not be made possible to anybody who would turn to the Ombudsman with such a request. This, as a matter of fact, nullifies the statutory principle of the confidentiality of the procedure and it takes away from the Ombudsman an important element of its function.

On this basis, a recommendation was adopted in 2010 and 2011 which was supported by the National Assembly when dealing with the reports: that a solution be adopted in the Act on Access to Information of Public Character which, while taking into account the principle of transparency of the work of the institution of the Human Rights Ombudsman of the Republic of Slovenia, will also observe the principle of confidentiality of the procedure before the Ombudsman with regard to cases considered by the Ombudsman pursuant to the Human Rights Ombudsman Act.

A meeting was held with the representatives of the Ministry of Public Administration and the Information Commissioner with co-workers on 23 September 2010 at the Ombudsman's premises. However, an agreement on the method of making modifications of the ZDIJZ was not achieved and the work regarding the preparation of the amendments of the Act was brought to a halt.

In its response report, among other matters, the Ministry of Public Administration explained that in the beginning of 2011 a working group for the amendments to the ZDIZ was established. The working group should examine all possibilities for finding a solution which, in accordance with the intention of the ZDIJZ and while taking into account the mission of the Ombudsman, will enable the Ombudsman to carry out its fundamental tasks. Until now the Ombudsman has not been informed of the work or of the proposals made by the mentioned working group. But the Ombudsman will insist that by way of modifications of the ZDIJZ a solution is found which will, taking into account the transparency of the work of the Ombudsman, respect the principle of confidentiality of procedure before the Ombudsman. Specifically, a solution, which would transfer the decision on the fact of whether the principle of confidentiality of procedure before the Ombudsman is transferred to another state authority, is not acceptable for the Ombudsman This must be decided by the Ombudsman himself protecting human rights and fundamental freedoms against the intervention of other state authorities.

SUMMARY OF PROPOSALS AND RECOMMENDATIONS

- The Ombudsman invites everybody participating in public debates not to incite hatred or intolerance on the basis of any personal circumstance in their statements and texts.
- The Government should examine additional possibilities to also sanction public incitement to hatred, violence or intolerance as an offence.
- The Ombudsman proposes an examination of possibilities to enact a civil punishment as a result of any undue intervention into privacy on the basis of public publication.
- The principles and rules to implement the electoral presentations and referendum presentations and programmes on public radio and television be defined in the Radiotelevizija Slovenija Act in a manner such as not to lead to unequal treatment and various interpretations of the law.
- The Ombudsman recommends that Programme Council of RTV Slovenija adopt a Code of Ethics for the Profession, which would define the rights and conduct of creators of the programme in a clearer manner.
- The Ombudsman proposes that, within the framework of the rules on referendums, a question be examined with regard to the clarity of any question and material decided on at a referendum.
- The Ombudsman repeatedly recommends, by way of the Higher Education Act, the regulation in detail and unification of procedures and criteria for the prolongation of the student status.
- Collection, protection and the time period for keeping and further processing of documentation of psychiatric institutions be specially regulated by the law.
- The Ombudsman recommends that primary schools should have data on family and social conditions collected and kept only by the schools' counselling services which should collect and process this data with diligence and while taking into account the principle of proportionality concerning the collection of personal data.
- The Ombudsman proposes to adopt a solution in the Act on Access to Information of Public Character which, while taking into account the principle of transparency of work of the institution of the Human Rights Ombudsman of the Republic of Slovenia, will respect the principle of confidentiality of the procedure before the Ombudsman in regard to the cases dealt with by the Ombudsman pursuant to the Human Rights Ombudsman Act.

1. Media reporting on family tragedy

An initiator warned us about an article in a newspaper in which a journalist disclosed the name and the first initial of a surname and published a photograph of a suspected perpetrator in a family tragedy. It was determined that the initiative might be justified as a result of a violation of the right to the privacy of children of a suspect and that it might be a case of a violation of the Code of Ethics of Slovene Journalists, precisely in the part which refers to the sensationalist and unjustified disclosure of the privacy of individuals, care or lack of care when mentioning names and publishing pictures of perpetrators and respect in reporting and publishing photographs of those experiencing a family tragedy. Following the normal practice, in cases of violations of the Code of Ethics of Slovene Journalists, the Ombudsman usually instructs the initiators to initiate the procedure before the Journalist's Court of Honour by themselves. Exceptionally, when children or representatives of marginal groups are affected, such a procedure is also initiated by the Ombudsman's Office. As a result of children being affected in the mentioned case, the Human Rights Ombudsman proposed to initiate a procedure against the journalist and an editor-in-chief due to the violation of Articles 20, 21 and 22 of the Code of Ethics of Slovene Journalists. We believed that in the actual case no public interest for the intervention into the privacy of the family was demonstrated and that by the publication of the name and the first initial of the surname of the suspect in the family tragedy a simple identification of his children, the victims of the family tragedy, was possible.

It was also determined that by means of the publication of the photography of the alleged perpetrator, the identification of the juvenile victim was also possible. We have particularly warned that in some cases the publication of a photo of a suspect might lead to more severe consequences than the disclosure of his name and surname. In our opinion, as a matter of fact, the identification of a suspect is possible by publishing his photograph as well as the identification of his victims to those who are acquainted with the person and his family only by appearance. A greater damage was caused by publishing the name of the suspect and his photograph than were potential benefits for the provision of information to the public. The journalist, in our opinion, did not show enough consideration for the juvenile victims since his reporting contributed to the accurate identification of victims and a result of such reporting is a deepening of the family tragedy, a traumatic experience by the victims of a criminal offence and the worsening of their medical condition.

The Journalist's Court of Honour adopted a resolution based on our proposal that the journalist and the editor violated Articles 20, 21 and 22 of the Code of Ethics of Slovene Journalists but no sanctions against the violators were adopted. By determining the violation of the Code of Ethics of Slovene Journalists, the Court of Honour agreed to the Ombudsman's assessment regarding the justification of the initiative as a result of a violation of the privacy of a victim of a criminal offence. **1.2-46/2010**

2. Inappropriate campaign of the Ministry for the inclusion of persons with international protection

Initiators turned to the Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") due to an allegedly controversial web campaign by the Ministry of the Interior. A website: www.begunec.si, is intended to raise the awareness of the wider public with regard to the significance of the inclusion of persons with international protection into Slovenian society. In the opinion of the initiators, some published contents were highly problematic from the aspect of refugees. The slogans "Why Run Away from Paradise?" and "Iran – Nice to Die" were particularly highlighted.

The Ombudsman similarly evaluated both slogans as disputable in terms of ethics since the message conveyed is not clear and may be interpreted as cynical and insulting. We urged the Ministry of the Interior to make a stand with regard to the above mentioned slogans and, at the same time, to explain its position on such a method of dealing with refugee issues.

In its reply the Ministry of the Interior pointed out that by means of such slogans they desire to raise the awareness of a thinking individual that there are people who are forced to leave their beautiful countries since there their fundamental human rights are trampled and their lives are threatened. It was the matter of a slightly more complex but at the same time more penetrating message which was also easier to remember. The fact that the campaign does not demonstrate a non-ethical attitude to the current refugee issues, supposedly, derived from other contents on the above mentioned web page.

Irrespective of an extensive explanation by the Ministry of the Interior, the Ombudsman's opinion on the controversial nature of the messages was not changed. In our opinion it is not possible to expect that every receiver of messages of this campaign will understand them in the manner envisaged by the Ministry of the Interior. **1.2-16/2011**

3. Public incitement to hatred and intolerance against the Roma in the Pomurje

The Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") considered an initiative of a non-governmental organisation in relation to the removal of an information board of the Society for Sustainable Development of Pomurje and about stickers with the slogan "Roma Raus" which appeared in the vicinity of their office.

In spite of information that the Police had already been investigating the case, an inquiry was addressed to the Ministry of the Interior. The Ministry replied that, on the basis of the determined facts, data and evidence, the Police had submitted a criminal complaint to the Murska Sobota District State Prosecutor's Office ("the DSPO") as a result of a reasonable cause for suspicion of a criminal offence concerning public incitement to hatred, violence and intolerance under Article 297 of the Criminal Code. The Ombudsman then addressed an inquiry to the DSPO in Murska Sobota which confirmed that on 25 October 2011 a criminal report was received from the Lendava Police Station as a result of the above mentioned criminal offence against three persons, one of full age and two juvenile persons. The persons mentioned produced some stickers with the slogan "Roma Raus" and posted them across Lendava. A prosecutor dealing with the case decided for an alternative method of criminal prosecution, specifically, for a suspended criminal prosecution. This is an example of an alternative, out-of-court settlement of criminal cases. In the case of a suspended prosecution, the State Prosecutor, with the consent of the injured party suspends the criminal prosecution against a perpetrator if the said person is willing to act according to the rules of the State Prosecutor and fulfil some tasks with which the harmful consequences of the criminal offence are reduced or eliminated.

In a procedure led by the Police and State Prosecutor's Office, no violations of human rights and fundamental freedoms were detected by the Ombudsman. Regardless of that, the initiative is interesting from the perspective of the functioning of the Police and State Prosecutor's Office since in this case the action was undoubtedly defined as a public incitement to hatred and intolerance. At the same time it has been determined by the Ombudsman that as a result of the suspended criminal prosecution the case will not be considered among the limited amount of case-law concerning public incitement to hatred, violence and intolerance. **1.2-50/2011**

2.2 DISCRIMINATION

GENERAL

The number of initiatives classified within the field of discrimination was smaller in 2011 (49) than in the previous year (59). There were again more initiatives indicating discrimination based on national or ethnic origin (24) and there were also more initiatives concerning discrimination in employment (9). But there were fewer initiatives related to equal possibilities based on gender (5). The above mentioned statistical data does not imply that exactly this number of cases referring to discrimination were considered by the Ombudsman since such contents were also dealt with in other fields, the most in the field of cases related to labour law. The period considered also saw the most initiatives in this field related to the position and reproaches regarding the unequal treatment of members of the Roma community. Many questions of this type were dealt with by the Ombudsman following her own initiative or on the basis of observations from the media.

2.2.1 Mechanisms of protection against discrimination

The Ombudsman has been warning for many years that the statutory framework and institutional mechanisms for the elimination of discrimination are not adequate and compliant with the requirements of the Union acquis. In the Annual Report 2010, we proposed to the Government of the Republic of Slovenia, among other matters, that it adopt legislative solutions which, in accordance with the Union acquis, would provide for impartial, independent and efficient treatment of cases regarding violations of the prohibition of discrimination of any origin and in all fields. The Ombudsman also proposed to the Government that it should more efficiently implement and coordinate activities regarding the determination of actual situations and policy-making in all fields where unequal treatment may arise as a result of personal circumstances (discrimination). In the Ombudsman's opinion, the integration of Governmental authorities (offices) which currently implement tasks in these fields would be appropriate in order to cover all fields and to prevent the imbalances regarding individual personal circumstances from happening. On 19 October 2011, the National Assembly proposed that all institutions and officials at all levels take into account the above mentioned recommendations.

When in the middle of 2010 it became clear that the Council of Europe adopted a final decision to close the Information Office of the Council of Europe Ljubljana at the end of that year, the Ombudsman proposed a solution, being a short-term and transitional one, to continue with the work of this Office covering slightly extended contents in the form of a Centre for Human Rights at the Ombudsman's office ("the Centre").

The proposal was discussed and given support at the meeting of the Inter-ministerial Working Group for Human Rights functioning within the scope of the Ministry of Foreign Affairs. But difficulties appeared on the side of representatives of the Government Office for Equal Opportunities, that the proposal should not be considered and the conclusion of the work of the Government Working Group needed to be waited for which will produce an integrated solution". Since the Government did only inform itself about the proposal which was submitted to the Government's discussion by the Ministry of Foreign Affairs, the Information Office of the Council of Europe stopped operating at the end of 2010. An amazing opportunity was thus missed for such a Centre to continue its work at a location which was well established both for individuals as well as non-governmental organisations which often needed host premises for various meetings and promotional activities. If the

Ombudsman's proposal had received the (financial) support (the Centre's annual budget would amount to approximately 300,000 euros), the Centre could have been a platform for promotional activities also in the field of prevention of discrimination.

As a result of also waiting for a "final and integrated" solution, the opportunity was thus missed for the inception of activities to be taking place within the framework of an independent national institution for the protection and promotion of human rights. The Ombudsman has written several times in the annual reports about the lack of such an institution. This, however, is what international organisations are constantly warning us about.

2.2.2 National and ethnic minorities

1. Special rights of national communities

Jus like in 2010, we did not receive any initiatives explicitly warning about a violation of any of special rights granted to both self-governing national communities and their members and what might be a basis for an intervention by the Ombudsman in accordance with the law. We believe that Slovenia regulated the status of both indigenous national communities very well, as regards regulatory and institutional levels. This, however, does not imply, on the other hand, that violations do not happen in practice, which do not come to the Ombudsman for various reasons. But the Ombudsman has no scope in terms of personnel and funds to operate in a more proactive way, as is done by some specialized institutions for the protection of human rights, such as we had wished to see established (see above).

2. Communities of the Roma and Sinti

Strictly speaking, all initiatives received and dealt with by the Ombudsman in 2011 in the field of national and ethnic minorities referred to the communities of the Roma and Sinti. Initiatives referred to various problems experienced by members of these communities, mostly with regard to various aspects of life in individual settlements. More is written in the remainder of the text. But we also received many initiatives from inhabitants living in the vicinity of such settlements. We also dealt with the issues regarding the financing of these communities and with individual cases of misunderstandings and conflicts among their members.

It can be generally considered that also in 2011 a certain amount of progress had been made in the field of the implementation of rights of members of the Roma community in the Republic of Slovenia. The Roma Community Act ("the ZRomS-1") and the accompanying documents, particularly the National Programme of Measures for Roma of the Government of the Republic of Slovenia for 2010-2015 had already brought some results. By way of establishing Slovenia's Roma Community Council ("the Council"), a portion of the powers and responsibility for the solving of the situation of the Roma community is transferred to the members of this community. It has been determined, however, that the functioning of the Council up to this point had not satisfied the expectations upon the adoption of the law.

The Ombudsman has been warning about the problematic composition of the Council for several years. In this regard, at the beginning of 2010, we submitted to the Constitutional Court a request to review and assess the compliance of Article 10 of the ZRomS-1 with the Constitution of the Republic of Slovenia with obligations undertaken by the State under the treaties related to the protection of human rights and freedoms. The Constitutional Court failed to find any non-compliance with the Constitution and instructed the Ombudsman that, if the assessment is made that the existing disagreements among individual Roma societies and the state of affairs, owing to the enacted method of representation in the Council, and the trust in the Council as the umbrella organisation of the Roma community has been undermined the Ombudsman may make a proposal to the Government and the National Assembly, in accordance with the Ombudsman's powers, to modify the contested provision of the law.

Likewise, the developments in the Roma community and the functioning of the Council in 2011 strengthened the Ombudsman's conviction that the current statutory arrangement regarding the composition of the Council contributes to disagreements within this community and not to the Council being established as a legitimate representative of the entire Roma community in the country. Similarly, the majority of representatives of the Roma community finally realised that the ZRomS-1, particularly the provisions regarding the composition of the Council, must be modified. In this regard, the Ombudsman recommended to the Government in the 2010 Annual Report to prepare amendments and modifications of the ZRomS-1 as soon as possible and in cooperation with the representatives of the Roma community.

2.1 Organisation of Roma settlements in the wider area of Novo mesto

During her regular operation outside the head office in Novo mesto, a visit was paid to the Ombudsman by several initiators pointing out serious problems related to the inclusion of members of the Roma community in Slovenian society. Later, some other inhabitants from the area of South-East Slovenia, particularly from municipalities of Novo mesto, Škocjan and Šentjernej, turned to the Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") with their written initiatives. Initiators informed the Ombudsman about various actual cases of conflicts with members of the Roma community living in the Roma settlements in the wider area of Novo mesto. They pointed out that the authorities respond poorly or do not respond at all to reports on unlawful actions against the safety of people, property and public order. Not taking action pursued by national authorities and authorities of local self-government causes dissatisfaction, feelings of helplessness, inferiority, injustice and inequality before the law, despair and sudden awareness of the inefficiency of authorities. In such situations, initiators started thinking about getting organised themselves for safety (as they are called, village guards) in order to protect their fundamental rights to personal safety and the safety of their property.

On the basis of the above mentioned initiatives, the Ombudsman turned twice with her inquiries to the Government of the Republic of Slovenia. For the first time on 21 July 2011 and secondly, in order to obtain additional explanations, on 19 September 2011. The Government submitted its answers, firstly, on 1 September 2011 and, secondly, on 24 November 2011.

In many ways, the answers from the Government confirmed the indications of the initiators regarding the situation in the field. The Ombudsman has determined that the conditions in the wider area of Novo mesto represent a vicious circle of improper living conditions, exclusion, too poor an education level, un-employability, violent attacks on foreign property and lack of action on the part of authorities giving rise to doubts about the efficiency of the law. In the Ombudsman's opinion, these elements occur more in areas where the Roma live in illegal settlements lacking municipal utility services.

A safe and warm home gives a man a basic feeling of safety. Inhabitants of illegal Roma settlements live in constant fear of losing the roof above their heads. Inhabitants of illegally placed settlements come in conflict with the law with their mere residence, they enter into a condition of originating unlawfulness from birth. Their dwellings are modest, over crowded, often with no access to water, electricity and sewage system. People who live in such conditions are typically representatives of vulnerable and pushed away, "marginal" social groups. Wherever no fundamental level of living culture has been provided for members of the Roma community since birth, it is not possible to expect a satisfactorily level of observance of the legal order of the Republic of Slovenia. This, obviously, is not an excuse for violations of legal order although it somehow provides their explanation.

That unsuitable living conditions are the main reason for conflicts among the population has also been determined in several places by regulatory documents and Government documents. The Government did recognise the significance of the arrangement of the issues related to the living conditions of the Roma community in the National Programme of Measures for Roma for the 2010-2015 period ("the NPMR"). "Improving living conditions and arrangement of Roma settlements in orderly manner" is determined as a number 1 priority measure".

While taking into account the above mentioned documents the Ombudsman has determined that, in terms of principle, the Government is aware of the fact that dysfunctional living conditions do mean the essence of the problem reported by initiators from the wider area of Novo Mesto. But these documents on their own do not imply the implementation of rights.

The Ombudsman has determined that national authorities have left the legal regulation and the arrangement of Roma settlements in terms of the provision of municipal utility services to be handled by municipalities. Time has shown that some municipalities are ineffective as holders of measures for the legalisation of Roma settlements and in the provision of municipal utility services. In the Ombudsman's opinion it has been demonstrated that the task of organising Roma settlements in terms of their legal status and the organisation as regards municipal utility services has in several places exceeded the capabilities of some municipalities.

The dissatisfaction of initiators who had turned to us is closely and inseparably, even by their origin, related to the lack of the regulation of the position of Roma settlements. Poor living conditions of members of the Roma community lead to dissatisfaction both, on the part of the Roma as well as with the population in the vicinity and the misunderstanding between the two communities is growing deeper to the extent that public order and peace are seriously threatened. It is a matter of a vicious circle of exclusion, violence, attacks on property and deficiency in taking actions on the part of authorities causing doubts about the efficiency of the law. Permitting unlawful conditions and conduct is, truly, the easiest solution but such a solution is not acceptable from the aspect of the main goal aiming at being achieved by the ZRomS-1 and it only increases the gap between the Roma and the majority of the population.

The Ombudsman has determined that the first step towards a long-term and integrated solution for the worrying living conditions is the legal regulation of the Roma settlements and the provision of municipal utility services in them. The situation in the wider area of Novo mesto, as a result of the lack of legal arrangement and municipal utility services in Roma settlements and long-lasting disturbances of public order and peace, is, in the Ombudsman's opinion, of such a nature that the Government should assess whether it would be necessary to take action pursuant to Paragraph 3 of Article 5 of the ZRomS-1. Measures of the Government to ease the worrying conditions in the wider area of Novo mesto should have been oriented towards active and persistent efforts for the fastest possible legal arrangement of Roma settlements and providing them with municipal utility services. When solving the critical social and economic conditions of the Roma population unlawful conduct and situations cannot be permitted but measures for the improvement and arrangement of Roma settlements in an orderly manner particularly need to be prepared, adopted and implemented at an accelerated pace.

The arrangement of living conditions of the Roma population is a part of the special rights of members of the Roma community in the Republic of Slovenia, taking into account the special status of the Roma community in the Republic of Slovenia, and is granted by the ZRomS-1 aiming at the successful inclusion of the Roma into Slovenian society. Firstly, Roma settlements need to be arranged in terms of spatial planning which falls under the responsibility of municipalities, but when the lack of legal arrangement or municipal

utility services poses serious threats to health, when public order and peace has been disturbed over a long period of time or when the environment is permanently threatened, the arrangement in terms of spatial planning and other necessary measures to regulate the conditions must be adopted by the Government of the Republic of Slovenia (Article 5, Paragraph 3 of the ZRomS-1).

The Government rejected the proposal of the Ombudsman that the Office itself, instead of municipalities, would intervene with the arrangement of Roma settlements. It has claimed that Article 5 of ZRomS-1 does not list measures on the basis of which the lack of legal arrangement and municipal utility services are measured and believes that it is clear from the legislation applicable in the field of spatial planning that it is the municipalities that have to be the first to approach the spatial arrangement of Roma settlements. The Government also believes that the intervention by the State into the responsibilities of municipalities would nullify the work and endeavours of all those municipalities which, with the assistance of the State and particularly in cooperation with the Roma population have striven to arrange a long-term solution to the living conditions in the Roma settlements. The final finding of the Government was that the living conditions in Roma settlements are improving and that in the present situation there is no reason for the State to intervene with municipal responsibilities. In spite of a rejection of the proposal of the Ombudsman, following the discussion about the letter by the Human Rights Ombudsman of the Republic of Slovenia, on 24 November 2011, the Government of the Republic of Slovenia adopted a Decision imposing on the Ministry of Environment and Spatial Planning a requirement to examine actual possibilities for joint co-operation of the State and municipalities in the arranging of the Roma settlements, pursuant to Article 42 of the Act Regarding the Siting of Spatial Arrangements of National Significance in Physical Space ("the ZUPUDPP").

Article 42 of the ZUPUDPP stipulates that the Ministry responsible for spatial planning and the municipality may agree that a municipality shall plan and modify a spatial planning document for any certain spatial arrangement which is of joint national and local importance if with regard to the connection of the spatial arrangement of national significance with spatial arrangement of local significance this is more appropriate. For this purpose the Ministry responsible for spatial planning and the municipality, prior to the preparation of such a spatial planning document, shall conclude an agreement in which obligations in the preparation and adoption of the spatial planning document, financing of the preparation of the spatial planning document and expert bases and other mutual obligations, important for the preparation of such spatial planning document, are determined.

The Ombudsman has determined that in this case the Government responded in a suitable manner and that, by way of its Decision, it expressed a certain degree of agreement with the findings of the Ombudsman that the arrangement of the Roma settlements in terms of their legal situation and municipal utility services has been too slow. It is also believed that the cooperation between municipalities and the Ministry enabled by Article 42 of the ZUPUDPP may contribute to a faster arrangement of conditions. The Ombudsman will also continue with the consideration of these questions in 2012. Within its powers, it will follow how the Decision of the Government of the Republic of Slovenia regarding the joint cooperation of the State and municipalities in the arrangement of the Roma settlements will be put in practice.

2.2 Implementation of the right to drinking water in an illegally sited Roma settlement

On the initiative of a Vice-President of the Roma Community Council of the Republic of Slovenia, Mrs Dušica Balažek, on 21 March 2011, the Ombudsman visited the illegally constructed Roma settlement Dobruška vas in the Škocjan Municipality to have a look at the living conditions there. The Novo mesto Municipality settled the Roma in Dobruška vas a little less than fifty years ago. The land where the Roma live is owned by the Agricultural

Cooperative Krka of the Škocjan Municipality, but is partially also in the ownership of the Roma. Supposedly, local authorities have been promising the Roma for at least 15 years to have the settlement arranged as regards its legal status and the provision of municipal utilities serviced, but the inhabitants of the settlement are still without access to drinking water, toilets and electricity.

During the inspection of conditions in the Roma settlement the Ombudsman determined that the living conditions are at an extremely low level, even such that they seriously threaten the life and health of people, particularly children. The worrying living conditions are mainly a result of the fact that the majority of inhabitants of this settlement do not have any access to fresh drinking water.

On the basis of conditions seen on the spot, the Ombudsman determined that the living conditions in Dobruška vas pose a serious threat to the life and health of people from the settlement and due to the possibility of a spread of contagious diseases the health of the surrounding population is also threatened. The Ombudsman assessed that the lack of municipal utility services in the Roma settlement Dobruška vas may lead to a permanent threat to the environment. On 21 March 2011, the Ombudsman proposed to the Mayor of the Škocjan Municipality that a tank with drinking water as a temporary but urgent measure be ensured. The Mayor rejected the proposal of the Ombudsman by referring to the illegality of the Roma settlement and the absence of a legal basis for the proposed measure.

The Ombudsman made a judgement that owing to the lack of action on the part of the municipality, conditions had arisen for the intervention of the Government of the Republic of Slovenia. The Roma Community Act ("the ZromS-1") in its Article 5, Paragraph 3, stipulates, as a matter of fact, that by means of the necessary measures, the Government of the Republic of Slovenia, in order to arrange conditions, may also intervene in the territory of a municipality in which the lack of legal arrangement and the provision of municipal utility services in the Roma settlements may pose a severe threat to the health of people, causes long term disturbances of public order and peace or permanently threatens the environment.

On 24 March, the Ombudsman proposed to the Government of the Republic of Slovenia that it adopt in the shortest possible time and implement all the necessary measures to ensure the acceptable living conditions in terms of health in the Roma settlement in Dobruška vas, as a result of unsuitable living conditions and lack of action by the municipality. The Ombudsman proposed that the Government of the Republic of Slovenia immediately provide for a drinking water tank in the affected area, as one of the main temporary measures.

The answer of the Government of the Republic of Slovenia was received by the Ombudsman, after additional intervention, only on 22 April. In its answer the Government of the Republic of Slovenia stated that the Ministry of Health, by visiting the settlement on spot, was informed about the living conditions of the Roma in the Dobruška vas settlement and determined that the "living conditions are actually worrying from the aspect of the health of people". In this part the Government therefore agreed with the findings of the Ombudsman (submitted two months before!) but did not adopt a measure concerning the provision of drinking water in the affected area, since, among other matters, it was of the opinion that "the intervention of the State into exclusively municipal powers would imply a severe blow to all municipalities which with the assistance of the State and particularly in collaboration with the Roma population are striving for a long-term arrangement of the living conditions in the Roma settlements". An additional argument with which the Government of the Republic of Slovenia rejected the proposal of the Ombudsman also lies in the fact that, supposedly the ZRomS-1 had not accurately determined the criteria for the intervention of the Government instead of an inactive municipality. Similarly in this case, the Government of the Republic of Slovenia, has therefore entirely left the solving of the issue to the municipality.

The Ombudsman expressed her concern due to the non-observance of her proposal in an additional letter to the Government of 9 May. The Ombudsman repeatedly and in a more extensive manner presented the reasons demanding immediate action by the Government of the Republic of Slovenia.

The access to the drinking water in the Roma settlement was still not ensured after more than three months of active efforts by the Ombudsman, which is why, on 5 July 2011, the Ombudsman addressed the following final findings to the Government of the Republic of Slovenia: (1) that the inhabitants of the Roma settlement Dobruška vas had not been provided with access to the drinking water; (2) that the access to drinking water is a human right, also provided for in international legal documents; (3) that with regard to the provision of drinking water the Government cannot refer to the powers of the municipality neither to individuals who, by means of mediation procedures, might succeed in achieving the implementation of so fundamental a right as is a drinking water supply; 84) that the implementation of a technically relatively simple and financially not complicated but urgent measure in terms of life related to the provision of drinking water had taken place at an unreasonably slow pace and too slow a pace.

On the basis of the visit to the settlement, the opinion of the Ministry of Health, the report of an independent expert of the United Nations regarding the access to drinking water and toilets and on the basis of answers by the Government on the Ombudsman's inquiry, the Ombudsman developed her final opinion, i.e., that the Government had not done everything in its powers and authority to ensure the access to the drinking water to the inhabitants of Dobruška vas. This, however, indicates a violation of human rights and fundamental freedoms. The Ombudsman pointed out to the Government of the Republic of Slovenia that the Government's violation of human rights and fundamental freedoms will continue to exist until access to drinking water and toilets is provided to all inhabitants of the Roma settlement Dobruška vas.

Following the receipt of the final findings of the Ombudsman on 13 July, the Government of the Republic of Slovenia organised a meeting at which the representatives of ministries and governmental offices agreed that the observance of the right to drinking water arises both from domestic as well as international legislation and it means the provision of public access and a public connection to the water supply system. In accordance with this finding the participants of the working meeting agreed with the Mayor of the municipality that the municipality immediately set up a water supply connection in the settlement. The Government of the Republic of Slovenia undertook that in case of inactivity of the municipality, it would find a solution for setting up the water supply connection by itself.

The last answer from the Government of the Republic of Slovenia was understood by the Ombudsman as an important and positive move in the understanding of the right to drinking water. This is especially shown in two standpoints: 1) the Government of the Republic of Slovenia is aware of the fact that the access to drinking water is a human right, and, 2) the Government of the Republic of Slovenia admits that, in the final analysis the implementation of the right to drinking water is its responsibility. The Government of the Republic of Slovenia did not communicate to the Ombudsman how access to drinking water had been ensured to the inhabitants of Dobruška vas. Neither did the affected persons from Dobruška vas submit any more complaints which is why the Ombudsman has concluded that the critical conditions in the settlements had been dealt with.

3. Other minorities (not recognised by the Constitution)

For several years the Ombudsman has repeated her recommendation in annual reports that the discussion should commence regarding the position and measures of the implementation of collective rights of minorities not mentioned as such by the Constitution but being so great in number, that it is necessary to make a stand about their situation in the Republic of Slovenia. Likewise, based on such repetitive recommendations of the Ombudsman, on 1 February 2011, the National Assembly adopted a Declaration the Republic of Slovenia regarding the Situation of National Communities of Members of Nations of Former SFRY in the Republic of Slovenia ("the Declaration"). Annual warnings and recommendations of the Ombudsman were indicated among the grounds for the adoption of the Declaration.

In its response report to the 2010 Annual Report, the Government of the Republic of Slovenia explained in this regard that on the basis of the said Declaration, the Decision on the Establishment, Composition, Organisations and Duties of the Council of the Government of the Republic of Slovenia for issues of national communities of members of nations of former SFRY ("the Council") was adopted at its session on 19 May 2011. The Council was set up on 16 June 2011. At its first session it concluded that the Association of Associations of Cultural Societies of Constitutive Nations and Peoples of former SFRY in Slovenia should prepare a transparent document regarding what financing would be needed in various fields (education, media, etc.) and submit it to all members of the Council for information before the next session of the Council. At the same time it was concluded that the representatives of national institutions in the Council should prepare a review of existing mechanisms of co-financing in their fields and potential methods for improvements.

The Ombudsman has determined with satisfaction that one of her long-lasting recommendations was thus established and that the situation in this field was improving.

2.2.3 Rights of persons with disabilities

In the 2010 Report, in this field the Ombudsman recommended the adoption of legislative documents and implementing regulations and measures which would indicate the implementation of the Convention of the Rights of Persons with Disabilities.

In relation to this, a reply of the Ministry of Labour, Family and Social Affairs was mentioned by the Government in its response report that the implementation of rights stipulated in Article 17 (technical devices to overcome communication barriers) and Article 21 (payment of costs for adaptations of a vehicle) of the Equalisation of Opportunities for Persons with Disabilities Act was a complicated and complex procedure demanding the cooperation of line ministries, experts and users, persons with disabilities. Further, as stipulated by Articles 19 and 22, a supplier of technical aid devices and the provider of the vehicle adaptation needed to be chosen by a public call to tender. It was forecasted that the implementing regulations were being prepared and were expected to be adopted in the time period stipulated by the law. According to the data at the disposal of the Ombudsman, not all implementing regulations were adopted within the statutory term, that is by 12 December 2011.

In addition to initiatives pointing out the difficulties of disabled persons which we received in this field, several initiatives and letters were also received which pointed out various views held by individual disability organisations.

- The Ombudsman recommends the adoption of statutory solutions which, in accordance with the Union's acquis, will provide for the impartial, independent and efficient treatment of cases concerning violations of prohibition of discrimination of all origins and in all fields. For this purpose, it is necessary to set up an independent advocate holding powers for investigation in cases of violations of the prohibition of discrimination and punishing violations both in private and public sectors.

- The Ombudsman recommends that the Government prepare, together with representatives of the Roma community, amendments and modifications to the Roma Community Act with regard to the composition of the Roma Community Council.

- The Ombudsman recommends that the Government dedicate greater attention to the legal arrangement and provision of municipal utility services in Roma settlements, within the framework of the National Programme of Measures for Roma for 2010-2015, particularly in the wider area of Novo mesto. Within the framework of the implementation of the NPMR, the time periods for the adoption of the necessary measures by municipalities should be stipulated by the Government. If municipalities fail to adopt or implement measures, the Government should examine the need to adopt relevant decisions by itself pursuant to Article 5, Paragraph 3, of the Roma Community Act.

- The Ombudsman recommends that the municipalities ensure access to drinking water for all its citizens which should be suitable and without differentiation since it is a case of one of the internationally recognised human rights.

- For the implementation of the Convention of the Rights of Persons with Disabilities and the Equalisation of Opportunities for Persons with Disabilities Act, the Ombudsman recommends the fastest possible adoption of implementing regulations and implementation of measures for the true equalisation of opportunities of persons with disabilities.

4. Acquisition of pieces of land with Roma Settlements

An initiator turned to us who in the denationalisation procedure, together with other heirs, was given back the ownership of agricultural land. There is a Roma settlement located at this land. The initiator pointed out to the Ombudsman of the Republic of Slovenia ("the Ombudsman") that the municipality is handling the solving of the legal arrangement and the provision of municipal utility services in the Roma settlement too slowly which was causing violations of his ownership rights. We were of the opinion that the initiative might be justified that is why an inquiry was submitted to the municipality inquiring how the municipality plans to regulate the Roma settlement in terms of its legal situation, including the time schedule for its implementation. We were also interested whether the municipality held a Commission to monitor the conditions of the Roma community ("the Commission"):

The municipality explained that it had begun with the solving of the living conditions of members of the Roma community several times. The first attempt was in 1992 when the municipality wished to relocate the Roma families onto free areas inside the municipality. This method did not receive any support from the Municipal Council which is why the municipality acceded to the legalization of the existing settlement in 1997, but fifteen years later, in 2012, the Municipal Spatial Plan ("the MSP") was not yet adopted. The MSP is a pre-condition for the re-classification and subsequent purchase of pieces of land with Roma settlements. The municipal decision on the commencement of the preparation of the MSP from March 2008 forecasted that the MSP would be adopted within two years or earlier but four years later the municipality is only in the middle of the procedure regarding the adoption of the MSP. Within this procedure, the municipality is in the progress of implementing guidelines required by the parties responsible for spatial planning and management.

The municipality indicated the adoption of the Spatial Planning Act of 2007 among the reasons for such long lasting procedures regarding the legal arrangement of the Roma settlement, the procedure for the adoption of the spatial order had to be stopped and the procedure for the adoption of the MSP had to be started. Another important reason for a standstill in the legal arrangement of the status of the Roma settlement is supposedly that the owners of pieces of land where the Roma settlement is located had revoked their authorisations to the (common) attorney-at-law. Hence, the municipality currently did not have a common counterpart on the part of the owners, presenting thus an additional barrier in the integrated solving of the Roma issue. The third reason was supposedly the fact that the municipality turned to the Roma Association with a request to propose two representatives of the Roma community to hold membership in the Commission but the Association had not replied in more than half a year.

On the basis of the answer of the municipality the Ombudsman has determined that the municipality wrongly addressed the request to appoint two representatives of the Roma Community in the Commission. The municipality was warned that such a request should have been addressed to the Roma Community Council of the Republic of Slovenia representing the interests of the Roma community in Slovenia in relation to state authorities. No grounds for justification were detected in the replies of the municipality with regard to the legal arrangement of the Roma settlement. Since the municipality has not adopted the MSP, where the land would be categorised as building land, the municipality cannot apply to national calls to tender aiming at the co-financing of basic municipal infrastructure in the Roma settlements. Within these calls to tender, it is also possible to apply for funds to purchase pieces of land. Lengthy procedures with regard to the arrangement of the settlement pose a threat to the implementation of human and special rights of the Roma community on the one hand, and the exercise of human rights of individuals living in the vicinity of illegal Roma settlements, on the other hand. Both one as well as the others have been affected with regard to their dignity, personal rights, ownership rights, equality before the law, and, last but not least, in their trust in the rule of law.

The Ombudsman has determined that the standstills in legal arrangement and the provision of municipal utility services in Roma settlements are often related to the lack of political will on the part of the local authority. The legalisation of Roma settlements is, as a matter of fact, related to strong opposition on the part of citizens which is why a municipal authority, in their care for their own political survival, often neglect an active resolution of the arrangement of a Roma settlement. This, however, may endanger the goal of the priority field of the National Programme of Measures for Roma for the period 2010 - 2015 ("the NPMR"), that is, the improvement of living conditions and the arrangement of Roma settlements in an orderly manner.

Based on findings regarding standstills in legal arrangement and provision of municipal utility services, particularly in the area of South-East Slovenia, the Ombudsman has proposed to the Government of the Republic of Slovenia, that it impose clear time frames for the adoption of the necessary measures for legal arrangement and the provision of municipal utility services in Roma settlements in phases, in order to make measures from the NPMR happen. The implementation of a clearly defined phase of the procedure might be followed by way of reports by the Commission of the Republic of Slovenia for the protection of a Roma community. If municipalities did not carry out the measures, suitable sanctions would have been envisaged. If any of municipalities delayed with any of the phases of the procedure, the activity of the municipality would have to be immediately taken over by the State. The Government of the Republic of Slovenia is not in favour of this Ombudsman's proposal since it believes that there is too much intervention in the responsibilities of municipalities. **10.1-3/2011**

2.3 RESTRICTION OF PERSONAL LIBERTY

GENERAL

The aim of this chapter is to present findings from initiatives dealt with and relating to the restriction of personal liberty.It deals with persons who have been deprived of their freedom of movement for various reasons; they are detainees, convicted persons serving prison sentences, minors serving juvenile prison sentences, minors in a correctional home, persons serving imprisonment for the enforcement of fines, some persons with mental disorders or illnesses in social and health institutions, aliens in a Centre for Aliens and some applicants for international protection.

2.3.1 Detainees and convicted persons

26 initiatives submitted by detainees (42 in 2010) and 124 initiatives submitted by convicted persons (92 in 2010) were dealt with in 2011. Of these, four initiatives referred to minors in a correctional home. We continued to visit prisons and Radeče Correctional Home which is reported on in the chapter relating to the implementation of tasks and powers under the National Prevention Mechanism.

It has been determined that all recommendations from the 2010 Annual Report are still valid as regards this field since they had not (yet) been fully implemented. Similarly, there were no changes to the indeterminate, deficient or in any other manner inappropriate regulatory framework, as was detected from initiatives. It is a matter of questions related to visits of authorised persons, contacts of convicted persons with journalists, the use of electronic communication means in prisons, submission of data on a person serving a prison sentence, and other issues.

The initiatives submitted by detainees mainly related to problems in connection with the imposed detention and the mere implementation of the detention. The accommodation during the detention was questioned; for example, the housing of a minor together with adults, accommodation in a single living unit, poor equipment of rooms, lack of possibilities for outdoor exercise and reception of visitors and other contacts with persons from the outside world, possibilities for work and other issues they had experienced. Only a small part of the complaints referred to the conduct exercised by prison officers but a greater part referred to the reactions of education services.

A drop in initiatives by detainees may be related to the fact that prisoners are (finally) better informed of the powers and duties and limitations of the Ombudsman in cases of open judicial proceedings. Hence, we generally explained to the detainees their position in terms of the law and legal possibilities available to them in case they disagreed with the imposed detention. When necessary, their accusations were verified at the relevant courts and prisons in which the detention was implemented and we adopted other measures when dealing with their initiatives.

The initiatives by convicted persons related to issues they were facing when serving a prison sentence. These included: poor living conditions, transfer from a more liberal regime for serving their prison sentence to a more rigid regime, transfer into another prison or department (or premises), interruptions and suspensions in serving the prison sentence, occupational injuries, bonuses for work performed, granting or withdrawing of various privileges, health care, entry and use of personal items and other issues.

The accommodation of imprisoned persons must respect human dignity and privacy (particularly sleeping accommodation). The rooms must meet the requirements of health and hygiene regulations; due regard must be paid to climatic conditions, the floor space, the content of air, lighting, heating and ventilation (Recommendation Rec (2006)2 of the Committee of Ministers to Member Sates on the European Prison Rules). We have to operate upon the principle that the perpetrators are sent to prison to serve a sentence and not to be (additionally) punished in the prison. This is also stressed by the ZIKS-2 (Article 4) when it stipulates that a convicted person is granted all rights during the implementation of the prison sentence except those which have been explicitly taken away and limited by means of the law. It can unfortunately be stated that in Slovenian prisons this requirement is (still) not yet fully observed which is why improvements in living accommodation of some prisons are urgent. During our visits to Koper Prison, Nova Gorica Department, several proposals for improvement have been submitted by the Ombudsman's Office until now. It has been determined that conditions have improved in some parts but they have not changed significantly in the detainee department (except for some smaller renewal works), although this would be urgently necessary.

Judgements by the European Court of Human Rights ("the ECHR") in the cases Mandić and Jović vs Slovenia, and Štrucl and others vs. Slovenia, have, in the Ombudsman's opinion, as expected, warned our State about the poor living conditions of persons serving detention and prison sentences in the Ljubljana Prison. The ECHR made a judgement that Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the CPHR") was violated, otherwise stating that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". The ECHR had also determined that our legislation does not provide for an efficient and accessible legal remedy with regard to complaints about living conditions in which applicants served their detention or prison sentence. The need to adopt measures was emphasized which would reduce the number of persons imprisoned in this institution leading to the elimination of conditions which were judged as not respecting the dignity of a great number of persons imprisoned there. In this manner (new) violations of Article 3 of the CPHR would be prevented. The ECHR has also pointed out to the Government of the Republic of Slovenia the observance of the recommendations made by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment and Punishment and have also encouraged Slovenia to develop an effective instrument which would provide a speedy reaction to complaints concerning inadequate conditions of detention and prison sentence and ensure that, when necessary, the transfer of a detainee is ordered, complying with compatible conditions under the Convention. It has also been observed that the lack of financial resources cannot in principle justify prison conditions which are as poor as to reach the threshold of treatment contrary to Article 3 of the Convention and that it is incumbent on the respondent Government to organise its penitentiary system in such a way that ensures respect for the dignity of imprisoned persons regardless of financial or logistical difficulties.

A lot of complaints of convicted persons in the Dob pri Mirni Prison were again dedicated to residence in hospital rooms. As a result, there were also more cases dealing with the violation of patient rights under the Patient Rights Act ("the ZPacP"). The Trebnje Community Health Centre determined that patient rooms in the Dob pri Mirni Prison are not adequately organised that is why the health care is less adequate, of worse quality and providing less safety. The Dob pri Mirni Prison was thus invited to improve the conditions of hygiene in the department with patient rooms. The Prison therefore appointed a person to regularly clean and take care of their patient rooms.

The initiatives of convicted persons relating to the work of prison officers and the use of coercive measures against them were, repeatedly, small in number. But it is right that each prison facility and the Prison Administration of the Republic of Slovenia should adopt all the

necessary measures to clarify circumstances of cases showing potential irregularities in the work of prison officers. The General Director of the Prison Administration of the Republic of Slovenia may, therefore, pursuant to the Rules on Implementation of Powers and Duties of Prison Officers, appoint a special Commission with the task of verifying all circumstances concerning the use of coercive measures. It needs to be repeatedly pointed out that with prisons being crowded, an additional burden is also imposed on professional workers and prison officers. The situation of prison officers and problems they encounter during their work is pointed out in the Chapter on employment relations.

Initiations claiming threats posed to individuals when serving prison sentence are particularly worrying since all reasonable measures must be used to prevent any violence among inmates and to take precautions for the personal safety of every prisoner.

The Reporter magazine and some other media highlighted an event entitled “Rape In Prison” which, allegedly, took place in the Ig Prison. On the basis of the above mentioned reports in the media, the Ombudsman’s Office demanded explanations from the Prison Administration. They replied that the event in the Ig Prison was reported at the end of 2010 and duly dealt with. It is further clear from the reply received from the Prison Administration that in regard to this event all the necessary measures were put in place in order to clarify the case. The Police were immediately informed about the report and also dealt with the case. On the basis of the reply received from the Prison Administration, we believe, that all the necessary measures to clarify the circumstances with regard to this case were actually carried out in the Ig Prison. It needs to be pointed out, however, that such reports (considering their sensitivity) must be particularly speedily and carefully dealt with in order to clarify all facts and circumstances.

Some initiators drew attention to their problems also by means of the (forecasted) hunger strike. When we were informed about the hunger strike we came into contact with initiators and proposed that they use the statutory stipulated procedures for the protection of their rights. The hunger strike is not and cannot be the means to attain any sorts of goals. A convicted person does have the right to complain to the General Director of the Prison Administration when it is the matter of a violation of rights or regarding other irregularities with no provision for judicial protection. If a convicted person does not receive an answer to his/her complaint within 30 days from lodging it, or if he/she is not satisfied with the decision made by the Director General, he/she has the right to file an application to the ministry, responsible for justice (Article 85, Paragraphs 1 and 2, of the ZIKS-1), making a decision on this application in the capacity of the authority of first instance in charge of complaints. It is therefore possible, at this stage, to verify any doubts in regard to an individual decision made by the Director General.

By way of a decision made by the Ministry of Justice (“MJ”) this complaint channel is now closed and additional verification by other authorities is not envisaged. Hence, this is an internal complaint channel available within the framework of the penitentiary system. In addition to this channel, an individual may also use other methods envisaged by the ZIKS-1 in order to enforce and protect the rights of convicted persons. There is also the right to make a complaint to other authorities carrying out the supervision in penitentiary institutions, including submitting the initiative to the Ombudsman. These other authorities may independently make a judgement on the claimed irregularities taking into account their powers and responsibilities. Hence the Ombudsman decides on initiatives of convicted persons independently and autonomously and not in the capacity of an authority of first instance. We agreed in this regard with the Prison Administration that the complaint procedure as defined in Article 8 of the ZIKS-1 is separated from the complaint procedure pursuant to Article 85 of the ZIKS-1 and that convicted persons must also act in accordance with caution concerning the legal remedy and be careful to lodge complaints within the

statutory prescribed deadline. But such existing regulatory framework regarding possibilities of complaints is, in our assessment, not very clear, which is why it will be examined in even more detail in the future. The extent of the legal remedy under Article 83 of the ZIKS-1 is also unclear; under this provision, a convicted person who believes that he/she has been subjected to torture or other cruel methods of inhuman or degrading treatment, may require judicial protection by way of his/her proposal. This has also been determined by the above mentioned judgment of the ECHR in cases Mandić and Jović vs. Slovenia and Štrucl and others vs. Slovenia.

In 2011, (partial) progress as regards the improvement and extension of spatial capacities within the scope of existing prisons was finally made. Within the framework of the project concerning an integrated renewal of the Dob pri Mirni Prison, a construction of two new buildings was concluded holding a capacity of a total of 174 beds. It provides an important contribution to the improvement of living conditions for prisoners and more suitable conditions for the work of employees. According to the assurances made by the Minister of Justice, these new facilities are just a part of a wider reform relating to the implementation of the penitentiary system which are needed in Slovenia (or other judgements issued by the European Court of Human Rights may again be expected in the future). It has to be repeated and pointed out that just creating additional facilities for the accommodation of imprisoned persons alone cannot bring long-term solutions. It has been stressed several times that the use of alternative sanctions which might, according to our assessment more often substitute a prison sentence would contribute the most to reduce the size of prisons and eliminate over crowding.

Also in 2011, the representatives of the Ombudsman visited the Ljubljana Prison (on 11 July) in order to measure the temperature of some living and work rooms. It was determined that in three years since the temperature has been monitored in summer months, the condition has not improved significantly and that the situation is still highly unfavourable, both for inmates as well as for the employees. The Ombudsman is therefore repeatedly drawing her attention to unfavourable living and working conditions in prisons during the highest external summer temperatures and again recommends the adoption of measures to ensure decent living and working conditions (for employees).

In its 2010 Annual Report, the Prison Administration has reported that the provisions of the Act Amending the Enforcement of Criminal Sanctions Act started to be implemented in practice. Under these provisions, there is a possibility of a release n parole with custodial supervision. According to the data collected, some proposals have been submitted to the Courts holding the relevant jurisdiction that a convicted person released on parole be allocated a counsellor. We agree with the Prison Administration that the number of convicted persons (seven) released on parole for whom custodial supervision has been ordered upon their release on parole is not high but it shows that the supervision of convicted persons who are serving their prison sentence during their release on parole has finally begun to be implemented.

The custodial supervision of perpetrators is also envisaged by the Criminal Code (“the KZ-1”) in Article 63, with regard to the ordering of suspended sentences. This provision, as a matter of fact, regulates the suspended sentence with custodial supervision since it stipulates that under the conditions determined by this Criminal Code, the Court may decide that the perpetrator who is given a suspended sentence has to undergo custodial supervision for a certain period of time during the term of suspension. The custodial supervision in this way involves assistance, supervision or custody specified by the law.

The Ombudsman considers the possibility of a suspended sentence with custodial supervision an important substitution for the deprivation of freedom penalty, particularly in cases of short-term prison sentences. In addition, this type of suspended sentence means assistance to the perpetrator during his/her re-socialisation and hence a better chance of not repeating the criminal offence again. But, unfortunately, according to data known to us, this practice is not frequently used in case-law. With regard to our inquiry on potential measures to improve the introduction and the wider use of the ordering of suspended sentences with custodial supervision, the Ministry of Justice communicated to us that it was aware of the advantages of ordering such a criminal sanction and that it believed that (together with other types of criminal sanctions) it extends to the judges an area for manoeuvre when selecting an adequate and appropriate criminal sanction in cases of convictions. The ordering of such a criminal sanction has been increasing in the last years. According to the data by the Statistical Office of the Republic of Slovenia, there were a total of 95 such criminal sanctions ordered in 2010, that is (as compared to the previous year) as much as a 53-percent increase of the use of the above mentioned option. The above mentioned conclusion had strengthened the belief of the Ministry of Justice that Slovenian courts which were co-creating the criminal policy were aware of the importance and the suitability of such a criminal sanction. The Ministry of Justice believed that State Prosecutors might also importantly influence the guidelines in the criminal policy of courts. That is why, when formulating the new State Prosecutor Act ("the ZDT-1"), special attention was dedicated to this fact, since a new instrument is incorporated into the Act, that is the prosecution policy (Article 145 of the ZDT-1).

Similarly, within the extent of preparations for the amendments and modifications of the KZ-1, the Ministry of Justice was particularly attentive to the potential initiatives by Slovenian courts and State Prosecutors which might in any way refer to the potential shortcomings in the regulatory bases, among other matters, also in connection to the above mentioned field. No proposals to modify the regulation of a suspended sentence with custodial supervision, however, were received. Nor were any such proposals received at the level of expert and inter-ministerial coordination. By way of the Act Amending the Criminal Code ("the KZ-1B"), Article 58 of the KZ-1 was, among other matters, amended with a new Paragraph 5 henceforth stipulating that a perpetrator, who admits his guilt under the Criminal Procedure Act when making a first statement on the action of indictment in which for such action a suspended sentence is proposed, or if it is admitted in an agreement with the State Prosecutor, the Court may order a suspended sentence also for criminal offences for which a prison sentence of at least five years is stipulated, determine a prison sentence of up to five years and a term of suspension for up to ten years. The above mentioned amendment therefore extends the possibilities to order suspended sentences as well as suspended sentences with custodial supervision for cases when a perpetrator, in accordance with the new instruments of the Criminal Procedure Act ("the ZKP") will admit his/her guilt before the Court or conclude an agreement with the State Prosecutor confessing guilt.

In addition, the substitution of house detention and community service for a prison sentence has been rearranged in the KZ-1B (in accordance with initiatives from case-law), so that the relevant judicial proceedings are simplified and shortened and the possibilities of their application are extended. Both possible alternative methods of implementing a prison sentence may thus be determined already in the operative part of the judgement. As regards community service the inclusion of custodial supervision is also possible. Under the new arrangement, by way of such work it will be also possible to substitute fines. Additional progress in this field can therefore be expected with these new measures.

Undeniable progress in the field of mental health of convicted persons and detainees for the whole of Slovenia will also be introduced by the operation of the Unit for Forensic Psychiatry, within the scope of the Psychiatry Department of the Maribor University Clinical Centre (in August 2011). But, as forecasted, it will only commence its operation in 2012.

2.3.2 Persons with mental disorders and persons in social welfare institutions

General

In comparison to the previous year a few more initiatives were dealt with in regard to the field referring to deprived freedom of movement as a result of mental disorder or an illness. There were 23 cases relating to the restriction of movement in psychiatric hospitals (18 in the previous year), while eight initiatives were considered as regards persons in social welfare institutions ("the SWI") (five were handled the year before). The majority were related to the Mental Health Act ("the ZDZdr"), specifically, to admission to the treatment without a consent or by means of admitting a person to a secure department of the SWI.

With the application of the ZDZdr it has been demonstrated that the current statutory regulation in this field has numerous shortcomings and that amendments will be necessary. Hence, we have already pointed out to the Ministry of Health ("the MH") some problematic provisions of the ZDZdr. A special Working Group for Monitoring the Implementation of the ZDZdr and the Preparation of Proposals for Amendments of the Act was formed by the Ministry of Health in 2010. But its work came to a standstill. At the end of 2010 the issue was also discussed at the meeting held between the Minister of Health and Minister of Labour, Family and Social Affairs. According to the information from the Ministry of Health, both ministers agreed "that it is not necessary to amend the content of the entire Act but only that urgent modifications and amendments of individual Articles be harmonised". The Ministers also support intensive cooperation in the implementation of the Act, particularly in relation to the planned activities relating to the support for the advocates of rights of persons in the field of mental health. The Ministry of Health and the Ministry of Labour and Social Affairs ("the MLSA"), hence, promptly monitor the implementation of new instruments introduced by the ZDZdr, that is, an Advocate of Rights of Persons in the field of Mental Health and a Community Treatment Coordinator". The Ministry of Health also consented to the modifications of the ZDZdr needed to be adopted in order to eliminate irregularities and assured that the proposal regarding the modifications of the law were still underway. But such a proposal was not (yet) ready until the end of 2011.

Findings from initiatives handled

We have verified claims by initiators by way of inquiries with the providers of psychiatric treatment and social welfare services and programmes. The procedure regarding admittance for treatment in the department under special supervision ("DSP") of a psychiatric hospital without a consent is regulated by the ZDZdr. That is why, in such cases, we explained to the initiators that a person may be admitted to the DSP with a consent or without a consent but under conditions stipulated by the law. The admittance for treatment without a consent may be carried out pursuant to a decision by the Court issued following a proposal for an admittance in the DSP or, in urgent cases, even before the Court Decision is issued if circumstances referred to in Article 39, Paragraph 1 of the ZDZdr have arisen, and if due to the nature of the mental disorder it is urgently necessary to limit the freedom of movement and contacts with the surrounding environment should be prevented. It was also explained to the initiators how the appeal procedure takes place with regard to the conduct pursued by medical workers or their collaborators, regulated by the Patient Right Act ("the ZpacP").

The ZDZdr also regulates the admission of a person into a secure department of the SWI, which, under conditions stipulated by the law, may be carried out without a consent, on the basis of a Court Decision. Since it is stipulated by the ZDZdr that the keeping of a person in a secure department pursuant to a Court Decision may only be determined for a maximum of one year, if it is determined that further retention of a person is necessary, the SWI must propose to the Court that it prolong the retention in the secure department prior to the expiry

of the time period referred to in the Court Decision. Any involuntarily accommodation in the secure department of the SWI where personal liberty is restricted should be, as a matter of fact, considered as an interference with the rights of an individual. In our opinion, the legislator, when determining the maximum permissible time of the detention to one year, had an expert and reasonable argument for such a period of time. Such judicial proceedings may be an assurance for a person detained that no impermissible interference with their human rights and fundamental freedoms will take place. Hence in one of the cases handled we conceded to an initiator that the judicial proceeding should have been carried out in such a manner that the medical condition of a person whose detention was being decided should be taken into account, as well as the said person's capability of understanding the situation and other specific potential circumstances. For these reasons, judges and attorneys-at-law participating in such proceedings should be suitably qualified.

The Ministry of Labour, Family and Social Affairs has assured that it has been striving to eliminate and regulate lack of clarity when in the practice of the social welfare institutions there are various interpretations of the provisions of the ZDZdr regulating the admittance of persons to secure departments. Owing to this lack of clarity various practices have been identified concerning the admittance processes (in the Ombudsman's evaluation, some are also inappropriate) as determined during the visits of the Ombudsman in the capacity of the National Prevention Mechanism. At the end of 2010, for this purpose. the Ministry of Labour, Family and Social Affairs, within the framework of a commission for the verification of secure departments, invited all special SWIs and homes for the elderly to verify departments on the basis of the Rules on staff, technical and premises requirements for institutional care providers and Social Work Centres providing mental health services, and on the verification procedure thereof (Official Gazette of the Republic of Slovenia, No. 97/09, hereinafter referred to as: "Rules"). According to the communication by the Ministry of Labour, Family and Social Affairs, the Verification Commission had already commenced verification procedures on the basis of applications received in 2011; the Rules otherwise stipulate a transitional period when institutions may still provide security services but must simultaneously harmonise all technical conditions as well as their staff within three years, and requirements for premises within five years from its entry into force.

In this regard the Ministry of Labour, Family and Social Affairs also communicated that the group for monitoring advocates of rights of persons in the field of mental health, together with advocates of patient rights started with presentations in special social welfare institutions in June 2011. Since the ZDZdr dictates that each social and welfare institution must publish, in a visible place, a list of rights appertaining to a person under this Act, for this purpose, the Ministry of Labour, Family and Social Affairs prepared leaflets and posters entitled "I desire an Advocate" including all the necessary information together with telephone numbers. The fulfilment of this statutory obligation is verified during our visits to these institutions.

An initiative was also dealt with in which it was pointed out that users of psychiatric services were not invited to participate in the preparation of modifications of the national mental health programme. The initiator also believed that a regular presence of or access to a psychiatrist in residential groups should be provided for at a systemic level which would allow for a timely identification of a worsening of a mental disorder in a user and immediate psychiatric treatment would be provided. The Ministry of Health ("the MH") explained that when formulating the national mental health programme it has been striving all the time to gain the cooperation of representatives of non-governmental organisations. Hence, when formulating the first proposal of the Resolution on the National Mental Health Programme, a representative of one of the non-governmental organisations of users should participate as a member of a working group. There were two other representatives of a non-governmental organisation taking part in the working group for the reform of a

resolution. On the basis of such answer it was assessed that the users of psychiatric services are able to participate in the formulation of a Resolution on the National Mental Health Programme, and it would be also possible (it was possible) to submit comments during the public hearing.

The Ministry of Health explained that it wishes to regulate the field concerning the promotion and protection of mental health in an integrated and systemic manner and improve the accessibility to psychiatric services to all citizens of Slovenia. As regards the presence of psychiatrists in the residential groups, it was explained by the Ministry of Health, that there are 156 psychiatrists working in Slovenia (Institute of Public Health, 2009), and in 2011, there were 49 residential groups functioning only with non-governmental organisations (MLDSA, 2011). Residential groups which are organised and pursued by non-governmental organisations in the field of mental health are mainly intended for persons who have finished an acute treatment and do not need any hospital treatment which is why medical services within the framework of non-hospital public health network satisfy their needs. The Ombudsman believes that the accessibility to psychiatric services needs to be improved in the State as a whole, also within the framework of the non-hospital health network, since long waiting lists and long distances undoubtedly diminish the efficiency of such aid. The question is whether this aid should be provided for the users of psychiatric services living in residential groups within the framework of the residential group or not, is, however, of a more organisational nature.

Ormož Psychiatric Hospital has pointed out the advantages of a constant follow up of patients with the most severe mental disorders in a community for which a network of social, non-governmental and medical services needs to be provided for. Hence it proposed that the psychiatric treatment for this group of patients for whom the average period of hospitalisation has been significantly shortened in the past ten years should be organised in a limited time period following their dismissal from hospital. This treatment would be carried out through psychiatric working groups which would enable these patients the continuation of their treatment in a domestic environment. In this regard, the Ministry of Health has explained that the programme of a community psychiatric treatment was discussed by the Medical Council at its 3rd session in 2008. A Decision was adopted approving the programme and adding it to a list intended for the priority funding in 2009. Since in 2009 and 2010 there was not enough money to finance new medical health programmes, the abovementioned programme was classified under the list ranked for funding only in 2011 and was admitted into financing by means of Annex 2 to the General Agreement for 2011 in the amount of 700,000 euros, within the scope of the available funds. The Ministry of Health otherwise expects the psychiatric hospitals to ensure funds to finance the programme of community psychiatrics by means of a redistribution of funds, in particular, by decreasing the funds for acute hospital treatment since the implementation of the programme of community psychiatry is supposed to have an impact on the reduction of the number of repeated hospitalisations and the shortening of the in-patient length of stay and therefore to lower costs incurred within the scope of acute hospital treatment.

2.3.3 Aliens and applicants for international protection

Two initiatives were received in this field of work in 2011. They referred to the residence of two aliens with restriction of movement in the Centre for Aliens but the handling of their case was not concluded in 2011. Other findings relating to the consideration of initiatives of aliens are described in the Chapter on Administrative Affairs – Aliens. Similarly as in the previous year, in 2011 we visited the Asylum Home in Ljubljana and the Centre for Aliens in our capacity as the National Preventive Mechanism. These findings are reported in more detail in the Chapter referring to the implementation of duties and powers under the National Preventive Mechanism.

The Return Directive (Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals) binds the Member States to ensure an efficient system for monitoring compulsory return. The Police were of the opinion that within its powers and responsibilities it was the Ombudsman that is that suitable institution holding suitable knowledge, experience and authorisation to perform the supervision as stipulated by Article 8, Paragraph 6 of the Return Directive. Hence it asked the Ombudsman to make a stand on the solution of the question regarding the provision of a system to monitor compulsory returns.

The Constitutional Role of the Ombudsman, as defined by Article 159 of the Constitution of the Republic of Slovenia, is the protection of human rights and fundamental freedoms of individuals in their relations with national authorities, local community authorities and holders of public powers. Within the extent of the powers and duties, the Ombudsman generally deals with potential irregularities when warned about them (when an initiative to commence the procedure is received) or has noticed them on her own. But, within the extent of the Ombudsman's powers and duties, no efficient system to monitor compulsory return can be ensured. The Ombudsman already, within the extent of her powers and duties, and also in the capacity of the National Preventive Mechanism, monitors the procedures by police officers, it may also be those relating to the expulsion of aliens, but it is our belief that in this manner it cannot represent an efficient system to monitor compulsory return as requested by the highlighted Directive.

Considering the fact that the Ombudsman's powers and duties are stipulated by the Human Rights Ombudsman Act, it was also observed, that new powers and duties can not be added at all by way of the Rules. Hence, one of the non-governmental organisations which is already engaged with the legal protection of aliens is viewed by us (for example, Legal-Informational Centre – PIC) as a solution for the transposition of the above mentioned Directive into our legislation. This has clearly already been a practice of some EU countries (also according to our data, such monitoring is, for example, in Estonia, carried out by their Red Cross).

Detainees and convicted persons

- The Ombudsman stresses the need to organise the penitentiary system for enforcing prison sentences in a manner which will fully ensure respect for the dignity of imprisoned persons and in this regard the Ombudsman recommends the adoption of measures to ensure decent living conditions for prisoners and suitable working conditions for employees in prisons.
- The Ombudsman points out that that workers in prisons have a duty to ensure proper and lawful conduct with all inmates and by way of reasonable measures to take precautions for their personal safety.
- The Ombudsman recommends a more frequent use of alternative sanctioning measures which would contribute to the reduction and elimination of prison overcrowding.
- The Ombudsman recommends a more frequent use of suspended sentences with custodial supervision since it is considered as an important substitution for the punishment of the deprivation of liberty, particularly in cases of short-term prison sentences.
- The Ombudsman recommends that the Unit for Forensic Psychiatry within the framework of the Psychiatric Department in the Maribor University Clinical Centre should commence its operation as soon as possible.
- The Ombudsman proposes better provision of information to detainees with regard to how they should act if they wish to participate at a judicial hearing.
- The Ombudsman recommends special attention be given in the potential accommodation of minors in detention together with adults.
- The Ombudsman recommends that the measure of isolation or serving a separate prison sentence should only be used for the shortest necessary period of time and be ordered by a relevant Decision and with regular verification of reasons and providing possibilities to challenge it by way of complaint channels.
- The Ombudsman urges the Ministries of Justice and Health to adopt systemic measures and legal bases for an orderly organisation of health care of inmates.
- The Ombudsman proposes a procedure should be defined in more detail which would prevent any unequal treatment of convicted persons when determining the existence of the alleged violation of house rules and when making decisions whether a certain violation of a convicted person will be dealt with only by means of treatment and/or also by way of a disciplinary procedure.
- The Ombudsman repeatedly proposes that more efficient methods of assistance to convicted persons in post-penal treatment and in the final period of their prison sentence be introduced and that the consistent implementation of Article 101 of the ZIKS-1 and Article 107 of the Rules on the Implementation of Prison Sentences be ensured.

Persons with mental disorder and persons in social welfare institutions

- The Ombudsman proposes the preparation of amendments and modifications of the Mental Health Act by which the determined irregularities in its application should be eliminated.
- The Ombudsman proposes better accessibility to psychiatric services, including outside the hospital medical network since long waiting lists and long distances surely decrease the efficiency of such aid.
- The Ombudsman proposes legal regulation for cases in which, owing to an individual's psycho-physical condition the service of the Court Decision may not be possible, and that the method of serving a Decision in such cases be specially regulated.
- The Ombudsman proposes to regulate the use of mobile phones in the house rules of an individual health care institution or social welfare institution so as to result in a uniform treatment of all persons in departments under special supervision or in secure departments.

Aliens

- The Ombudsman invites the Ministry of the Interior to ensure an efficient system of monitoring the compulsory return under the Directive on the returning of illegally staying third-country nationals.

5. Prisons do not act equally upon a suspicion of TB infection

An initiator made a complaint owing to conduct by the staff during his transfer from the Ljubljana Prison to the Dob pri Mirni Prison. There he was isolated even though he warned the employees that he had epileptic fits. Upon his transfer the prison officers who admitted him wore protection masks and he was given one too. Prison officers explained to him that there was a possibility that he could have been infected with the TB bacillus. He was not informed about that in the Ljubljana Prison.

Following the inquiry by the Ombudsman the Prison Administration of the Republic of Slovenia explained that in the Ljubljana Prison the initiator lived together with an inmate who was diagnosed with a suspicion of an infection with the TB bacillus during his lung examination. The Golnik Hospital had also included the initiator on a list of contact persons and informed the Ljubljana Prison about the date of his examination. The decision regarding the isolation of the initiator was adopted by the health care service of the Dob pri Mirni Prison, following the instruction of the responsible doctor of the Trebnje Community Health Care Centre. During the medical examination which was carried out only on the fourth day following the transfer into the Dob pri Mirni Prison, a TB infection was ruled out which is why the initiator was accommodated in the prison medical wing.

It is not clear from the reply received from the Prison Administration when and who in the Ljubljana Prison had potentially informed the initiator about the possibility of the TB bacillus infection, or who had explicitly warned him about this possibility and whether he was taken to the scheduled medical examination in the Golnik Hospital on 4 April 2011. That is why additional explanations were required from the Prison Administration.

Upon our additional inquiry, the Prison Administration informed us that pursuant to the report of the Ljubljana Prison's doctor it was clear that the information on the possibility of a TB infection was submitted to all inmates who were in contact with the supposedly infected convicted person. That is why it is possible to conclude that the initiator had already been familiar with the possibility of the infection in the Ljubljana Prison, except he did not respond to the invitation to an examination in the Prison's clinic since, according to the doctor's statements, he refused examinations several times.

Hence, the answer of the Prison Administration only provided an assumption that the initiator was informed about the possibility of the TB infection in the Ljubljana Prison. In the Ombudsman's opinion, the health care service of Ljubljana Prison should have informed him about this fact and have clearly written it. Then it would be also easier to compare procedures with convicted persons who came in contact with the infected persons. Hence the conduct of prisons was completely different: in the Ljubljana Prison the initiator was not isolated and he did not use the protection mask. In this case the health care service of the Ljubljana Prison even made an assessment that with regard to contacts without the signs for TB infection no preventive measures (masks, isolation) need to be provided, while upon the transfer of the initiator, the health care service in the Dob pri Mirni Prison introduced precisely such measures. Such a diverse treatment is, surely, worrying, and in the Ombudsman's opinion, it has to be dealt with. On the basis of the situation determined, the Ombudsman recommends that the Prison Administration should take care that health care service in all prisons will have uniform instructions for their actions upon the occurrence of an infection with the TB bacillus. Such instructions may be obtained from a relevant professional institution.

The Ombudsman also recommends that all persons affected should be informed of the necessary measures (it may be also in a written form) and make a record of this fact in their medical documentation.

If a convicted person who was exposed to contact with the TB bacillus must be transferred to another prison, measures between prisons should not differ. And with a potential lack of clarity, in any case, the convicted person should have been examined by a doctor before the transfer.

In our opinion the initiative was justified. In order for such cases as the one mentioned above not to happen again, we informed the Prison Administration of the Ombudsman's findings.
2.2-19/2011

6. It is not all the same in what conditions persons on secure departments live

An initiator turned to the Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") who has a young son with a mental disorder and who was admitted to a special social welfare institution on the basis of a Court Decision. The initiator pointed out two issues: firstly, completely inappropriate conditions in which her son now lives, and, at the same time, she also drew attention to the lack of space for the institutional protection of younger persons with a mental disorder.

We visited the initiator's son, had an interview with him and inspected conditions in which he lives. We also assessed that he lives in an unsuitable place, that is, in a small, poorly lighted and transitional room through which the staff access a handy dispensary several times a day. The floor is covered with tiles. There is no alarm-call bell in the room.

The director of the institution is aware of the fact that the accommodation in this case is not adequate but currently there is no other room available. They had to admit the initiator's son since this was imposed on them by the Court by means of the Decision which did not take into account their complaint that the secure department was full and that there was no suitable place available. The initiator's son assured us that he is satisfied with his accommodation since he finds it more important to have a one-bed room on his own, even though the room is of lower quality. Since the institution submitted its opinion to the Court that the initiator's son, in fact, fulfils the conditions for admission to their secure department, it is assumed that, in the institution, he will receive suitable care, protection and expert treatment which is why the procedure in this case was not continued. The case discussed has reopened the question regarding the issue of the applicable regulation of admittance in secure departments of social welfare institutions on the basis of Court Decisions. The State which enabled such admittance by way of the law should also provide enough suitable facilities. Hence, the initiative was considered justified. With regard to the issue described, we will again draw this to the attention of the Ministry of Labour, Family and Social Affairs suggesting to them that they adopt appropriate solutions. **2.4-1/2011**

2.4 ADMINISTRATION OF JUSTICE

GENERAL

As in 2010, the number of cases handled relating to the field of judicial proceedings decreased in 2011, precisely, from 504 in 2010 to 473 in 2011. Of this number, 257 cases referred to the field of civil proceedings and relationships, 71 to criminal proceedings, 22 to proceedings before labour and social courts, 9 cases were related to administrative judicial proceedings and 96 to minor offences. Initiatives are again divided between those referring to the long lasting element of judicial proceedings and the very numerous ones relating to the quality of judicial decision-making.

2.4.1 Findings from initiatives handled

The content of initiatives received and relating to the field of civil law was varied, as previous years, this is the most extensive field of law regulating numerous dynamic and varied relationships in private law. Initiatives referred to unsolved questions regarding inheritance, ownership rights, relationships between neighbours, disputes arising from contractual relations between individual persons and individual persons and companies, questions relating to divorce, child support (both of children as well as support of former spouses) and other.

The Ombudsman has no powers in relation to individuals as individual legal persons. If parties cannot agree on the arrangement of their mutual disputed relations, then there is usually no other possibility than to resort to the judiciary. Judicial proceedings are time-consuming, costly and their result is uncertain. That is why as an alternative to the judicial settlement of disputes, mediation is increasingly becoming established. In our country, disputes have been resolved by way of mediation for ten years. According to the data of the Ministry of Justice, there were 2239 cases settled before courts by way of mediation in 2010, which is 100 percent more than in 2009. It is a method of peaceful resolution of a dispute which is often more efficient, faster and particularly cheaper than any potential initiation or continuation of a dispute resolution before the court. By means of mutual amenability parties strive to find a solution to finally satisfy everybody and to take into account the interests of all parties involved. Hence, we always inform initiators about the option to resolve their dispute by way of mediation.

The majority of initiatives received also showed the social hardship being tackled by an increasingly large number of individuals. Generally, actual legal assistance and advice offered by the Ombudsman in relation to their case was expected from the Ombudsman (in most times indirectly and sometimes also directly). Since the Ombudsman has no powers or authorities to provide legal aid, we informed the initiators mainly about options they have to protect and enforce their rights in individual judicial (but also administrative) proceedings, or we referred them to other relevant channels for the resolution of the case. We directed them, when necessary, so as to provide themselves with the assistance of an attorney-at-law at the expenses of the State within the framework of free legal aid, if they were eligible to receive it as a result of poor financial and material condition.

Similarly this year, we wish to particularly highlight initiatives in which initiators drew attention to the lengthy time element of proceedings, both judicial as well as in proceedings with regard to the granting of free legal aid. The review of such cases has sometimes shown, though, that some initiatives were not always justified since the reasons for lengthy

proceedings were due to initiators themselves or as a result of opposing parties involved in the proceedings. In some cases, initiators have not (yet) used the (acceleratory) legal remedies available to parties in proceedings in accordance with the Protection of Right to Trial without Undue Delay Act. We advised such initiators to lodge an application for an individual acceleratory legal remedy within the extent of the actual proceedings, such as the right of scrutiny and a motion for a deadline. When, on the basis of circumstances, it was determined that our intervention was necessary, we made inquiries at courts. These, as a rule, regularly responded to our inquiries and, in some cases we dealt with, it might have been determined that our inquiry was justified and that it triggered further action in the consideration of the case. Some example cases are presented among the cases selected.

Since, with the unjustified delay of (judicial) proceedings, conditions are met for the Ombudsman to intervene, we also reacted in cases reported by the public media. Hence, also owing to the article published in the Slovenske novice newspaper and entitled "Bojan Kajnta's Death will apparently Fall under Limitation", an enquiry was carried out at the Celje District State Prosecutor's Office. It is evident from their reply that tasks they are bound to carry out under the law were performed in a very short period of time, and that the Office lodged an indictment on 16 March 2009. Since the main hearing had not yet been called, we turned to the Celje District Court to clarify the circumstances in terms of time. The Court communicated to us that the main hearing had been called for the end of 2011, while taking into consideration the case's priority when dealing with criminal cases. Pursuant to the Decree No. Su 170001/2011 of the President of the Court, the case would be resolved by giving it priority treatment. The communication of the Court thus made grounds for the conclusion that the case was dealt with in accordance with the provisions of the Judicial Regulations regarding case priority, whilst simultaneously, the imposed priority resolution of the case will provide for its faster handling and conclusion of the criminal case before its limitation.

We also dealt with some cases related to the delays in a new trial at first instance following the return of the case from the appellant or the revising Court. In such a case, similarly, we turn to the Court by way of an inquiry regarding reasons leading to the delay in the consideration of the case. Usually, as a result, the handling of the case is brought forward.

On the basis of initiatives received it has also been noticed that proceedings at first and second instance are truly getting shorter but decision-making at the Supreme Court of the Republic of Slovenia is still delayed even though the number of unsolved cases has been reduced by this particular Court by 38 percent. Hence, in one of the cases considered, more than two years have lapsed from the time of lodging the revision to the decision made by the revising Court. Even though it is a matter of an extraordinary legal remedy leading to the provision of unity of the legal order, and the uniform application of the law, the original purpose is still to ensure the appropriate and lawful decision in an actual dispute. Hence, it is undoubtedly in the interests of any party, that a revision is (also) speedily decided upon and without undue delay.

The need to conclude judicial proceedings in reasonable time has again been pointed out to Slovenia by some judgements of the European Court of Human Rights ("the ECHR"). As a matter of fact, the Ombudsman has been drawing attention to the unreasonably lengthy judicial proceedings for several years; since, not only is the constitutional right to trial in reasonable time thus violated, they may cause a great deal of suffering to an individual or prolong his/her hardship. Social and labour disputes are particularly highlighted as well as proceedings involving children (for example, owing to sexual abuse). The cases considered have also included a case in which almost seven years have passed from the report of a criminal offence to the calling of the main hearing in relation to a criminal offence involving a person with mental disorder. Hence, in the Ombudsman's opinion we need to insist on eliminating court backlogs and eliminate all cases of long waits for the commencement of the trial or hearing and judicial proceedings which take too long.

It is encouraging that courts in 2011 repeatedly resolved more cases than received for their consideration, even in spite of a high caseload (in 2010, 0.2% fewer cases were received by the court for their resolution than in the previous year). The finding of the Supreme Court of the Republic of Slovenia requires particular attention, that is, that commercial disputes, criminal cases, insolvency proceedings and execution of a claim by way of seizing real estate have become critical. At the same time, some shortcomings have been determined in some courts (for example, poor management of the caseload, disproportion in staffing with regard to the caseload of courts, inappropriate age structure of the unsolved cases, as stated in the document by the Supreme Court of the Republic of Slovenia: Javna otvoritev sodnega leta 2012 ("Public Opening of Judicial Year of 2012")). Hence, the Ombudsman supports the adopted measures and proposals for solutions made by the Supreme Court of the Republic of Slovenia in order to improve the situation related to the decrease of the backlog of cases, resolution of older unsolved cases, acceleration of proceedings relating to business operations taking place before courts, unburdening of judges and levelling of human resources.

A technological modernisation of the Slovenian judiciary is intended to shorten judicial proceedings. With the introduction of audio recording of all hearings (used since 1 October 2010), the improvement of the technical equipment of courts, centres for social work and other users of video-conference systems in the judiciary was completed. The audio recording enables the examination of witnesses, experts, children, patients, prisoners and other participants in remote judicial proceedings. The Ombudsman also considers this an important addition as its purpose is not only to shorten judicial proceedings but also to bring them closer to the parties and to reduce their costs. We thus encourage the Ministry of Justice and the Supreme Court of the Republic of Slovenia to continually strive for projects aiming at the simplification of judicial proceedings, bringing them closer to users and thus increasing the efficiency of courts.

2.4.2 Quality of judicial decision-making

As mentioned several times, and most recently also in the 2010 Report, the judiciary itself will be the one to contribute to its reputation only by issuing quality Court Decisions while providing for trial without undue delay. However, again we encountered numerous initiatives in which individuals stated that the issued Court Decision was illegal (or inappropriate) and other irregularities experienced during the work of the court were mentioned. Some such reproaches were also directed towards Court Decisions issued by the appellant court in contentious proceedings where the access to a revision is increasingly more limited and hence, too, the supervision over the work of these courts.

The quality of judicial decision-making is undoubtedly also influenced by the quality of regulations which are the basis for the decision made by the Court which is why special attention needs to be dedicated to this aspect when amending and modifying regulations.

Priority resolution of cases on account of non-priority cases

The case priority at courts is determined by Article 13(a) of the Courts Act. The fundamental criteria for the case priority applied in the resolution of cases is the time when the case was submitted to the Court and priority treatment is given only to those cases determined as such by the law (for example, detention). A judge, when determining the case priority of other cases, in addition to the time when the case has been submitted to the Court, may also take into account the type, nature and significance of the case. In one of the cases considered (non-priority case, its indictment was made final on 13 March 2008 but in the beginning of 2011 it had still not been prioritised), the Judge explained that owing to the main hearings of urgent and extensive cases involving detention almost no hearing of cases not involving detention had been fixed since September 2010 onwards.

This kind of information is worrying in the Ombudsman's opinion, since, as a result, the decision-making in other cases (not involving detention) is obviously put aside to an undetermined time in the future which, however, might also indicate a violation of the right to trial in reasonable time. As a matter of fact, the court makes decisions during judicial holidays only in urgent cases. Apart from this exception, courts are, according to our assessment, bound to also solve other cases regardless of the number of priority cases. The proportion of priority and other cases being handled must be set in reasonable relation to each other so that, so far as possible, parties involved in non-priority cases are ensured the right to trial without undue delay.

The President of the Court agreed with the finding of the Ombudsman, but commented that this relationship cannot be determined in advance, which is why, in this regard, it is not possible to adopt any advance measures. The uniform workload of judges with cases involving detention is, as a matter of fact, ensured by way of keeping a special record on the incoming cases involving detention. The President of the Court also pointed out that, by way of the Act Amending the Courts Act, specialized departments for trials in more demanding cases related to organised and commercial crime, terrorism, corruption and other similar criminal offences have been established. Since these cases will also have the status of priority (it is expected, however, that they might be extraordinarily complicated both, in terms of legal as well as wider aspects), their resolution will have a serious impact on delays in the resolution of non-priority cases. The prevention of delays should, however, be solved on a systemic level since only by implementing existing provisions regarding Judicial Regulations, will such prevention be possible, in the President's assessment.

Allocation of cases to a duly appointed judge

The right of everybody that his/her rights and obligations and allegations against person be decided upon without any undue delay, and by an independent, impartial court constituted by the law, and particularly, that a case may only be tried by a judge who is selected according to the rules, stipulated in advance by the law and Judicial Regulations is provided for in Constitution (Article 23). This constitutional right must be ensured to everybody by a consistent use of rules regulating such right (particularly Article 160 of the Judicial Regulations), or an individual may be deprived of it.

In this regard, a case of an initiator was dealt. He expressed his doubts that a lawful judge was hearing in criminal proceedings. A private action was lodged against the said initiator (on 26 June 2008) which was determined as uncompleted by the Court. As such, it was recorded in the IV Kr entry record and the Court requested the plaintiff to supplement the application. The application with which the private action was supplemented was equipped with three stamps on the incoming document: it is evident from the first one that the Court received the application on 5 September 2008, it can be deduced from the second one that it was received in the Office for Criminal Cases on 10 September 2008, and the third that it was received in the Office for Criminal Cases 9 October 2008. On 1 October 2008, a decree was written by hand on this application, stating: "to entry into the "K" record file". This application was, however, following the explanation of the Court, actually written in the K record file only on 9 October 2008 when its resolution was also allocated to a judge. A judicial advisor, according to the explanation of the Court, gave the decree to record the case in the II K record (only) on 9 October 2008, which was consequently considered as the date of lodging of the private action and on this basis the case was allocated to the judge according to the list of that day.

On the basis of the above mentioned facts, the Ombudsman assessed that the doubts of the initiator regarding the allocation of the highlighted criminal case to the lawful judge (in accordance with Article 160 of the Judicial Regulations) may be justified. Hence, the Ombudsman pointed this out to the President of the Court and the Minster of Justice who are responsible for the implementation of the provisions of Judicial Proceedings, in accordance with Article 6 of the Judicial Regulations.

The President of the Court assessed, as a matter of fact, that the actual case was allocated to the lawful judge and at the same time pointed out that it was an open criminal case and that in the actual case a judgement would be made by way of a final decision. The Ministry o Justice also informed us that they asked the President of the Higher Court to carry out an assessment of the judicial administration in accordance with the provisions of Article 67, Paragraph 3 of the Courts Act. But after the explanation received from the President of the Higher Court, stating that the allocation of the case into the open criminal case presented an objection of a legal nature which can be and must be decided only by the Senate of the first-instance Court, obviously, he did not insist on the request for the assessment. The position of the President of the Ljubljana Higher Court was, as a matter of fact, that the observance and implementation of regulations dealing with the allocation of cases to judges fell under the responsibility of the President of the Court. He also remarked that only responsible judges or the senates making decisions on the charge, objection or the extraordinary legal remedy may take a stand regarding the objections concerning improper allocation in an open court case. If the responsible judges determine violations of rules regarding the allocation of cases, only following the final decision in the case, the President or Presidents of higher-instance courts may verify reasons for the violation of rules. In spite of that, the Ministry of Justice informed us that the explanation of Article 160 of the Judicial Regulations was being prepared. The standpoint of the Ministry of Justice, however, was deduced from the subsequently received answer, that the date of the lodging of an initial procedural document is considered the date of entry of the initial procedural document in the main relevant record, in accordance with the Court Decree after the assessment (formal test) is carried out, while taking into consideration the provisions of Article 160 of the Judicial Regulations.

In our judgement, such an interpretation of Article 160 of the Judicial Regulations may be dubious since in the procedure concerning the allocation of cases it leaves grounds for doubt that an individual case is really allocated to the lawful judge. The date of recording the procedural document into the main relevant record, as a matter of fact, would be, in this case, dependant on the date of the issue of the Court Decree (that is, on an exclusively subjective circumstance) which is why, according to the Ombudsman's standpoint, it cannot by any means, be considered as the date of arrival or the date of lodging the initial procedural document since, in our opinion, the Judicial Regulations determine just the contrary: the date of the arrival of the application (as an objective fact) is the only circumstance in terms of time (without any possibility of ay external influence) which can and must be a criteria to record the entry of the received document into the record. It is and must be clearly evident from the incoming document stamp on the application when the application arrives at the Court. Only if the entry in the relevant record is exclusively dependent on the daily received documents (as clearly stipulated by Article 160 in Paragraph 2, indent 1 of Judicial Regulations), there could be no doubt of the accidental, natural or duly appointed judge who is ensured to everybody in accordance with Article 23, Paragraph 2 of the Constitution of the Republic of Slovenia. If the arrival of a certain document is treated in accordance with the Court Decree, and even by means of an indefinite, optional time delay (since the position of the Ministry of Justice does not even require that such a Decree be issued immediately after the arrival of a document or at once), the doubt about the appropriate allocation of the procedural document cannot be overruled. The issue of such a Decree is as a matter of fact, also dependant on subjective circumstances.

The position of the Ministry of Justice, stating that "the date of lodging of an initial procedural document is considered the date of entry of the initial procedural document in the main relevant record, in accordance with the Court Decree after the assessment (formal test) is carried out", thus, according to our standpoint, does not entirely provide for the enforcement of the constitutional right to a judge duly appointed pursuant to rules previously established by law and by Judicial Regulations. Hence, it was proposed the Ministry of Justice should re-examine or at least supplement its interpretation (if necessary at all with regard to the

application of Article 160 of Judicial Regulations). After re-examining their position, the Ministry of Justice communicated that, deriving from the actual case, a general interpretation cannot be formed or assessed, that it is the matter of an urgently needed interpretation since such interpretation may be founded on a legal assessment of circumstances which are the subject of the court trying the case (in open court proceedings). Neither is it possible to give a general interpretation if all other potential cases of recording incomplete applications and transfer of cases in other entry records after being supplemented are previously not examined and an analysis of their use in the practice is carried out. These are cases which, according to the communication of the Ministry of Justice, will be possible to be examined and analysed only within the extent of the planned renewal of Judicial Regulations when it will be possible to formulate more accurate rules regarding the entry of incomplete applications, on their allocation and their transfer to relevant entry records if they were initially entered into an ancillary entry record (for example, "Kr"). According to the communication by the Ministry of Justice, this is an important issue which will have to be examined in detail in the future. It is expected that the Ministry of Justice will fulfil its given announcement as soon as possible since it is undeniably a very important aspect concerning the enforcement of the right to judicial protection.

2.4.3 Free legal aid

By means of free legal aid (FLA), the State helps socially deprived persons in enforcing their right to judicial protection. The Free Legal Aid Act ("the ZBPP-UPB1 and ZBPP-B") stipulating the procedure of the allocation of the FLA and conditions which must be fulfilled to obtain the FLA, was not (yet) amended in 2011. The Act Amending the Criminal Procedure Act ("the ZKP-K"), however, introduced an amendment of Article 4 of the ZKP by way of a provision which in terms of its content is equal to the provision deleted in 2008 with Article 38 of the Act Amending the Free Legal Aid Act (ZBPP-B, OG RS, No. 23/08). According to the explanation of the Ministry of Justice, the obligation from the field of international law is being fulfilled with the proposal for the amendment, precisely, the obligation referred to in Article 14, Paragraph 3, item (d) of the International Covenant on Civil and Political Rights, concerning the free-of-charge advocate provided for by the State if so requested in the interests of the justice. Such advocate provided for by the State in the interests of justice, may be ensured in practice particularly to younger adults or other particularly vulnerable persons (for example, persons with disabilities, victims of family violence who themselves have allegedly committed a criminal offence, and others) who have been arrested by the Police due to the suspicion of a criminal offence and who have also been deprived of their liberty. In this manner, the principle of the rule of law (and thus the right to fair trial) and the principle of the social state are simultaneously implemented.

The number of cases related to the allocation of free legal aid has been increasing at courts in the past years. This is supposedly a consequence of the general financial crisis and regulations imposing additional obligations to courts in this field, particularly the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act ("the ZFPPIPP") which has introduced proceedings related to personal bankruptcy, and its amending Act ("the ZFPPIPP-A") which has introduced the possibility to obtain free legal aid in the form of an advance payment to cover the initial costs of bankruptcy proceedings of legal persons about which, however, upon their adoption, the opinion was given that "there are no financial consequences" (summarised according to the Annual Report of the Supreme Court of the Republic of Slovenia for 2010),

The growth of the caseload of these cases at courts is evidently shown also with delays in their resolution. In addition to cases referring to disappointment over the decision that the applicant was not eligible to FLA (most frequently as a result of exceeding the financial threshold), other cases considered included initiatives referring to the lengthy assessment of the applications

for FLA. The cases dealt with thus also included a case when the Court needed almost a year to decide on such an application. The Court found excuses for such reasons in a great caseload of applications for FLA which has been increasing every year. At the same time the Court pointed out that there was a staff turnover present in the FLA service. Upon such a delay in making judgements, a question is posed to us, whether the FLA received so late by an individual is any longer reasonable. We particularly question ourselves whether with such delays it is still possible to talk about fast and efficient judicial protection, when an individual waits for one year for legal aid to initiate the proceedings where his/her rights and obligations will be decided upon. Considering the statement of the Court that applications are increasing every day, this time period may even be prolonged which is obviously worrying and requires the adoption of measures for the improvement of the situation.

2.4.4 Minor offences

The number of cases considered in this field increased in 2011. We dealt with 96 cases (79 in the previous year). Initiators again made complaints over the decisions issued in a procedure concerning minor offences. Disappointed over the treatment of the case and/or unsatisfied with the decision issued, they also complained about inappropriate conduct, impartial treatment (for example, while using the same regulations for the same minor offence, the traffic wardens allegedly applied double standards), non-observance of facts and other complaints with regard to the right to fair proceedings. But some initiators indicated false statements made by minor offence bodies or circumstances which allegedly indicate false and incomplete determination of the actual situation in the minor offence proceedings.

This time, again, initiatives prevailed which related to the treatment of traffic offences which are, as a matter of fact, by far the greatest number of misdemeanours in our country. The majority of these initiatives was fixed on the work of the Police in the capacity of an offence body and only few on the work of the traffic wardens and other offence bodies (such as, for example, the Market Inspectorate). This is understandable since the Police still carry out the supervision over laws and regulations, with which minor offences are determined, to the greatest extent. Again we would like to point out offences owing to improper parking since they show the distress of people as a result of the lack of parking spaces, particularly in larger city centres.

Neither was there a lack of initiatives relating to penalties imposed regarding the revoking of a driving licence and difficulties in which individuals found themselves as a result of this punishment. Contrary to previous years, this time we received more initiatives relating to the confiscation of objects, particularly automobiles, in accordance with the Minor Offences Act (“the ZP-1”) and the new Act on Rules in Road Transport (“the ZPrCP”). The legal basis for the confiscation of items is Article 25 of the ZP-1 where it is also stated that, by way of the law stipulating a minor offence, a compulsory confiscation of an object (with which the misdemeanour was committed) is prescribed. One of such Acts is the ZPrCP (OG RS, No. 109/2010, application: since 1 July 2011) prescribing such confiscation in Article 23.

Some initiatives referred to the replacement of a fine with the performance of tasks which are intended for the general benefit of society or the local self-governing community or there were initiatives that somehow related differently to the incapacity to pay the fine imposed. We also encountered cases where the limitation occurred as a result of time-consuming proceedings, as a result of which the minor offence proceedings were not permissible any longer.

While considering the limited powers of the Ombudsman in open legal proceedings, we mainly explained to the initiators how they might enforce their arguments regarding the alleged misdemeanour and which judicial remedies were (still) at their disposal if they were not satisfied with the issued Decision. We pointed out that disappointment with the determined actual situation cannot be the reason for applying for an extraordinary legal remedy in minor offence proceedings.

2.4.5 Fine enforcement by imprisonment

The Ombudsman has encountered the issue of fine enforcement by imprisonment ever since the entry into force of the Minor Offences Act ("the ZP-1") pursuant to which decisions and judgements on minor offences are (also) determined by way of the determination of fine enforcement by imprisonment. This was also described in the 2010 Annual Report. It has been determined that the Act amending the ZP-1 ("ZP-1G") did not take into account the modifications proposed by the Ombudsman but even abolished the possibility that persons who are already serving fine enforcement by imprisonment propose by themselves the replacement of the fine payment with the performance of tasks intended for the general benefit of the public or the benefit of the self-governing local community (community service). Up until now, all amending acts of the ZP-1 have thus ignored the warnings of (at least one part) of the discipline opposing this measure pointing out doubts relating to the constitutionality of the fine enforcement by imprisonment. The Ombudsman believes that there is no legal and constitutional basis since in accordance with the established constitutional judicial assessment it does not even pass the so-called test of legitimacy. In addition, its introduction into our legal order is problematic from several aspects and the regulation itself is lacking. Since the Ombudsman believes that Article 19, Paragraph 1 of the ZP-1 is contrary to Article 19 of the Constitution and not in compliance with the principles of the rule of law (Article 2 of the Constitution), it made a proposal to the Constitutional Court of the Republic of Slovenia in the beginning of 2012 to assess the constitutionality of Article 19, Paragraph 1 of the ZP-1 and repeal it as incompliant with the Constitution since, in the Ombudsman's belief, it interferes with human rights and fundamental freedoms in an unacceptable manner.

2.4.6 State prosecution office

In the field regarding pre-trial proceedings, where initiatives are handled that are mostly related to the work of State Prosecutors, 25 cases were dealt with (29 in 2010).

Similarly, in 2011, in most cases considered, initiatives relating to the work of State Prosecutors referred to the powers and duties of a State Prosecutors in the pre-criminal and criminal proceedings, or they were related to initiatives to lodge a request for the protection of legality as an extraordinary legal remedy under the ZP-1. Most frequently they expressed disagreement with the report of an offence, or the initiators complained due to the long lasting decision-making regarding the report lodged, or because of other delays in the work of the State Prosecutor's Office, and due to the lack of information regarding the procedure in which the report lodged was being handled.

Several initiatives made reproaches relating to too little diligence and the quality of work by State Prosecutors. Similarly to the resolution of a case without undue delay, it is also important for an individual that the decision made by a State Prosecutor is impartial, professional in nature, correct and lawful in actual terms as well as from a legal perspective. It is worth repeating how important it is that the reasons stated in the Decision on the Rejection of the Information are comprehensive, logical, convincing and explained in a manner understandable to a (lay) applicant of the information. A correction of a potentially wrong decision, when it is the case of a rejection of information, is (at least) the right of the aggrieved party in order to initiate or continue with the criminal prosecution. Cases encountered by the Ombudsman hereby show that the aggrieved parties rarely decide to initiate criminal proceedings by themselves even though they may be informed about such a possibility. But they more frequently express their disappointment with the decision of a State Prosecutor and reasons for the rejection of the information by submitting an initiative to the Ombudsman, and also by way of a complaint addressed to the superior State Prosecutor. This may thus be an opportunity for an expert review in an individual case which was strengthened by the ZDT-1 It is also right that upon potential determined shortcomings or other greater irregularities the necessary measures are adopted to eliminate such issues and to provide better work in the future.

2.4.7 Attorneyship

There were also initiatives referring to the work of attorneys-at-law that were dealt with among the initiatives in the field of the administration of justice. They were slightly more in number than compared to 2010. Initiatives generally reproached lawyers about the poor quality of their legal advice and representation, non-fulfilment of agreements (for example, the lodging of an action), inappropriate conduct, negligence in relation to the client's interests and other actions which, in the initiators' opinion, indicated a breach of their duties on the part of attorneys-at-law in conducting their profession, and disappointment of other kinds relating to their work (for example, in the calculation of their services). Some cases considered also reproached lawyers for their services not being performed in a conscientious and diligent manner when carrying out free legal aid (FLA). More initiators, who did turn to the bodies of the Bar Association of Slovenia (BAS) with their complaints over the actions of their lawyers, were disappointed with the answers received, particularly in cases, when the Disciplinary Prosecutor, on the basis of their notification, did not request the initiation of a disciplinary procedure against a lawyer.

The attorneyship can neither be included among state authorities nor can attorneys-at-law be holders of public authorities which is why the consideration of complaints regarding their work is not under the direct responsibility of the Ombudsman. Although a lawyer is autonomous and independent in his/her work, this does not indicate that he/she may perform his/her work in an irresponsible manner, which has always been emphasized. A complaint against the work of an attorney-at-law is dealt with by disciplinary bodies of the Association, in accordance with the Attorneyship Act and the Statute of the Bar Association of Slovenia The supervision over the work of lawyers continues to be indirectly performed by the Ombudsman, through the supervision of the BAS, particularly in the part where the Association holds public powers. The Ombudsman particularly intervenes in time-consuming decision making performed by bodies of the BAS on the future outcome of a notification against the conduct of individual lawyers, or if it is believed that the assessment of an individual notification was not diligent enough. But the Ombudsman has no possibility of lodging legal remedies against decisions made by disciplinary bodies or even to modify their decisions.

2.4.8 Notaries

In 2011, the Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") received five initiations related to the field of notaries (one of them referred to the calculation of the notary service fee). Of these, two were justified, one was not, and in two cases the procedure before the Ombudsman was stopped as a result of the lack of cooperation on the part of the initiator. A modest caseload of initiatives in this field (none was received in 2010, 2008 and 2007, and only one was received in 2009) makes it possible to determine that the operation of notaries as a public service is adequately regulated, and that, as a rule, there are no violations of rights of individuals in need of a notary public's service.

As regards the performance of a notary as a public service, this is a sensitive segment of the operation of the State which has an important influence on the provision of legal protection in the State. The cconsequences of improper or even unlawful operation of the notary service may also be fatal for a user of such service, and his/her legal certainty threatened.

The Ministry of Justice ("the MJ") is also aware of this fact. The MJ started to plan modifications of the Notary Act, specifically with regard to tightening the disciplinary responsibility of notaries. In a similar way to the prevention of the improper operation of notaries, the supervision over the legality of their operation is also important. Such supervision, which, however, must be efficient and regular, may importantly influence the regularity and legality of the operation of notaries, by way of its preventive function. According to the statements

by the Ministry of justice, the supervision over the legality of operation of notaries, which is carried out both, by the Ministry of Justice as well as the Chamber of Notaries, has been strengthened since 2010 onwards. According to the assurances given by the Ministry of Justice, the supervision is supposed to be carried out systematically and the results of the supervision show that the legality and the regularity of the operation of notaries have improved. The Ombudsman supports such efforts to improve this segment of the operation of the State since the notary, as a public service, plays an important role in the provision and upkeep of the legal protection of individuals.

SUMMARY OF PROPOSALS AND RECOMMENDATIONS

- The Ombudsman supports the elimination of court backlogs and recommends the adoption of the necessary measures for the elimination of all cases of lengthy waiting for the initiation of judicial decision-making or overly long-lasting court proceedings.
- Upon the ensured trial without undue delay, the Ombudsman points out the importance of diligently run court proceedings which should be concluded by issuing court decisions of quality.
- The Ombudsman proposes a resolution of cases such that the proportion of priority and non- priority cases under consideration is in a reasonable proportion so that parties involved in non-priority cases are assured the right to trial without undue delay in the best way possible.
- The Ombudsman supports intensive work in projects with the goal of simplifying court proceedings, bringing them thus closer to the user and increasing the efficiency of courts in this manner.
- The Ombudsman recommends the adoption as soon as possible of the Criminal Code for Minors which has been forecasted by the KZ-1
- The Ombudsman proposes to the Ministry of Justice that it should prudently examine the application of Article 160 of Judicial Proceedings and possibly the preparation of more accurate rules regarding the entry of incomplete applications, their allocation and transfer in relevant entry records, since this is viewed as an important aspect of implementing the right to judicial protection.
- The Ombudsman believes that, in proceedings relating to the suspension of serving a prison sentence, Courts should make applicants more familiar with a potential determination that an expert must be engaged to asses facts and that this may be related to relatively high costs.
- The Ombudsman proposes that channels and proceedings should be reviewed by Courts aiming to determine and ensure the traceability of documents and evidence lodged by parties in judicial records directly at the hearing.

SUMMARY OF PROPOSALS AND RECOMMENDATIONS

- The Ombudsman supports and encourages the preparation of modifications and amendments of regulations in the pursuit of greater efficiency of execution in a manner that the constitutional and procedural warranties of debtors will not be threatened.
- The Ombudsman notes a lack of action by the State and responsible institutions to protect the position of a debtor in execution proceedings. These should be oriented towards raising the awareness of individuals of the potential consequences as a result of non-fulfilment of one's own obligations. Actual help and advice should be given when such persons are found in debt but have no knowledge as to where and how to solve the problem.
- The Ombudsman recommends a consistent implementation of supervision over legality and regularity of the operation of enforcement officers.
- The Ombudsman proposes that the Ministry of Justice prudently examine the Ombudsman's proposal for the improvement of the situation in the field of designated experts.
- The Ombudsman proposes the adoption of measures for faster resolution of applications for free legal aid.
- The Ombudsman emphasizes that even in the proceedings on minor offences, a violator should be guaranteed fair proceedings.
- The Ombudsman proposes to reflect on the proportionality of the amount of some court fees in proceedings on minor offences in a manner that will not completely divert the eligible parties from applying for a legal remedy.
- The Ombudsman proposes to the Bar Association of Slovenia that it give more attention to the efficiency of work of its disciplinary bodies and ensure fast, efficient and objective decision-making on notifications lodged against lawyers.
- The Ombudsman recommends a consistent implementation of supervision over legality and regularity of the operation of notaries.

7. Tragic consequences of successive errors made by Police and Court

An initiator from Ljubljana stated that her (now already) deceased son received a summons to be a defendant by the Ljubljana District Court in a case under the Ref. No. II Pom 23621/2009. There had been a request for an investigation issued by the Maribor District State Prosecutor's Office attached to the summons, and in that document data of some other person from Maribor with the same name and surname as held by her son were stated. The summons distressed the initiator and her son. Her son gave a written statement addressed to the Ljubljana District Court - Investigation Department in which he gave his details and informed them of the mistake which had occurred. They brought the statement to the mailroom of the Ljubljana District Court and then they also appeared before the Court where, in the presence of the initiator, a Senior Councillor of Justice held an interview with her son. Her son demonstrated his identity with his presence, birth certificate and a personal document but the Senior Councillor of Justice stated that there were numerous charges in his name. She advised him to consult a lawyer with a comment that "I really do not know how will you get yourself out of these workings". The determination of his identity did not bring any relief to her son but, instead, a threat that he would even have to defend himself against acts he had not done. According to the words by the Higher Councillor of Justice, a search of premises might even be expected and he might be brought by force to Maribor. For such a sensitive and vulnerable boy as the initiator's son was, this was such a severe burden that soon afterwards he, in despair, committed suicide.

The initiator's son had had a bad experience with the Police in the past since ten years ago he was brutally attacked by a plain-clothes criminal police officer which left severe consequences on him and a fear of the Police. She questioned herself why her son had been summoned to the Court as a defendant and how, after the determination of his identity, he was still burdened with a threat that he would have to defend himself in Maribor for something not related to him. The initiator was justified in questioning herself how the administration of the Slovenian judiciary works and how the national institutions use the data base on citizens. Lastly, documentation arrived to her address, involving actions of people unknown to her, in which there was a substantial amount of confidential data.

The Maribor District Court explained to the initiator that in the consideration of one of requests for investigation with the Maribor Police Directorate ("PD"), enquires were made in which the Court from the Maribor PPU, Criminal Police Investigation Section ("CPI") received a written reply with a notification that this person resides at the address of the initiator. Hence, the documentation in this case was then referred to the Ljubljana District Court which also summoned her son to the hearing.

In the continuation of the consideration of the case, the Ombudsman found that the copies of the request for the investigation on the information regarding the birth and the personal identification number (EMŠO) of the suspect were corrected by hand without making it clear who corrected these pieces of data, and when. We firstly requested an explanation from the Ljubljana District Court with regard to their conduct after receiving the information that the person who had received the summons by the Court (with spelling and other mistakes) was obviously not the one summoned by the Court. We have especially emphasized our finding that, in spite of the submitted formal letter in which the initiator's son explained the obvious mistake in the summons to the Court, the hearing of the initiator's son was carried out as he was the defendant. A great deficiency was hereby determined, specifically, that it does not derive from the minutes that the Court actually did establish the identity of the person being examined, nor were his personal documents compared to data from the request for investigation and any conclusions were adopted although the summoned person warned them about that.

The Court explained that a request by the Maribor District Court was received together with a request to examine the defendant with the same name as that held by the initiator's son. A judicial advisor determined the defendant's identity according to a standard form of the "Minutes on the Examination of Defendant", used in examination by all judges and presented the subject matter of the examination to the defendant and informed him of rights applicable to the defendant. She entered into the Minutes what the defendant said. Since she detected severe distress on the part of her son, she advised the initiator to authorise a lawyer in the continuation of the proceedings. Since, after the examination, the documentation was returned to the Maribor District Court, according to the (then) temporary President of the Ljubljana District Court, however, on the basis of existing data, it was not possible to accurately determine whether the initiator's son was "the right or the wrong person". But she agreed with our finding that it should derive from the Minutes of the examination of the defendant that a different identity of a person was determined as it derived from the request by the Maribor District Court.

We, at the Ombudsman's Office, were not satisfied with the answer and during the repeated intervention at the Court we pointed out that such communications showed that the Court in this case did not perform the establishing of the identity of the person who was involved in the examination performed since the temporary President obviously could not determine who actually was the person involved in the examination by the Ljubljana District Court. This occurred even though the initiator's son was right in front of the judicial advisor presenting a personal document and birth certificate (giving evidence of the correct identity of the examined person) and there was also a person stating that she was the mother of the person summoned. They both warned the judicial advisor that the person mentioned in the summons of the Court and in the request of the General State Prosecutor's Office to perform the investigation was obviously some other person than the one summoned.

In our repeated formal letter to the Ljubljana District Court we also pointed out statements of the initiator with regard to improper communication including mocking and other unnecessary verbal comments by the judicial advisor and the typist when her son responded to questions set. According to our evaluation, such conduct of judicial staff is absolutely unacceptable, particularly the fact that the judicial advisor obviously detected the severe distress of her son. Advice, which really was not proper advice, additionally hurt the initiator's son. If the judicial advisor (or the Court) had performed her task in a correct manner, that is, firstly establishing the identity of the invited person, such "advice" would not have been needed at all. In its reply to our finding the Court merely communicated that the documentation of the case was not at their disposal and that they deeply regretted the tragic event. We also turned to the Ministry of the Interior ("MI") in this case, requesting an explanation of the conduct by the Maribor PD with regard to the request by the Maribor District Court about the residence of a person with the name of the initiator's son. The Ministry of the Interior communicated that the review of the documentation showed that a criminal police officer from the CPI of the Maribor PD prepared a formal letter for the Court in which a wrong address of the person sought was stated. On the basis of this finding, the Office of the Director of the Maribor PD submitted the letter of the Ombudsman to the Specialised Department with the Office of the State Prosecutor General of the Republic of Slovenia, for further procedure. The leading officers of the PD interviewed the criminal police officer who prepared the formal letter during which he was warned about the mistake committed and a more consistent performance of duties at work was asked of him, but no other measures were implemented.

Hence, the reply from the Maribor PD left us without any explanation of circumstances as to how such a great mistake in establishing the identity of a defendant could have happened. The measures by the Maribor PD were obviously adopted only on the basis of a review of documentation and not to consider the suspicion of a criminal offence of the careless work performance. As regards this issue the case is still under consideration by

the Specialised Department of the Office of the State Prosecutor General of the Republic of Slovenia. In spite of this, we asked the Ministry of the Interior to provide us with a further explanation and required their reply be supplemented with an explanation as to how it was actually possible for the mistake in the identity of the defendant to happen together with submitting the wrong information on his residence to the Court. We were also interested whether the mistake was possibly due to systemic reasons, whether it is possible for a similar mistake to reappear at some other time and, if so, what measures were adopted for such a mistake not to happen again. We also asked for a justification of the decisions by the Maribor PD, with regard to the seriousness of the mistake made, to (only) carry out an interview with the criminal police officer in question without initiating any other procedure against him.

In the opinion of the Ministry of the Interior, there was no systemic error in this case but a "combination of circumstances such as non-transparently condensed notations of personal data, very similar personal data of two persons, and human error". According to the evaluation of the leading officers of the Maribor PD, the adopted measure against the criminal police officer (that is, a warning regarding the conscientious performance of tasks) was sufficient for the further professional and lawful performance of tasks. At the same time it was remarked that the management of the Maribor PD evaluated that within the system of national authorities and services, an error made by a criminal police officer should not significantly influence the procedure regarding the establishing of an identity and further proceedings before the Court. The Maribor PD, as a matter of fact, sincerely apologized to the initiator for the mistake made by the criminal police officer.

The documentation collected (answers received to our enquires and replies received) in this case undoubtedly show the mistake made by the criminal police officer of the CI of the Maribor PD when he sent wrong data on the residence of the sought person to the Maribor District Court. This mistake of the criminal police officer was also the reason for the summoning of the initiator's son as a defendant to the Ljubljana District Court. This, however, as was already stressed in the intervention with the then temporary President of the Ljubljana District Court, did not perform the establishing of the identity of the person involved in the examination which was performed. The Ombudsman has therefore determined that the proceedings of the Court were not suitable and considered the initiative as justified.

At the end of the consideration of this initiative we made a question addressed to the Ljubljana District Court whether the highlighted case was considered in any manner and whether measures were adopted for similar irregularities not to recur. The President of the Court communicated in this matter that the tragic event points out the urgency of greater caution when verifying and establishing personal identity. But it believes that disciplinary action against the judicial advisor and typist who were engaged in the actual case is not reasonable since the latter had already retired and the judiciary advisor is in the process of being retired. The Court deeply regrets the tragic event but the President communicated that it is not the general practice of the Court to apologize or express their condolences to the party, or in this case, to the initiator. Such a standpoint of the President of the Court is, in the Human Rights Ombudsman's opinion, particularly worrying since it deprives a directly affected individual, in this case the mother of the deceased son, of her human dignity. **6.0-51/2010**

8. Almost seven years have passed from lodging of information to calling first main hearing

In 2004 the initiators informed the Police about a suspicion of a criminal offence of a sexual abuse of their daughter with mental disorder. A person accompanying a group on holiday was suspected of committing this criminal offence. Ever since December 2004 when the initiators responded to the invitation of the District State Prosecutor's Office in Koper, the initiators have received no information regarding further handling of this case.

Upon an enquiry by the Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman"), the Koper State Prosecutor's Office communicated that in this case the charge was lodged in January 2008, and the last procedural action was performed in March 2008 when the Koper District Court decided on the objection against the charge (it was made final on 13 March 2008). The report was received by the State Prosecutor's Office on19 November 2004 and it submitted a proposal to carry out individual investigation actions on 6 December 2004 (after the investigation actions, the document was returned to the State Prosecutor's Office on 18 January 2005). Then, on 25 January 2005, the State Prosecutor's Office lodged a request for investigation and after the completed investigation (the document was received on 5 June 2007), on 9 July 2007, proposed the investigation be supplemented (after the supplementing of the investigation, the document was received on 19 December 2007).

Considering such data, we turned to the Koper District Court. A judge who dealt with the case in question explained that he had been dealing only with urgent extensive cases involving detention since September 2010 onwards which is why cases not involving detention (such as the case of initiators) he "almost did not list". But he communicated that, "with regard to the formal letter by the Human Rights Ombudsman", he listed the main hearing in the case in question for 14 and 21 July 2011 (in his subsequent reply he, as a matter of fact, explained that when fixing the main hearing he followed the proposal of a counsel of a defendant of 11 March 2011 and 5 April 2011, that is on the date, when the Court received our enquiry, he fixed the main hearing). The fixed main hearing, however, was later postponed on the proposal of the defendant's counsel due to annual leave and with her explanation that the defendant did not want a person substituting her at the main hearing. The postponement of the main hearing by the counsel was even asked for (only) by telephone, precisely, on the day before the fixed main hearing (she was informed about its fixation already on 7 April 2011!). The main hearing thus actually started only on 6 September 2011.

The Ombudsman evaluated the initiative as justified since it is unacceptable that from the report of a criminal offence to the fixation of the main hearing date with regard to a criminal offence against a person with mental disorder so much time had passed. It is an unacceptably long period of time to elapse from the report to the lodging of the charge and later by the fixation of the main hearing date. Obviously, it was only the intervention of the Ombudsman that contributed to the new move in the consideration of the case. **6.2-4/2011**

9. Notifications sent to wrong addresses of violators

An initiator turned to the Ombudsman owing to the incorrect serving of a notification of a minor offence. Instead of receiving a notification of a minor offence referring to the initiator, he received a notification addressed to another person. He assumed that this person received his notification.

We turned to the Office of the Minister of the Interior and requested an explanation of what measures were adopted as a result of an obviously erroneous serving of an item of mail. The

Ministry of the Interior explained that the minor offence body had simultaneously conducted a procedure against three persons in this case. Pursuant to Article 55, Paragraph 4 of the Minor Offences Act (ZP–1), a notification to a violator was drawn up for every person in order for the said person to make a statement regarding the facts and circumstances of the committed minor offence. During the preparation of postal items, or rather when placing the notifications into an envelope, however, an error occurred in the administration department so that the initiator in fact received the notification intended for another person whereas his notification was received by a third person. The management of the Police Station carried out a thorough interview with the person responsible for the dispatching of notifications. She was warned about the mistake made and was instructed on the proper procedure. The Information Commissioner also initiated a procedure against the said person with regard to the violation, pursuant to the Personal Data Protection Act (ZVOP-1). Indisputably, the official had failed to carry out the proper action when dispatching notifications to individual violators since she was not careful enough when placing letters about submitting a statement on a minor offence into envelopes. That is why the Police Station sent all three persons an explanatory note on the circumstances of the error made and at the same time an apology was made.

The Ombudsman assessed that in the handled case all relevant measures were adopted with regard to the irregularities made during the dispatching of letter items. The minor offence body apologized to the affected persons which is why there was no need for our further action. **6.6 - 50/2011.**

2.5 POLICE PROCEDURES

GENERAL

Slightly fewer initiatives were dealt with in 2011 that related to police procedures (100, while 117 were considered in the previous year). The operation of the Police, its organisation and duties is stipulated by the Police Act ("ZPol") which was not amended or modified in 2011, with the exception of an intervention into its provisions by the ZDT-1. But similarly, the expected integrated renewal of the Police legislation and organisation and definition of duties of the Police and their powers has not yet been implemented.

2.5.1 Findings from cases handled

Initiators who, prior to the filing of their initiation before the Ombudsman, had not taken advantage of the possibility for a direct appeal under Article 28 of the Zpol in order to ensure themselves the consideration of alleged irregularity within the extent of the system in which it was allegedly committed, were generally directed to use this legal channel. Only if this complaint channel did not fulfil expectations of appellants did we pursue enquiries with the Ministry of the Interior ("the MI") and carried out other measures when dealing with the case. We also acted similarly in all cases where it was assessed that an appellant's allegations demanded our immediate action.

It has been established with satisfaction that the Ministry of the Interior and the Police responded to our findings in this year as well, and mostly our proposals, opinions, criticisms or recommendations were taken into account.

The majority of initiatives, this year, also referred to the work of the Police as the minor offence authority. The Police were, for example, reproached because of inappropriate consideration of road accidents, improper determination of actual situations with regard to the alleged misdemeanour, lack of action in the violation of traffic signs and similar. The Ombudsman's Office itself has determined that the Police deal with objections made by violators in a too casual manner and practically does not carry out a confirmatory procedure but many times just sum up findings of a police officer and statement of an offender. It is within our powers to advise the use of legal remedies, stipulated by the Minor Offences Act ("the ZP-1"), principally to initiators in these cases and when necessary enquiries with regard to alleged irregularities are performed at the Ministry of the Interior.

Some of those cases have been highlighted with regard to the initiations considered in this field where it was again pointed out that police officers in police cars allegedly also violated provisions of traffic regulations. Rules and conditions regarding participation in road transport are regulated by way of various laws and apply equally to all participants, hence, including police officers. Police officers must likewise act in accordance with traffic signs except when they carry out official duties (urgent action) but in this case they must warn other participants in road transport accordingly, i.e. with light and sound signals.

But we do encourage the practice of the Police to inform all (minor offence) bodies within its organisation on the irregularities established since the repetition of a similar or the same mistake by another minor offence body is thus prevented. A state authority (including the Police) must at least express its apology to an affected individual. Hence we welcome the activity by the Police when they apologize for the mistake make and we encourage such

conduct in the future. For example, one of the initiators received a reply by the Uniform Police Directorate together with their explanation on a discovered false entry of the initiator's case in a computer application causing the court fee to be wrongly submitted for its enforcement. After determining the mistake, the minor offence body immediately revoked the incorrect enforcement of fine and sincerely apologized to the initiator.

The other section of initiations is related to the use of police powers which police officers can use when preventing, detecting or investigating criminal offences, when detecting and catching perpetrators, wanted persons and handing them over to responsible bodies and when collecting evidence and examining circumstances which are necessary to determine the proceeds made from criminal offences. Initiators reproached several irregularities made by police officers, for example, irregularities committed during interviews with children, when confiscating objects, during imposed detention, during the use of coercive measures, production of persons in court and similar.

It is correct that powers and official tasks are carried out by police officers in a resolute manner. In fact, the Police must interfere if a task from within its powers is considered. But taking action by the Police may only be performed within powers granted to police officers and backed by legal basis in the law. Police officers must also be considerate and tactful when involved in procedures with citizens in order not to unnecessarily disturb them or impose unnecessary obligations on them. A police officer is bound by due correctness and politeness in every procedure with an individual. It cannot be ignored that the respect for human personality and his/her dignity must also be ensured in criminal procedures and other legal proceedings, including during the deprivation of liberty. The use of coercive measures is obviously not acceptable if there is no legal basis for their use or if a person has already been restrained.

It is again frequently determined that statements of an initiator and explanations by the Police differ in the decisive facts which relate to the procedures by police officers with an initiator which is why it was not always possible to establish the actual situation regarding the police conduct.

Initiatives have to be pointed out which relate to the actions taken by police officers in cases of family violence. The Ministry of the Interior communicated to us, with regard to one of the cases considered, that they had informed the General Police Directorate about its finding made when solving complaints that police officers poorly determine the actual situation and issue payment orders for misdemeanour to both parties involved in a violation. Hence they proposed that, within the extent of training and additional training, police officers be trained for better recognition of actual circumstances concerning a violation, particularly minor offences committed in private space, and for determining the responsibility for a committed misdemeanour.

The next set of cases relates to the consideration of cases in which omission of action by police officers was reproached with regard to complaints submitted or requests for their intervention given. As a general rule, in both cases mentioned above, we turned to the Ministry of the Interior enquiring about the activities carried out by the Police in response to the complaints received. Police officers, as a matter of fact, must respond to every emergency call, verify an individual report or a request for their intervention and take appropriate action if this be demonstrated as necessary during their intervention, promptly , speedily and efficiently take care for the protection of rights of an individual. It is worth stressing that information on the progress of a procedure or criminal proceedings is also important to potential victims of criminal offences in order to protect their interests and rights. Hence, the Police (similarly to the Office of the Prosecutor) must not overlook its role held for the protection of victims of criminal offences, and in particular its necessary careful attention and support when solving their problems as a result of criminal offences, for example, the feeling of being threatened or in danger because of their testimony.

We also verified reproaches that the Police do not intervene because of frequent shootings in the Roma settlement Žabjek-Brezje. It was possible to detect in the answer received by the Ministry of the Interior that the Police, when they are informed about alleged violations in a Roma settlement, respond but in certain cases they are really not fully successful with the action they take. The answer shows that the Police (police officers from the Novo Mesto PD, in particular) make many efforts as efficiently as possible to solve the issue of any shooting (together with other issues) in the Roma settlements, including the Žabjek settlement. When they fail during their first intervention, they continue with their activities and by way of collecting information they carry out additional measures. In any case, we accept such operation by the Police with our approval and it is also encouraged for the future.

In the past years, the Police have made a great leap forward, also in our opinion, in the provision of safety in areas with multiethnic communities since, on the basis of various guidelines and other legal documents, it have been carrying out tasks in these areas for several years. In past years the Police has also been carrying out tasks under the National Programme of Measures for the Roma of the Government of the Republic of Slovenia and a project "Training of Police Officers for Work in Multi-Ethnic Society" is being carried out. This project is the fundamental basis for the successful work of the Police in this field. Individual Police Directorates have developed special plans related to the work in these areas and are adapted to the issue encountered there. Particularly active tasks in this field are carried out by the Novo Mesto Police Directorate where this issue is more prominent.

2.5.2 Shortcomings in appeal procedures

It has been established that some formal letters by individuals who were not satisfied with the action taken by the Police were only dealt with as an application in accordance with Article 16 of Paragraph 1 of the Decree on Administrative Operations and not as a complaint under the provision of Article 28 of the Police Act. The Ministry of the Interior agrees in this regard with the Ombudsman's opinion that formal letters including comments on the work of police officers, when this is only possible with regard to Article 28 of the Police Act, must be considered as complaints against the work of police officers since the supervision by the Ministry of the Interior as well as the public over the implementation of repression powers of the Police is thus ensured. And yet another case indicated that the appeal channel was possibly kept from participants in a considered case.

It has already been stressed that a complaint submitted by an individual pursuant to Article 28 of the Police Act must be dealt with and reflected on, taking into consideration all aspects of the matter. Generally, it must be first considered and all facts have to be verified by the Head of the organisation unit of the Police in which a police officer works and to which the complaint refers or his authorised senior officer. The duty concerning the clarification of all questions and dilemmas relating to the considered complaint thus lies with the Head of the organisation unit or a person determined by the Rules on Resolution of Complaints. At the same time, the said Rules likewise binds a person authorised by the Minister who has been allocated to solving the case mentioned in the complaint to thoroughly review the case dealt with in the previous procedures. If it is assessed that additional evidence or additional activities must be collected to clarify individual facts and evidence, he may request from the Head of the organisation unit that additional measures be implemented. And when individual procedures or the entire procedure concerning the verification of a complaint must be repeated, the person authorised by the Minister must propose to the Head of the internal organisation unit of the Ministry that they appoint a rapporteur who must verify a complaint and prepare a report for its consideration at the Senate. The person authorised by the Minister or the Head of the Senate may also request from the rapporteur the implementation of additional measures for the clarification of facts concerning the complaint and to supplement the report. The Rules on Resolution of Complaints thus stipulate several potential measures at the normative level to determine the

actual situation which is the basis for the decision on a complaint. The burden of proof and the duty to take all actions necessary to clarify reproaches in complaints are also held, in practice, by the Police and the Ministry of the Interior, that is, the State.

But some initiatives considered indicate this is not always true. In one of the cases considered, in a complaint (when complaining because of detention imposed) an initiator clearly made a complaint that he had been taken into detention "half naked". This complaint was also highlighted by the person authorised by the appellant at the session of the Senate. In spite of that, the Senate did not verify the complaints regarding this statement. In its answer to the complaint, the Senate for Complaints wrote that it was not possible to determine if the initiator was in his underwear during the imposed detention and when accommodated in the detention room since the police officers asserted that the given person wore short trousers which did not look like underwear. It seems that the explanations of the police officer were satisfactory enough for the Senate for Complaints and no additional verification in any manner was required (for example, by a diligent review of the image from the supervision camera in the detention room or by interviewing the officer on duty who supervised the detention of the initiator, by making additional questions to the initiator and police officers and similar). The Senate did not even question how the initiator was dressed when returning home after the detention if he had been detained "half naked".

During our visit of the Maribor Police Station I where the said person was detained, we verified this circumstance by ourselves and found that the reproach in the complaint given by the initiator was justified in this part The Maribor Police Station I did arrange the initiator's transfer home at the end of the initiator's detention. This was written in a duty report by a police officer who carried out the transportation (including the statement that the initiator "was only wearing underwear"). In addition, when visiting the initiator we were able to satisfy ourselves that the initiator used a classic type of underwear (of grey colour) which definitely did not look like short trousers. This shortcoming in the appellant procedure, however, with other circumstances regarding the case of the said initiator, generated doubt about the regularity of other findings from the appellant procedure since it was indicated that the complaint by the initiator was not diligently dealt with.

2.5.3 Private security and traffic warden services

There was again no initiative among the ones considered in 2011 to require our action taken against the conduct by traffic wardens. A new Private Security Act ("the ZZasV-1") was adopted in this field, together with the Rules on Implementation of the Private Security Act. Likewise, we did not receive any initiatives in relation to the use of powers of municipal traffic wardens which might interfere with the right of an individual. Some initiatives referring to the municipal traffic warden service in the capacity of a minor offence body are, similarly this time, pointed out in the chapter: Administration of Justice - Minor Offences.

- The Ombudsman proposes that the Police, particularly with regard to its work as the minor offence body (for example, when dealing with road accidents), should not to consider objections against their work in a superficial and casual manner but to carefully examine every appeal by examining evidence and providing for sufficient possibility for the defendant to challenge any incriminating statement if this is considered urgent by the given person. When doing so it should not only rely on the findings by a police officer or a statement by an offender.

- The Ombudsman recommends the Police to also inform all units within its organisation when determining irregularities during their work in order to prevent the same or a similar mistake to be repeated. The conduct of a state authority (including the Police) in relation to an affected individual also requires a relevant apology to the said person for the mistake made.

- The Ombudsman recognizes the positive progress made by the Police in the provision of safety in some areas with multi-ethnic communities in the Roma settlements while at the same time the Ombudsman recommends more efficient operation and faster reaction for the protection of life and property of people.

- The Ombudsman recommends the Police should carefully consider applications by individuals including statements that by means of an action or omission of such action by a police officer, their rights and freedoms have been violated, as a complaint against the work of police officers in accordance with Article 28 of the Police Act.

- The Ombudsman recommends that all bodies (the Police, courts) carry out all procedures as a priority and as fast as possible (without undue delay) when treating persons received under the Act on a European Arrest Warrant and in Surrender Procedures.

- The Ombudsman welcomes the policy of work of the Police in the field of investigating criminal offences against labour relations and social protection and proposes even more active cooperation with inspection services.

10. Inattention of police officers in operations with certificate on iems confiscated from person in detention

An initiator stated that on 2 December 2009 workers of the Murska Sobota Police Station (PS), among other items, confiscated the keys of the building in which he lives. Since after more than a year they were not returned, he turned to the Murska Sobota PS and the Murska Sobota Police Directorate (PD). There they referred him to the Office of the State Prosecutor General of the Republic of Slovenia who referred him back to the Murska Sobota Police Station. He did not receive any answer by the Murska Sobota PS following his written request to have the keys returned, neither were the confiscated keys returned to him. The initiator made a complaint against the conduct by police officers in which, among other matters, he emphasized that police officers also confiscated items which were not written in the certificate at the time of the confiscation of items.

The Ministry of the Interior ("the MI") explained that on the day that the initiator was arrested by police officers of the Murska Sobota PS pursuant to the Decree by the Murska Sobota District Court to bring the said person in the Maribor Prison, Police officers confiscated items from the initiator which were not allowed to be held with a person during his/her detention. These items also included keys with a keychain. It was also established that the first copy of a certificate on items confiscated from the detained person (JRM-2) written by a police officer (but not also signed) was inexplicably found on the initiator. But there was no copy of this certificate in the file. According to the statements by the police officer, the confiscated items were returned to the initiator when he was taken to the Maribor Prison. When verifying his complaint, no keys were found at the Murska Sobota PS or at the Murska Sobota PD. The MI therefore concluded that, considering the above mentioned, it was impossible to confirm the initiator's statements that police officers did not return his keys.

We were surprised at the conclusion made by the Ministry of the Interior. We warned the MI in our additional intervention that the Senate for Complaints also verified the statements of the initiator in his complaint with regard to the recording of the confiscation of items. Although the Senate was also informed about the original certificate on items confiscated from a person in detention (which was at the disposal of the initiator and not signed, as a matter of fact), the Senate concluded in regard to this part, that members of the Senate could not confirm the statements of the initiator expressed in his complaint. This conclusion of Senate was evaluated as at least too hasty. We believe that in an appellant procedure regarding statements from a complaint, it must at least be determined how many certificates on the confiscation of items were issued (if there were more of them) and also which of the certificates are "valid" and why not all certificates are found in the documentation of the case and how many items were confiscated from the initiator and how many returned. On the basis of the above mentioned, additional explanations regarding the confiscation of items and their return were required from the Ministry of the Interior.

In its additional answer the Ministry of the Interior, among other matters, explained that the Senate for Complaints did not take a stand with regard to the certificate on confiscated items which was at the disposal of the initiator owing to the question of its authenticity and followed the findings of a rapporteur that other items, except for those written on the certificate on the confiscation of items, police officers did not confiscate. But the Ministry of the Interior communicated that they are aware that the "situation occurred (the failure to unquestionably prove that keys with the keychain were actually returned by police officers to the initiator), among other matters, also as a result of poor attention on the part of police officers when operating with the certificate on items confiscated from a person in detention." In order to avoid potential further complications the Ministry of the Interior thus notified us that they were willing to find a solution, together with the initiator, which would be acceptable both, for the initiator as well as for the Police.

We assessed the initiation as justified. In fact, the initiator proved his statements regarding the confiscation of keys by means of the certificate which was at his disposal while the Police obviously had no evidence that the confiscated keys were actually returned. If police officers had also confiscated keys with the keychain to the initiator as a result of his being detained, they should have returned them to him at the end of detention and recorded it adequately. In this case, police officers obviously did not take care of that. Hence, we proposed to the initiator, if as a result of this act any damage was incurred to him, to turn to the Ministry of the Interior with a request for compensation for damage and define the damage incurred as this demonstrated his willingness to find a suitable solution. **6.1-5/2011**

11. Irregularities in the issued decision on minor offence

An initiator asked the Ombudsman to intervene since she believed that police officers at the Žalec Police Station (PS) failed to act lawfully when she reported an act of violence. As a matter of fact, she turned to them as a victim of a (criminal) offence but the police officers treated her as the perpetrator of the offence and issued a payment order imposing the payment of a fine on her in the amount of 625.94 euros. The initiator filed an objection against that but the minor offence body then issued a Decision with which a reprimand was issued for the alleged violation.

The Ombudsman could not consider the case in question in terms of its content (i.e., whether the initiator had committed the offence or not) since facts and circumstances regarding the offence may only be determined in a procedure and in a manner stipulated by the Minor Offences Act ("the ZP-1"). But the Ombudsman did find out certain shortcomings in the issued Decision on the Minor Offence. The destiny of the payment order is, as a matter of fact, not clear from the Decision, which was the subject of the initiator's appeal while the caution in the Decision stipulated that no request for judicial protection is allowed against this Decree. Considering the provision of Article 23 of the Constitution of the Republic of Slovenia giving the right to everybody to have their rights and duties and complaints against them independently and impartially decided upon and without undue delay by a lawfully established court, and considering provisions of the ZP-1, the Ombudsman requested the Ministry of the Interior to explain the legal basis for writing such a caution. We also requested an explanation regarding subsequent destiny of the payment order which was objected to by the initiator.

The Ministry of the Interior confirmed that irregularities were actually committed in the procedure concerning the offence to the disadvantage of the initiator. Hence, the minor offence body did not determine by way of a decision on the minor offence that this should replace the issued payment order, and this was not eliminated. But in fact it was determined that the implementation of the payment order was stopped as if the order had been eliminated. Likewise, the MI found that the minor offence body did violate the right of the initiator to use the legal remedy by way of illegal caution. That is why the Ministry of the Interior required the minor offence body to eliminate the determined procedural irregularities.

The Ombudsman obviously assessed the initiative as justified and pointed out the need to the Ministry of the Interior that all minor offence bodies within its organisation should be informed about the inappropriate action of authorized persons in this case in order to prevent the repetition of a similar case. **6.1-44/2011**

2.6 ADMINISTRATIVE MATTERS

GENERAL

In the field of administrative matters 379 cases were dealt with in 2001, which is approximately as much as in 2010.

2.6.1 Citizenship

In 2011, 19 initiatives were handled, while 11 were dealt with in the previous year. Questions raised by initiators mainly referred to information regarding conditions for the their naturalisation and Slovenian citizenship. The erased persons of Slovenia also turned to the Ombudsman because they believed that owing to the erase they are entitled to the citizenship of the Republic of Slovenia. We explained to everybody their status and conditions for the granting of citizenship.

2.6.2 Aliens

The number of initiatives considered stood at 42 which is slightly less than in 2010. Aliens mainly asked the Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") how to obtain individual types of residence permits in our country. We explained to initiators the possibilities stipulated by regulations on aliens. In 2011, the National Assembly adopted a new Aliens Act ("the Ztuj-2"). Upon the adoption of this Act, the Ombudsman gave some observations regarding the proposal of this Act, particularly, with regard to Article 49 which refers to the integration of the family and the right to the integration of the family, with regard to Article 53 which defines the residence permit under other justified reasons and for the interests of the Republic of Slovenia. We proposed a new Article 77 (a) concerning unaccompanied alien minors. Our observations also referred to the modification of Article 84 regulating the procedure with aliens under age. Some of our comments were adopted but, unfortunately, not all of them. We particularly draw attention to the non-adoption of the proposed new Article 77 (a) of the proposal. The Ombudsman reiterates that the ZTuju-2 should include a new Article with regard to the permission to the permitted stay of underage aliens not accompanied by parents or other legal representative since their stay in the Republic of Slovenia is of essential importance for this category of aliens. All decisions of a custodian are considered a special case and must in fact be adopted in the best interests of a child.

In 2011, a request to control the constitutionality of the International Protection Act ("the ZMZ-UPB2") was submitted to the Constitutional Court of the Republic of Slovenia with regard to the concept of the third safe state.

2.6.3 Denationalization

The initiators turned to the Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") because of lengthy procedures and for explanations regarding the returning of nationalised property to the agricultural community.

According to the data by the Ministry of Justice, there were 381 cases (471 in 2010) still unsolved as of 30 September 2011. The dynamics of the resolution of cases lead to the conclusion that the cases are being resolved but there are no grounds of justification for the denationalization process not being concluded after twenty years have passed since the adoption of the Denationalization Act.

2.6.4 Taxes and customs duties

In 2011, 40 cases were considered in the field of taxes, (51 in 2010) and one case from the field of customs duties (there were three in 2010). In 2011, likewise, we encountered cases of lengthy operation by the Ministry of Finance ("the MF") in its appeal procedures. One case related to the lengthy decision-making concerning a complaint against the Decision by the first-instance tax authority regarding the determination of a residential status. (5.5-4/2011)

We also dealt with a case when the first-instance body referred the complaint filed to the second-instance body of the Ministry of Finance after more than one month although the General Administrative Procedure Act stipulates that such a complaint must be submitted to the appellant body without any delay, but at the latest within fifteen days following its receipt. (5.5-30/2010)

Questions regarding the taxation of subsidies for a self-employed person have still remained open and, with regard to the increase in the number of unemployed persons deciding to adopt an independent entrepreneurial path, is becoming even more pressing. The Ombudsman does not accept the opinion of the Government of the Republic of Slovenia on the 16th Regular Report of the Human Rights Ombudsman for 2010 of 26 September 2011 in which the Government tries to convince the National Assembly of the Republic of Slovenia as well as us, that there are no grounds or justification to exclude the subsidy for self-employed persons from taxation. The Ombudsman again expects a modification of regulations referring to the issue of the taxation of the grant, specifically so as to exempt them from the payment of income tax.

But we are satisfied with the adoption of modified regulations on the exemption of unemployment benefit from being used in the execution of debts as written in the introduction of this Chapter. In 2011 we also received initiatives with regard to the failure of the payment of contributions for social security. It is derived from the abovementioned that the Government has still not set up a simple, appropriately organised and mutually integrated system of supervision over the fulfilment of statutory obligations which would ensure the stability of the welfare system and prevent damage incurred to persons insured.

2.6.5 Property law matters

32 initiatives were considered, compared to 28 in 2010. As regards this field we can not report on any significantly different initiatives than received in previous years. We received many related to unresolved land disputes with municipalities. It is particularly noticeable that municipalities are aware of their position as a stronger party. They do not wish to pay out compensation when, for example a public road or path runs over a private piece of land. In many instances municipalities in such cases do not even make a formal measurement of the land in private ownership over which a public road or path runs. Excuses are made that they lack money and they do not take into account the requirements of the eligible parties. A similar situation is found with the arrangement of relations with the Slovenian Roads Agency at the Ministry of Transport.

2.6.6 War disabled, victims of war violence and veterans of war

The Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") received some initiatives in 2011 in which initiators claimed that they were in default of the two-year deadline for the lodging of a request under Article 121 f the War Disabled Act ("the ZVojl"). The Ministry of Labour, Family and Social Affairs ("the MLFSA") did not prepare the potential modifications of this regulation in this year again even though we drew attention to this issue in previous reports and the urgency of such action is also shown by the initiatives on this

topic we receive every year. As regards the implementation of the Acts about Victims of War Violence ("the ZZVN"), quite a number of initiatives were received in which the initiators stated that conditions prescribed by the Act for the victims of war crime need to be extended. The current conditions, as a matter of fact, make it impossible for many people to obtain the status of a victim of war violence. Considering the recognition of the status under the War Veterans Act ("the ZVV") we again emphasize that some initiators performed important tasks and duties for the defence of the Republic of Slovenia during the war but not precisely those tasks as stipulated by the ZVV in order to obtain the status of a war veteran in Article 2. Hence the administrative units refuse such requests of clients and the initiators feel they have been cheated.

2.6.7 Registration of residence

It has been established that problems occur upon the ex officio registration of residence. For an individual without a registered permanent residence, in accordance with the provisions of the Residence Registration Act ("the ZPPreb"), it is not possible to register the residence. The mentioned Act stipulates that a person's permanent residence is deemed to be the address of the authority or organisation where the said person receives aid in material form if he/she also actually lives in the area of that body.

But problems arise when an individual receives aid from a certain Centre for Social Work but actually lives in the area of another Centre. The Ministry of the Interior informed us that they will try to solve the stated lack of clarity by way of modifications of the Residence Registration Act which have been under preparation.

2.6.8 Social activities

We dealt with 80 initiatives which is 12 more than in 2010. Many fewer initiatives from the field of pre-school education were considered than in previous years. In terms of content they referred to the determination of a payment for the programme in a kindergarten, to the wish of parents to ensure the vegetarian food in a kindergarten, to the consideration of a parents' application for the enrolment into a kindergarten and to the opposition by parents upon the introduction of yoga practice for children which supposedly has been carried out in some kindergartens. There were almost no complaints related to capacities in kindergartens being too limited.

As regards the field of primary school we dealt with several initiatives in which parents were not satisfied with the conduct of teachers and the management of schools on the occasion of individual conflict situations or with the quality of lessons. It has been established that the majority of parents are aware of the procedures for appeal and channels when they believe that something is wrong at the school. But parents were frequently dissatisfied with the response of the management of schools to their complaints, many times they were dissatisfied with findings of the Inspectorate of the Republic of Slovenia for Education and Sport ("the IES"), as a general rule, when they were not consistent with their opinion.

We dealt with two initiatives in the field of culture: one regarding the issue of the status of Ribičevina and the other with the problem of non-payment of a grant by the Slovenian Book Agency ("the SBA"). The SBA withheld the payment of financial funds to an initiator, a president of a cultural society, to which the society was supposedly entitled in accordance with the Contract on Financing and Implementation of a Cultural Project in the field of international cooperation for 2011.

We made an enquiry at the Slovenian Book Agency on the cause for withdrawal from the Contract. The Agency explained that the only reason for their decision to withdraw from the Contract was the failure to fulfil the contractual obligations on the part of the initiator. Slovenian Book Agency stated that the initiator should have informed the Slovenian Book Agency in time of the change of participating parties in the project and have proposed a modification of the Contract, which she did not do. We explained to the initiator that only the court can decide whether the Slovenian Book Agency acted in an appropriate manner, whether the provisions of the Contract which the initiator concluded with Slovenian Book Agency were clear enough for the initiator to act as set down by the director.

SUMMARY OF PROPOSALS AND RECOMMENDATIONS

- The Ombudsman proposes to the Ministry of the Interior that it should modify the Aliens Act (Ztuj-2), specifically, so as to enable an underage alien to a stay (in the Republic of Slovenia) in cases when the decision-making procedure regarding the stay of an underage unaccompanied minor is not finished in time. It is still acceptable for the said person to remain in residence in the Centre for Aliens, or on a proposal of a custodian for a special case, the said person's stay in the Republic of Slovenia is to be allowed. In addition. all rights arising from this fact and additional rights for the said person's accommodation and care under the supervision of the body responsible for social assistance, the right to the same level of health care as enjoyed by Slovenia children and the right to free translation and interpretation are protected.

- The Ombudsman requires that the Ministry of the Interior managing the procedures under the International Protection Act should always act in accordance with this Act. Under this a responsible body, if the decision on a request is not made within six months, informs the applicant in writing of reasons for the delay and announces within what time period the issue of the decision is to be expected.

- The Ombudsman again expects a modification of regulations referring to the question of taxation of grants for self--employed persons, specifically, so as to exempt them from the payment of income tax. The Ombudsman again draws attention to the lengthy procedure regarding the ex officio determination of permanent residence and proposes to determine a time period on a systemic level in which an administrative authority must conclude the administrative procedure.

- The Ombudsman proposes that the Ministry of Labour, Family and Social Affairs should again verify the possibility to adopt modifications which would enable additional lodging of requests pursuant to the War Disabled Acts. It should also examine the possibility of obtaining the status of a war veteran by those eligible persons who actually performed their duties in the defence of Slovenia and are not covered by the present Act.

- The Ombudsman again proposes to the Ministry of Education, Science, Culture and Sport that it accelerate the habilitation procedures and ensure that they be carried out in accordance with the General Administrative Procedure Act.

- The Ombudsman proposes to the Ministry of Education, Science, Culture and Sport that it clearly define which procedures in kindergartens and primary and secondary schools are pursued in accordance with the provisions of the administrative procedure and which not (for example, self-evaluation which is a professional task).

12. Lengthy decision-making in procedure to grant international protection

A non-governmental organisation turned to the Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") due to a lengthy procedure relating to applicants for international protection. They stated in their initiative that applicants have been involved in a renewed procedure for international protection since 2009. They allegedly have not received any answer or explanation from bodies of the Ministry of the Interior ("the MI"). During this time, they supposedly had only one interview.

The Ombudsman addressed an enquiry to the Ministry of the Interior requesting information about the actual state of the case and drawing attention to the provision of Article 31 of the International Protection Act ("the ZMZ") under which a responsible body, if no decision is made within six months, must inform the applicant in a written form of the reasons for delay and announce the time period in which the issuing of a decision may be expected.

The Ombudsman also requested the Ministry of the Interior to submit a copy of the before mentioned notification to the applicants. The MI informed the Ombudsman about the actual state of the case but it did not send a copy of that notification. Hence the Ombudsman repeatedly warned the Ministry of the Interior about the provision of the ZMZ and requested a copy of the written notification to the applicants. The given ministry did this only after the Ombudsman's second intervention.

The initiative was justified since the responsible body did not inform the applicants of reasons for the delay in accordance with the mentioned provision of the ZMZ. **5.2-41/2010**

13. Conduct of school upon child's illness

The Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") received a question from parents enquiring about the rights of a child after the child's return to school after an illness as a result of which the child missed classes for eight days. During the child's illness the parents found that in school the child would be tested on a certain subject matter and graded immediately after the child's return to school. This indeed happened. In addition, in the first week after returning to the school the child was required to take a test although the child could not compensate for all subjects missed within one or two days. When parents asked the teacher to postpone the written test, after her conversation with the principle, she decided not to allow it. The principle supposedly referred to the provisions of the Rules on verification and grading of knowledge in primary schools ("the Rules"). The parents consulted the responsible persons at the National Education Institute of the Republic of Slovenia and at the Ministry of Education and Sport. They learned from them that the teacher could have been more flexible by enabling the child to learn the missing subjects within a certain period of time. Parents believed that the entire event constituted a serious offence against the child.

If the conduct of the school was such as described by parents it is assessed by the Ombudsman at least as unfair. The applicable regulations (the Primary School Act and the Rules mentioned above) do not determine time periods for pupils to substitute the missing school subjects due to their absence in a case of illness. The time needed by a child to substitute the missing school subject should depend on the agreement between a pupil and his/her parents and a teacher. A teacher is familiar with the child's skills and capabilities and is obliged to help the child, last but not least so that separately she explains the missing school topic within the framework of the remedial classes which the teacher is obliged to carry out. Hence the Ombudsman believes that a decision whether a child missing for a longer time from the school will be questioned orally or when the teacher will verify his/her knowledge by means of a written test should not depend either on a principle nor from reference to a certain regulation.

If the school attended by this child is evaluated only on the basis of the described event we might say it is not a child-friendly school. The Ombudsman believes that one of the goals of the school system should be to give pupils as many opportunities as possible to show their knowledge. It can be noticed that in some schools poor knowledge is too often sought and what the children do not know is given too much emphasis. In this manner the school gets away from its mission causing, justifiably, fear and aversion by many parents and children. The profession of a teacher requires sensitivity, tolerance and patience, fairness and ability to adapt, respect, and many other positive characteristics. A person not possessing these is difficult to correct and it is even harder to prove the mistakes in the said person's conduct. Without such characteristics, however, the said person should not be a principal.

With regard to the implementation of rights of their children in school we explained to parents that parents are the first guardians of a child's rights. We advised them to firstly discuss the issue in question with the actual teacher, the head class teacher and the counselling worker in the school. If the persons mentioned are not willing to act in the best interests of the child, a discussion with the principal is necessary, who is obliged to exercise care in the protection of a pupil's right, in accordance with the law. If even the conversation with the principal is not sufficient, a complaint to the Inspectorate of the Republic of Slovenia for Education and Sport is possible.
The initiative was considered justified. **5.8-3/2011**

izkoristiti vse možnosti za strpen in miren pogovor v šoli. Prijava na inšpektorat ali tožba na sodišču kaže na izgubo zaupanja v šolo, kar pa bi bilo najslabše predvsem za njeno hčerko. Res je, da se v šolah včasih zgodijo dogodki, ki terjajo tudi tako ukrepanje, vendar po Varuhovi presoji v tem primeru še ni bilo dovolj tehtnih razlogov zanj. **5.8-59/2011**

2.7 ENVIRONMENT AND SPATIAL PLANNING

GENERAL

In the field of environment and spatial planning, we dealt with 132 initiatives in 2011, while there were 146 in 2010. There were many objections regarding the adoption of spatial planning documents, particularly in relation to the (lack of) cooperation in these procedures, an inadequate consideration and unjustified refusal of objections made by individuals. As a consequence, disagreement with the envisaged and later adopted spatial planning arrangement is present. Individuals wrote to us who oppose the construction of domestic waste landfill sites and their storage in certain places. There were many questions regarding the quality of drinking water and the access to information in this regard as well as questions about the construction of bio gas companies, on the obtaining of permissions for the use of drinking water, on the use of pesticides in the urban environment, on disturbing smells (from impregnated sleepers (or railroad ties), on the noise coming from various sources (air-conditioning devices, catering establishments, fireworks, church bells, low-frequency noise and other types of noise). Initiatives also related to disturbing construction sites and their influences on the surrounding environment, landslides restoration, exploitation works in a quarry, emissions from chicken farms, inadequate cooperation in the siting of electricity facilities in physical space, objections against the construction of overhead power lines. Initiators complained about the dusting of roads, all types of pollution (light pollution, particle pollution (PM 10), water, underground water, surface waters, underground Karst waters) but also due to unknown “chemical traces” in the sky.

Quite a number of initiatives received, referred to the lengthy procedures in granting concessions for small hydro power plants granted by the Government by way of a Government Decree, similar to the long-lasting consideration of proposals to shorten the outer boundaries of land parcels of waterside land along the flood embankment of the Mura river.

It has been established that none authority participating in the production and adoption of spatial planning plans does consistently take into account the principle of public participation in these procedures. Likewise, numerous bodies (as in an actual case, the Ministry of Environment and Spatial Planning and Ministry of Agriculture) do not act in accordance with the provision of the Decree on Administrative Operations stating that all formal letters of clients must be answered within not later than 15 days unless these letters are of malicious nature.

Also in 2011 we met with representatives of the Inspectorate of the Republic of Slovenia for Environment and Spatial Planning (IRSESP) and the Environment Agency of the Republic of Slovenia (ARSO) at a working meeting. Nine meetings were held with non-governmental organisations operating in the field of the environment. The content of these meetings is described in the Chapter “Cooperation with Non-Governmental Organisations”.

Upon the occasion of the international year of forests (2011) as declared by the United Nations Organisation we issued a free-of-charge brochure of the Human Rights Ombudsman of the Republic of Slovenia: Gozdovi in pravica do zdravega življenjskega okolja (Forests and the Right to a Healthy Living Environment). Three primary schools were included in this project, coming from the Zagorje ob Savi municipality; they contributed drawings on the topic of forests for this brochure. Upon the issue of the brochure an exhibition of their drawings was produced. In this manner, the Ombudsman also includes children in the field of environment protection and raises their awareness on the topic.

2.7.1 Land with water use and issue of permissions for the use of water

The Ombudsman warns about too slow a resolution of ownership relationships in land with water use. The Water Act (ZV-1) was adopted in 2002 and since then very little has been done. In recent years (the end of 2009 and onwards), when the Ministry of Environment and Spatial Planning started to solve this issue, this was done with external contractors. As a matter of fact, they hired a law firm to carry out this task. The Ombudsman is raising a question whether such a method is really the optimum one, both with regard to the use of budget funds as well as discipline.

Similarly in this year's report we cannot report any progress regarding the issue of permissions for the use of water. As of 1 January 2011, the Slovenian Environment Agency had 1027 unsolved applications related to the issue of permissions for the use of water. The Slovenian Environment Agency has explained that the Rules on Drinking Water Supply are the reason for problems relating to the issue of permission of water use concerning the use of water for a persons' own supply of drinking water. The Rules stipulate that a private water system supplying more than five residential buildings or a building in which a catering, tourist, agricultural or food business is carried out must have a manager. Owners of buildings which ensure their drinking water supply from such a private water supply system had to conclude a contract on the management of private water system with a legal entity or an individual taking over the management of such private water supply system by 31 December 2010. On the basis of this contract, a municipality had to approve of the selected manager. But if persons supplied with the drinking water from a private water supply system within the extent of their own supply of population with drinking water, could not agree about choosing a manager of the private water supply system, the municipality had to determine a public service operator supplying the neighbouring settlement areas. Only when the manager of a private water supply system is confirmed or determined by the municipality does the ministry, responsible for environmental protection, issue the permission for the use of water.

The Slovenian Environment Agency has stated that the problems relating to the issue of permission for water use concerning the use of water for a persons' own supply of drinking water occur since the municipalities do not implement the Rules in a consistent manner and thus, as a result of an undetermined or non-confirmed manager of the water supply system, the condition for the Slovenian Environment Agency to issue a permission for the use of water is not fulfilled. The Slovenian Environment Agency has also explained that modifications of the ZV-1 and the Rules are envisaged so that permission for the use of water will not need to be obtained in the case of one's own supply of drinking water but only the use of water and the drinking water catchments will have to be recorded.

2.7.2 Emission monitoring

In spite of repeating the issue in question for several years, the arrangements in the field of emission monitoring have remained unchanged. The facility or plant operator is left to choose an authorised person for carrying out the measurements. Apparently this situation, which does not ensure an efficient supervision over the quality of emission monitoring, suits the State.

2.7.3 Pollution of the environment

In 2011 we continued with consideration of the issue relating to pollution. In the case of the Mežica Valley, a situation has been researched when a restoration programme for the Mežica Valley has been adopted by the Government, on one hand, while, on the other, there is a concession contract concerning the commercial use of mineral resources in this area concluded between the Government and a company in 2002. Owing to this contract, this area is supposedly additionally polluted.

The Ombudsman has been dealing with the issue of the pollution of the Celje basin for some time. In terms of actual cases, the Ombudsman has speeded up the inspection and some other administrative procedures which were very lengthy in certain cases. It has been established that an integrated solution of the issue in question and a fast and efficient inter-ministerial cooperation of numerous authorities would be necessary. The first steps in the attainment of such cooperation have already been implemented, on the Ombudsman's initiative.

This year we also dealt with the environmental issue of Zasavje. More was reported on this topic in our Annual Report for 2010.

2.7.4 Other matters

It has been established that the responsibility between the Ministry of the Environment and Spatial Planning and the Slovenian Environment Agency has not yet been explained in relation to the decision-making on environmental damage which was also reported in the Annual Report for 2010. We dealt with cases of the siting of movable base stations inside a condensed settlement and found that such a station is not a facility as stipulated by the Construction Act (ZGO-1), which is why an inspector has no basis to carry out a supervision and take action and neither to determine compliance with spatial planning documents, as it is not considered to be a facility. We received an initiative referring to problems owing to a motocross route in a natural environment.

2.7.5 Inspection procedures

Initiators turned to the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) due to lengthy inspection procedures, because of their dissatisfaction with (lack of) action taken by the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning, non-implementation of inspection decisions, non-responsiveness by the said Inspectorate and other matters.

SUMMARY OF PROPOSALS AND RECOMMENDATIONS

- The Ombudsman proposes that the Ministry of Agriculture and the Environment should adopt suitable measures to ensure the elimination of delays in the issue of permissions for the use of water and in the resolution of ownership relationships in pieces of land with water use.
- The Ombudsman proposes to the Ministry of Agriculture and the Environment to immediately start solving the issues in the field of waste management, PM10 particle pollution and implementation of the Water Directive.
- The Ombudsman invites all responsible authorities, in particular the Ministry of Agriculture and the Environment and the Ministry of Health to approach as fast as possible the solving of the pollution of the Celje basin, the Mežica Valley and other overly burdened areas in a coordinated, systematic and efficient manner.
- The Ombudsman recommends that the Ministry of Infrastructure and Spatial Planning provides for the management and maintenance of the spatial planning information system.
- The Ombudsman urges all policy-makers in the field of spatial planning to conduct prudent spatial planning, particularly in the siting of facilities having influences on the environment and possibly also on the health of people (bio gas companies, base stations, motocross routes, etc.).
- The Ombudsman again recommends to local and national authorities that the actual inclusion of the public be ensured at the earliest stage of spatial planning procedures (consideration of public opinions) and the transparency of these procedures.
- The Ombudsman again recommends to the Ministry of Agriculture and the Environment that it should prepare a systemic arrangement with regard to smell emissions.
- The Ombudsman again requires that the Ministry of Agriculture and the Environment and the Ministry of Infrastructure and Spatial Planning should provide for efficient implementation of tasks of inspection services, also by way of an accurate definition of priority tasks for the work of construction inspection, and ensure the transparency of their work.
- The Ombudsman recommends the Ministry of Infrastructure and Spatial Planning to create a more suitable arrangement regarding the implementation of execution proceedings through another person and an elimination of the current situation where there is only one person authorised in the proceedings in the whole Slovenia.

14. Does mobile base station have environmental impact?

A civil initiative association turned to the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) and pointed out the issue of a mobile base station which is set in the middle of the village without the consent of residents in its direct vicinity.

A construction inspector established that the regulation from the field of construction of facilities was not violated, hence there was no legal basis for any action. The mobile base station is, in fact, not a facility within the meaning of the provisions of the Construction Act.

The Ombudsman also requested the Ministry of the Environment and Spatial Planning ("the MOP") to explain whether the case had been considered from the aspect of potential environmental impact. In its reply, MOP explained that the strategic environmental impact assessment (SEIA) is implemented for plans (programmes, plans and other general documents) which are adopted by a responsible national authority or a municipality pursuant to the Act (Article 40 of the Environment Protection Act) if by way of these documents a development in the environment is determined or planned for which the environmental impact assessment (EIA) needs to be implemented; when an assessment of acceptability under the regulations concerning nature conservation is required for such development or when its implementation would have a more significant environmental impact. As it derives from the statutory definition of the SEIA, it is urgent that it is a matter of a plan and not a concrete development in the environment. Plans relating to the arrangement of physical space are: for example, the national spatial plan, a municipal spatial plan, a detailed municipal spatial plan. An environmental impact assessment is carried out for developments which may have an important impact on the environment and are determined with the Decree on categories of projects for which an environmental impact assessment is mandatory. Base stations are not enumerated among these projects.

In the actual case the Ombudsman did not establish potential violations of public sector authorities but the Ombudsman believes that the mobile base station certainly is such a type of facility which has an important impact on the life of people in its surroundings. Hence it would make sense to reflect on the modification of legislation which would require suitable permissions also for these types of projects and facilities. The Ombudsman will address a proposal in this direction to the Ministry of the Environment and Spatial Planning. **7.2-5/2011**

15. Answer of the Inspectorate of the Republic of Slovenia for Environment and Spatial Planning

An initiator informed the Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") with the fact that he turned to the 17. 11. Inspectorate of the Republic of Slovenia on 17 November 2008. Although he asked for a reply, he did not receive the answer until March 2011. On the basis on the Ombudsman's intervention, the said Inspectorate replied to the initiator on 18 April 2011. The operation of the Ombudsman was successful since the given Inspectorate replied to the initiator on the basis of the Ombudsman's intervention. But it is unacceptable that the said Inspectorate replied only after two years. The Ombudsman has again established that the State must adopt all necessary measures to ensure suitable conditions for regular and efficient work of state authorities. This obligation and inexplicably lengthy procedures in the administration have been pointed out by the Ombudsman in several annual reports and some possibilities to improve the efficiency of work of administrative authorities have also been indicated. The situation is improving (too) slowly, hence we will continue to strive to have cases in all areas of work of state authorities resolved without undue delay and within statutory time periods. **7.1-10/2011**

2.8 PUBLIC UTILITY SERVICES

GENERAL

The number of initiatives in the field of public utility services decreased overall in 2011 (from 66 to 52). The number of cases related to communications, energy industry services and transport decreased but increased in the fields of public utility sector and concessions. The greatest number of initiatives referred to the payment and prices of services for the supply of public utility services (drinking water, waste collection) and an increasingly greater distress of individuals who cannot pay the individual public utility services is evident. Initiatives varied a great deal and the majority of cases was concluded with relevant explanations and instructions to initiators. Those more interesting ones are described among the selected cases.

16. Public bodies "referring backwards and forwards between them" initiator's application for two years

An initiator addressed an initiation to the Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") from which it could have been concluded that the Department for Economic Activities and Transport at the City Administration of the Ljubljana Municipality ("MOL Department") and the Slovenian Roads Agency at the Ministry of Transport ("Roads Agency") had been referring the initiator's application regarding the marking of a pedestrian crossing over the major road in the initiator's quarter, backwards and forwards between them for two years.

In principle both authorities agreed that the pedestrian crossing in question is needed but they had different explanations with regard to the obligation for obtaining the project documentation, arrangement, indicating and ensuring light at the crossing as well as financing of these obligations. Among other matters, the Roads Agency required that, to indicate the pedestrian crossing on both sides of the road, suitable areas for pedestrians should be arranged (pavement), a ramp for disabled persons (it is a part of the pavement) and public lights which fall under the responsibility of the municipality, while the MOL Department refused this requirement since it was supposedly not based on legal regulations.

The Ombudsman submitted an opinion to the Minister of Transport ("Minister") that such conduct by national and local authorities is unacceptable and detrimental to the safety of road users and, in this manner, also detrimental to public interests. The Ombudsman also proposed that the Minister should form an expert committee in which representatives of the Ministry, the Roads Agency and the Ljubljana City Municipality will participate. The purpose of the Committee would be to determine which, in accordance with applicable regulations, national and local authorities are responsible for individual tasks relating to the indication of and arrangement of the pedestrian crossing on the major road, and in what order. If regulations in this regard are not clear enough or accurate enough, the Committee should propose their modification or amendment.

The Minister himself shared the Ombudsman's opinion. The proposal of the Ombudsman for the formulation of the Committee was, however, refused with an explanation that in the meantime a new Roads Act had started to apply which regulates the question regarding the arrangement of pedestrian crossings on major roads in a more detailed manner. A pedestrian crossing on a major road is ordered by the Roads Agency by means of a working order and then in cooperation with the municipal administration it prepares and harmonises a contract on financing or co-financing of traffic arrangement. The contract is concluded by and between the Republic of Slovenia and the municipality.

The initiation was justified. Considering the explanations obtained, we proposed to the initiator that he turn to the Roads Agency with regard to this case. **(8.4-5/2011)**

17. Improper traffic arrangement in Maribor City Municipality

An initiator turned to the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) because he believed that the traffic arrangement at a roundabout in Maribor City Municipality (MOMB) does not ensure the safety of road transport users. The initiator also attached a formal letter of the Maribor Police Directorate ("MB PD") from 2010 in which the said Directorate submitted an opinion that longer cargo vehicles, as a result of too small turning radius, violate road traffic rules by driving in the opposite lane or on a curb which is why the driving of these vehicles should have been prohibited by way of prescribed traffic signs. The MB PD proposed that the MOMB examine the case and implement the necessary measures. According to the statements of the initiator, the situation at the roundabout in question remained unchanged.

We asked the MOMB for their explanation. Among other matters, the municipality replied that certain measures were implemented (prefabricated barriers) but when turning, longer cargo vehicles drive also on the pavement. In 2011, the MOMB supposedly commissioned project documentation in order to adjust the turning radius. It has been concluded that the Maribor City Municipality is in fact aware that longer cargo vehicles violate road traffic rules as a result of too small a turning radius but accepts such a situation and allows it. The opinion was submitted by the Ombudsman to the Maribor Municipality that its conduct is unacceptable since with the omission of due action to provide the compliance of the existing situation with the road traffic rules the Municipality does not provide for the safety of road transport users. The proposal of the MB PD was repeated and sent to the MOMB.

The Municipality did not accept the opinion and proposal of the Ombudsman. It stated that the safety of pedestrians or drivers is not threatened since it carried out certain measures for that purpose and initiated procedures relating to the preparation of project documentation to rearrange the radius of the roundabout in question, in accordance with the opinion of the above mentioned Police Directorate.

We verified the statements given by the said municipality at the MB PD. A repeated inspection of the roundabout in question was carried out by the Maribor Police Directorate and it was established that the situation is the same as upon its formal letter to the said municipality in 2010 to which no reply had yet been received. For the provision of safety of road transport users, the Maribor Municipality should arrange for a greater turning radius at the roundabout in question or prohibit the driving of longer cargo vehicles by means of traffic signs.

We repeated our opinion and proposals to the Mayor of the Maribor Municipality. At the same time we urged him to submit an answer to Maribor Police Directorate to its formal letter Again, the Maribor City Municipality did not accept our opinion and proposal although it stated, in relation to the complaint on an identical situation, that the department of the municipality responsible for this type of case did not receive a letter of the Maribor Police Directorate. Hence, the situation was identical and measures implemented only within the extent of regular maintenance works.

The reply of the MOMB has confirmed our opinion and proposal. The said municipality in fact admitted that the situation is identical to the one mentioned in the warning letter by the MB PD in 2010. Because of that and owing to the “lack of knowledge” of the content of the letter from the MB PD, other statements of the Maribor Municipality could only be considered as misleading. The initiation was justified. **(8.4-2/2011)**

2.9 HOUSING MATTERS

GENERAL

In 2011, 109 initiatives were handled in the field of housing matters (85 in 2010). A great increase in initiatives was recorded in the field of housing business while there were fewer initiatives in the field of housing relationships than in the previous year. Numerous initiatives were related to social hardship and general financial circumstances of initiators. Hence, they are explained in other sections of this Report. The majority of recommendations of the Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") from the Annual Report for 2010 remained unsatisfied. We can only report on progress in relation to the adopting of the National Housing Programme for the period from 2012 to 2021 which, however is still in the stage of a draft at the time of writing this report.

There were also many initiatives in which initiators claimed that municipal dwelling units are inadequate for living, that a municipality leases inappropriate not-for-profit apartments, that the municipality does not wish to renew not-for-profit apartments, that an apartment with too little floor size is offered as an exchange by a municipality. Several initiators complained about an inappropriate attitude of public officials, particularly at municipalities.

2.9.1 Expulsion from housing and dwelling units

Every year we write about the issue of expulsion from housing, likewise about dwelling units which municipalities, in accordance with the Local Self-government Act ("the ZLS") and the Housing Act ("the SZ-1") should have at their disposal for temporarily resolving the housing needs of socially deprived persons, therefore, for the solving of the most severe housing distress situations. But many times the initiators, in their utmost distress, turn to the Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") hoping to receive the Ombudsman's help upon the threat of expulsion from housing and the Ombudsman's attempt to postpone it or even that the Ombudsman will find an appropriate apartment for them.

Therefore: there are too few dwelling units to solve the most severe social hardship, and the quality of accommodation in them is also questionable. The Housing Act must be amended at once and the obligation of municipalities in providing for a certain number of dwelling units (for example, with regard to the inhabitants of a municipality) must be determined, or incentives should be offered to municipalities upon the provision of a certain number of dwelling units. A provision in the ZLS, stipulating that municipalities must provide for funds for the construction of, obtaining and renting of not-for-profit apartments and residential buildings dedicated for the temporary solving of housing needs of socially deprived persons and conditions to develop various forms of construction and renewal by means of a suitable land and regulatory policy, in the Ombudsman's opinion, does not present a sufficient guarantee that municipalities will actually ensure an adequate number of dwelling units for the socially most vulnerable category of individuals. We also believe that the standard of accommodation in dwelling units must be improved.

2.9.2 Subsidising rents

Regardless of these established changes the Ombudsman believes that the income assessment for obtaining rent subsidies should be adapted to actual living expenses. This was already proposed in the Annual Report for 2010. The above mentioned proposal is especially justified since the income assessment also applies to subsidizing of market rents which are actually much higher than not-for-profit rents. A tenant of the so called market apartment must in fact pay to the owner a higher amount, irrespective of otherwise different rules for subsidizing, than paid by a tenant in a not-for-profit apartment. In spite of pointing out for many years the inappropriateness of conditioning the subsidizing of market rent by imposing a public call to tender for obtaining a not-for-profit apartment in a municipality of a permanent residence of an applicant, this condition has remained in the SZ-1. Individuals frequently, as a result of not fulfilling this obligation while simultaneously meeting income and other conditions do not obtain a right to a subsidy of market rent.

2.9.3 Tenants in denationalised apartments

In 2010, the European Committee of Social Rights at the Council of Europe adopted the decision that Slovenia is violating the rights of lessees in denationalised apartments which are guaranteed by the European Social Charter, specifically, the right to housing, the right to family protection and the prohibition of discrimination. For this reason, the European Committee has imposed on Slovenia the obligation to ensure financial and statutory conditions to eliminate the mentioned violations in a reasonable time.

The Ministry of the Environment and Spatial Planning, which is responsible for the above mentioned issue, replied to our enquiry stating that the Ministry of Labour, Family and Social Affairs, the Ministry of Finance and the State Attorney's Office have prepared a document describing the issue of tenants in denationalised apartments. This document was submitted to the Permanent Representative Office of the Republic of Slovenia to the Council of Europe through the Ministry of Foreign Affairs. At the same time, the Ministry of Labour, Family and Social Affairs, together with the Ministry of the Environment and Spatial Planning proposed amendments of the Rules on Granting Not-for-Profit Apartments in the Government procedure and the establishment of an inter--ministerial working group to be established by the Ministry of the Environment and Spatial Planning at the level of State Secretaries. Although the above mentioned issue was discussed with the Minister of the Environment and Spatial Planning, Dr Roko Žarnić, at the office of the Ombudsman as early as on 8 June 2010, and we were assured that the mentioned ministry would respect the findings of the European Committee of Social Rights and that decision on the topic would be adopted by the Government we have not yet been informed of any actual proposals and solutions.

The problem has existed for more than twenty years and it is an unacceptable interference with the right of tenants in denationalised apartments, but, likewise, also of all those who have been persistently warning about violations.

2.9.4 Housing inspection

An initiator wrote to us and complained about the poor conditions in a multi-apartment building in which he resides. He turned to several state authorities with regard to his problem, among other bodies also to the Housing Inspection, operating at the Ministry of the Environment and Spatial Planning within the scope of the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning. The housing inspection declared it did not have the appropriate powers. According to the opinion of the Housing Inspection, the basis for its action arises from provisions of the Housing Act ("the SZ-1"), only when it is the case of a multi-apartment building with floor ownership. An exception are rental relationships where the Housing Inspection may act in multi-apartment buildings of all ownership types.

But the Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") reiterates that the responsibility of Housing Inspection must enable supervision over the implementation of regulations in relation to housing relationships irrespective of the ownership of a multi-apartment building. Hence, in the case of a lack of clarity regarding the powers of Housing Inspection, the SZ-1 must be immediately amended.

2.9.5 Other matters

The issue of housekeeper's apartments is still not solved. The position of former housekeepers is unequal. Some had the right to purchase their apartments under favourable conditions and are now their owners while others have become and have remained tenants or have even had to move out of these apartments.

Many initiatives referred to the payment of costs for an apartment. Initiatives demanded our explanations and guidelines on how to act when disagreeing with the invoices received.

SUMMARY OF PROPOSALS AND RECOMMENDATIONS

- The Ombudsman proposes to the Ministry of Infrastructure and Spatial Planning to prepare modifications to the Housing Act and determine therein an obligation of municipalities for the provision of a certain number of dwelling units (for example, with regard to the inhabitants of a municipality) of a suitable standard of residence or to provide incentives for municipalities in their provision of them.
- The Ombudsman also proposes that by means of amending the Housing Act a relevant ministry enables the Housing Inspection department to supervise the implementation of regulations from the field of housing relationships, regardless of the ownership of a multi-apartment building.
- The Ombudsman repeatedly proposes to the Ministry of Labour, Family and Social Affairs that it adjust the income assessment (the income limit for the determination of eligibility for a subsidy) to the actual costs of living.
- The Ombudsman requires that the Government should respect the findings of the European Committee of Social Rights at the Council of Europe with regard to the violation of rights of tenants in denationalised apartments and, in regard to the violations determined, should adopt actual measures for their elimination.

18. The Ombudsman speeded up the restoration of a damaged municipality flat

An initiator turned to the Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") who informed us of problems as a result of damage in a not-for-profit apartment in which a four-member family lives and it is owned by the City of Ljubljana Public Housing Fund. Owing to severe damage (deep cracks), the apartment became a danger to life . The initiator turned to several addresses in this regard, also to the Ljubljana City Municipality and presented the case to the Mayor of the Ljubljana City Municipality. After her personal conversation with the Mayor, she received an answer from the said municipality in which the issue of her apartment was not mentioned. She therefore wrote again to the Ljubljana Mayor but, after more than a year, she did not receive any answer.

The Ombudsman addressed an inquiry to the Ljubljana City Municipality asking for information on reasons why the initiator did not receive any answer and about potential activities relating to the mentioned issue. The City of Ljubljana Public Housing Fund answered our inquiry. After the receipt of the Ombudsman's formal letter, an inspection of the apartment, together with an expert in construction, was immediately carried out by the mentioned Fund. It was established that various structural works were needed. Measures were proposed which, as stated by the said Fund, are an actual technical solution for the apartment in question. The given Fund also initiated a procedure regarding a selection of the most favourable contractor for the carrying out of works, and they will promptly inform the initiator (her family) about the implemented activities. The works in the apartment were expected to last for seven days. The initiator would try to relocate somewhere on her own, and the City of Ljubljana Public Housing Fund would exempt her from a one-month payment of rent.

It has been established that the initiative was justified and the Ombudsman's intervention successful since the mentioned Fund, on the basis of our letter, immediately carried out the inspection of the apartment and started the work relating to the repair of damage in the apartment. **9.2-33/2011**

19. Noise and waste at Trnovo Beach in Ljubljana

An initiator turned to the Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") with regard to alleged violations of public order and peace and pollution. She put the blame on young people who, primarily at weekends, assemble in great numbers at the so called Trnovo Beach in Ljubljana. The initiator has already turned to the Trnovo Quarter Community, Ljubljana City Municipality, Ministry of Health, Ministry of Labour, Family and Social Affairs and the Ministry of the Interior with regard to the case in question.

It was gathered from her initiative that the addressees did respond to the initiator's applications but, in her opinion, in an inappropriate and inefficient manner. She expected the Ombudsman to influence, by means of the Ombudsman's authority the content of the resolution of the problems in question.

We explained to the initiator that the Ombudsman cannot accede to her requests. There are legal remedies available for this purpose which have to be used by the affected individual himself/herself. In spite of that we requested the Ljubljana City Municipality to provide explanations about the case handled. The said municipality explained that several measures were introduced with regard to the case handled. The Trnovo beach is cleaned up every day in the early morning hours and a bigger team takes care of this at weekends. Toilets are installed under the Prule Bridge and their use is free of charge. At the Ljubljanica River embankment, there are large dust bins being emptied every day. The area in question is regularly controlled, day and night, by the City Traffic Warden Service. It is strengthened

at weekends. They act in accordance with their powers and inform the responsible Police Station or other responsible bodies in cases of violations. The supervision is also carried out by the Inspectorate of the Ljubljana City Municipality, in cooperation with national inspectorates. Young visitors to the area in question have been publicly urged to exercise tolerance, intercultural and intergenerational dialogue, care for cleanness and a lower level of noise by the Mayor of the Ljubljana City Municipality.

Since not enough grounded circumstances were shown to justify the Ombudsman's potential subsequent handling of the issue in question, the case was concluded. The given municipality in fact did respond to the conditions within its powers. The initiation was not justified. **9.2-30/2011**

2.10 EMPLYOMENT RELATIONS

GENERAL

The number of initiatives received and handled by the Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") in 2011 relating to the field of employment relations was six percent higher compared to 2010 (in total: 238 initiatives). The number of cases relating to unemployment increased the most, precisely by 50 percent (in total: 31 initiatives), likewise in the field regarding workers in the public sector, specifically, by 20 percent (in total: 85 complaints). An increase was also recorded in the field of scholarships. Slightly fewer initiatives (93) were handled this year with regard to employment relations. There were 99 such complaints in 2010. Similarly as in previous years, in 2011, the Ombudsman received a lot of anonymous initiatives and letters expressing despair over alleged illegal action by the State. Initiators asked us for advice on where to turn due to non-paid salaries, holiday pay, their inability to take annual leave, the termination of employment, violence in the workplace and other issues. Afraid of losing their job, many people wished for the Ombudsman to turn on their behalf to supervisory institutions and to intervene in the elimination of a violation in this manner. Some even asked the Ombudsman to help them find a job.

Key questions of 2011 may be defined as follows: the non-payment of salaries, non-payment of social security contributions, employment of foreign workers, employment of persons with disabilities, the issue of persons employed at the Ministry of Defence and Slovenian Armed Forces, the provision of safety and health at work, bullying, harassment and mobbing in the workplace and the issue relating to the use of temporary agency workers, the issues concerning the obtaining of the Zois and state scholarships and inspection procedures. The issue handled in the field of the unemployed is presented in a specialChapter; number 2.14.

With regard to the Ombudsman's recommendations mentioned in the Annual Report for 2010 it has been established that only some were attained: the new Aliens Act ("the Ztuj-2") was adopted and the Employment and Work of Aliens Act ("the ZZDT-1") were adopted, the amendment of the Agreement on Social Insurance between the Republic of Slovenia and Bosnia and Herzegovina ("BiH") was put into effect. By means of this Agreement, the payment of monetary benefits is also made possible to insured persons from Bosnia and Herzegovina holding a temporary residence in Slovenia. It is expected that a similar agreement will also be conclude with other countries (Macedonia).

The Occupational Work and Safety Act ("the ZVZD-1"), applicable since 3 December 2011 onwards, was adopted. 1. 1. On 1 January 2011, the Labour Market Regulation Act ("the ZUTD") came into force (with certain exceptions).

The Act Amending the Vocational Rehabilitation and Employment of Disabled Persons Act ("the ZZRZI-C") was also adopted.

2.10.1 Workers in the public sector

There were 85 initiatives handled by the Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") handled in 2011 in this section (70 in 2010). In terms of contents, the most complaints related to bullying, harassment and mobbing in the workplace in various national authorities and institutions, but also at local level and in other segments of the public sector. Individuals frequently experienced transfers to other workplaces or

changes of working tasks as bullying and revenge. We explained to the initiators where to turn and how to act. Neither does the Labour Inspectorate of the Republic of Slovenia ("the Labour Inspectorate") have much power in regard to this type of violence in the workplace, nor possibilities for actual detection of this phenomena in an individual work team and the case law gives no encouraging results in this field.

More initiatives were related to the conditions in the Slovenian Armed Forces, precisely, with regard to occupational health and safety at work, the provision of suitable working conditions for disabled persons in the Slovenian Armed Forces, with regard to evaluating additional training of employees in terms of the reimbursement of travel costs of employees. It was primarily the Trade Union that turned to the Ombudsman with these problems, and not so much employed individuals. The Ministry of Defence did reply to the inquires of the Ombudsman, but no commitment to improve conditions was noticed in their replies. With regard to the reimbursement of travel costs for employees in the Slovenian Armed Forces, the initiators claimed that they recently received new forms for the reimbursement of the above mentioned costs to be signed. Superiors required from employees that they fill in the price of the lowest public transport fare (a train), in fact also those for whom the use of the train is distinctly less favourable in terms of time. For some from distant regions commuting to work in Ljubljana, while taking into account their eight hour workday, this indicated, that upon actual use of the lowest means of transfer, these persons would be away from home for 16 hours. We did not receive any clear viewpoints from persons responsible at the Ministry of Public Administration, not even in regard to a question on whether it is reasonable and effective that public officials, particularly employees in the Slovenian Armed Forces and the Police, commute from one side of Slovenia to the other, causing great costs to the State (a negative environmental impact is only mentioned herein). Is it really right that data on the cost of the lowest fare for the public transport (the train) is demanded from employees, although it cannot be actually used since it is two times longer in terms of time than transport by personal vehicle or a bus? Would it not make more sense to seek solutions which would be more friendly to people and the environment?

2.10.2 Scholarships

There were 18 initiatives from the field of scholarships, while there were 14 in 2010. More than half of the complaints were related to the decision-making on Zois scholarships. In terms of content they referred to the fulfilling of additional criteria for granting scholarships. Initiators expressed their criticism of the scholarship system requiring incredibly high average grades from candidates. The threshold for the 2011/2012, school year the average grade for obtaining a Zois scholarship for students was set at 9.75. Initiators believed that annual setting of the grade in accordance with the provisions of the Scholarship Act ("the ZŠtip") was misleading. Students at faculties who applied for a Zois scholarship for the first time also warned about an unequal position among them since it is generally known that it is significantly harder to achieve the required average grade at some faculties than at others. In addition, it is also important for the average grade, in which year a student applies for the above mentioned scholarship. Immediately after the first year the number of exams passed is smaller and as a result the average grade may be higher, but it is harder to achieve the required average grade later.

2.10.3 Issues regarding provision of work and employment brokerage

We were informed from the media and anonymous writings of initiators on the issue regarding the provision of workers to another user, and on employment brokerage. The first case refers to the so-called employment contract between a worker and an employer carrying out the activity of the provision of work to another user. This activity was introduced into the Slovenian legal order by the Employment Relationship Act of 2003. The second case refers to the measures by the State in the labour market which, in addition to the State, can also be performed by holders of a concession.

Violations with regard to the provision of work and employment brokerage were supposedly taking place in several ways. Several agencies providing work to another user, which were entered in the register, demanded from workers that they carry out work within the extent of other activities for which the agency was not registered. Thus, workers were carrying out work for these agencies which were gained by these agencies on the basis of civil law contracts To cover up for their provision of work to another user without an entry in the register, these agencies concluded a Contract on Cooperation with users. The new arrangement ("the ZUDT") stipulates sanctions for such conduct of agencies, and it likewise punishes a user who accepts workers from agencies not entered in the register.

There are cases known in practice when a worker performed work for the same user for several years, specifically under agreements between various agencies. It is also known that agencies received advance payments from users but workers remained unpaid or were paid less than the company hiring them was willing to pay for them.

There were many problems also due to the fact that numerous so-called staff brokers in the labour market operate illegally. This refers to the agencies for the provision of work which are not even registered in the register as well as for those without a concession for employment brokerage granted by the Ministry of Labour, Family and Social Affairs. Since such brokers conclude civil law and technical contracts on service brokerage with the actual employers, the action by the Labour Inspectorate of the Republic of Slovenia is limited in these cases.

2.10.4 Non-payment of contributions

The issue concerning the non-payment of contributions was also acute in 2011. We found from the initiatives received as well as from the media, about numerous employers (it is not only the case of the company Steklarska nova which was described in the last year's Report) who did not pay social security contributions for their workers. Also this year we turned to the Pension and Disability Insurance Institute of the Republic of Slovenia ("the ZPISZ"), the Ministry of Labour, Family and Social Affairs, the Labour Inspectorate of the Republic of Slovenia and the Tax Administration of the Republic of Slovenia. It is concluded from the answers by the abovementioned authorities that the State takes over the responsibility of the operation of the public pension system and that the rights of workers are not diminished because their employers do not pay for their contributions. Periods for which contributions were not paid are actually taken into account by a percentage per a pension assessment and the amount of an individual's pension is not influenced. Hence the non-payment of contributions is debited to the State and insurance companies which cover the outstanding balance for the payment of these pensions.

2.10.5 Cooperation with Labour Inspectorate of the Republic of Slovenia

The cooperation between the Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") and the Labour Inspectorate is good. The Labour Inspectorate mostly answers the Ombudsman's questions in due time, and we also held joint working meetings.

The Ombudsman proposes modifications of the Work Code, specifically, so as to have clear and unchallenged powers of the Labour Inspectorate in place and that, in practice, through their interpretation, they will not lead to a possibility of reducing the powers of the Labour Inspectorate of the Republic of Slovenia. The said Inspectorate needs to be strengthened and, considering new conditions in the labour market, reorganised. Powers of individual inspections in the field of labour, particularly the Labour Inspectorate, the Inspectorate of the Republic of Slovenia for Public Administration and the Defence Inspectorate of the Republic of Slovenia should be outlined so as not to have similar subject matters regulated by various regulations and various bodies for taking action.

2.10.6 Employment of foreign workers

In 2011, a new Employment and Work of Aliens Act ("the ZZDT-1") came into force under which foreign workers may obtain a personal work permit beforehand. The Act has introduced the EU Blue Card. Employers providing for their workers' accommodation must ensure minimum living and hygiene standards. The law has introduced stricter supervision over employers employing foreign workers and it has abolished the seasonal work in hospitality and tourism industry, as in construction. This year the amendment of the Agreement on Social Insurance between Slovenia and Bosnia and Herzegovina started to apply. On its basis, unemployment benefit will also be granted to citizens of Bosnia and Herzegovina with temporary residence in Slovenia.

The Aliens Act ("the Ztuj-2") was also amended. It is still not possible to discuss the actual effects of the newly adopted regulations since they have applied for a relatively short period of time. We believe that the above mentioned amendments will slightly mitigate the dependency of foreign workers on their employers but the conditions of foreign workers are still not adequate. In addition to problems experienced by other employees (non-payment of salaries, inappropriate working conditions, etc.), foreigners have special problems linked to their position. An employer's non-payment of contributions to a foreign worker makes it harder for him/her to prolong his/her temporary residence permission arising from work. Foreigners are also included in the workforce loan chain more frequently where, however, owing to unclear legislation, the action by supervisory institutions is weak.

2.10.7 Issue regarding employees in real sector

We received many initiatives which referred to the non-payment of salaries, social security contributions and working time determination, too high a number of (unpaid) extra hours, the use of annual holiday and holiday pay, the use of lunch time, unbearable temperatures in the workplace, supervision during sickness leave, bullying, harassment and mobbing and other types of violence in the workplace.

2.10.8 Employment of persons with disabilities

In October 2011, the Act Amending the Vocational Rehabilitation and Employment of Disabled Persons Act ("the ZZRZI-C") was adopted. The purpose of this Act is to prevent abuses in social enterprises. The supervision over the implementation of the quota system of employment of persons with disabilities and supervision over obtaining and use of funds received by employers to employ persons with disabilities have been made stricter. The punishment of violators will be possible to a greater extent than until now. Companies which want to obtain all benefits brought by the status of a social enterprise will have to employ at least 50 percent of persons with disabilities. Cash receipts for the duration of employment rehabilitation have been increased form the previous 30 to 40 percent of the minimum wage. It is expected that the new law will contribute to the protection of persons with disabilities in the labour market.

2.10.9 Workplace mobbing

Also in 2011, we received several initiatives in which workplace mobbing was mentioned by initiators. Those parts of the public sector are particularly critical where, as a result of a special hierarchy and commanding, complaint channels are strongly limited (Slovenian Armed Forces, Ministry of the Defence of the Republic of Slovenia). In these instances, the Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") primarily verifies the operation of the Labour Inspectorate of the Republic of Slovenia responsible for determining whether employers have adopted measures to protect workers against sexual and other harassment and workplace mobbing as stipulated by the Employment Relationship Act ("the ZDR"). If an employer

has not adopted these measures, an inspector may punish him with a fine. This measure, a fine, however, does not solve the problem which caused a worker to turn to the Labour Inspectorate. As a matter of fact, it is the court that is responsible for determining harassment and mobbing. On the basis of the initiations handled, the Ombudsman has established that procedures and measures adopted by employers for the protection of workers do not provide for efficient protection of workers against this type of violence in the workplace. It is good to define the mobbing as a criminal offence, but, in the Ombudsman's opinion, it does not help the victim to have the unacceptable conduct stopped.

SUMMARY OF PROPOSALS AND RECOMMENDATIONS

- The Ombudsman proposes that the Government adopt measures which will prevent employers from not paying workers their wages and social security benefits.
- The Ombudsman proposes that the Ministry of Labour, Family and Social Affairs precisely define in the Employment Relationship Act in which instances may a warning be given on the option of the employment contract termination being issued to a worker and what the legal consequences of such a warning are and what the legal remedy is against the issued warning.
- The Ombudsman proposes the amendment of regulations so as to make the Labour Inspectorate of the Republic of Slovenia and the Tax Administration of the Republic of Slovenia responsible for the supervision over payment of premiums for compulsory supplementary pension insurance for workers working in workplaces for which the contribution period is calculated with a bonus.
- The Ombudsman proposes modifications of the Work Code so as to make the powers of the Labour Inspectorate of the Republic of Slovenia clear and unchallenged. In addition, in practice, through their interpretation, they should not lead to the reducing of power of the said Inspectorate.
- The Ombudsman proposes that the Government should ensure that procedures of all supervisory institutions (Labour Inspectorate, the courts and others) will take place quickly and they will actually be concluded in reasonable time. For this purpose, these institutions should be strengthened in terms of their personnel.
- The Ombudsman proposes to the Ministry of Labour, Family and Social Affairs that it examine the scholarship policy and adequately amend the ZŠtip, particularly in the part referring to the annual setting of thresholds for obtaining a Zois scholarship, considering the complexity of individual faculties. Rules on applications by individuals for more scholarships at the same time must be clearly stated in the ZŠtip.
- The Ombudsman proposes to the Government to immediately commence solving the issue of state scholarships for foreign students in Slovenia and to adopt suitable and relevant statutory solutions.

20. Violations of rights of employees in Port of Koper

The Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") has received several initiatives in which initiators warned about an unbearable situation for employees employed with various contractors carrying out their work exclusively in the territory of and for the needs of Luka Koper (Port of Koper) d.d. Employees warned about their working time, longer than 300 hours on a monthly basis, a requirement for permanent availability of workers, about extremely low payment for work, the allegedly inappropriate implementation of inspections, about irregularities in the method of payment of wages and irregularities in the field of safety at work. Employees employed with contractors have highlighted that their position is significantly worse than that of those employed at the Luka Koper d.d. although they are all included together in a uniform working process for the needs of the Port.

The Ombudsman enquired about this case at the Labour Inspectorate of the Republic of Slovenia and we also addressed a formal letter to the Management Board of Luka Koper d.d. In this letter, irrespective of the lack of powers of the Ombudsman, we expressed our concern for the situation of employees and proposed that the Management Board should continue to be actively involved in the improvement of relations between its contractual partners and their employees. The Management Board of the Port of Koper answered that a clause was included in all contracts with their contractual partners on the compulsory observance of the Work Code, that they importantly contribute to the rise in tariffs for services, which consequently enables better payments to employees, and they provided their mediation upon the occasion of an "employment dispute" of employees.

The Labour Inspectorate informed us with regard to our enquires that several inspections were carried out in employers' companies operating in the area of the Port of Koper in 2010 and 2011. Several irregularities were noted. During this time, the said Labour Inspectorate ordered four prohibition decisions, five verbal warnings and seventeen fines for misdemeanours. Four regulatory orders were issued, and four criminal reports were given. Some cases were transferred to the Tax Administration of the Republic of Slovenia, for their consideration. The Labour Inspectorate also warned that employees frequently submit very unclear and non-defined complaints. Hence employees are often dissatisfied because they expect from the given Inspectorate the solution of problems which might only be solved by reverting to legal recourse. .

When handling the initiation it was established that employers have often interfered with the employees' rights. Potential irregularities of the work performed by the Labour Inspectorate were not found. We warned employees that they should better define their complaints against their employer and enable in this manner a more efficient work of the Labour Inspectorate whilst enabling the Ombudsman to simultaneously supervise the work of the mentioned Inspectorate. Violations of rights on the part of the Labour Inspectorate of the Republic of Slovenia and other authorities were not found. **4.1-49/2011**

21. Inappropriate procedure in a posting abroad

An initiator, an officer in the Slovenian Armed Forces, claimed that he was served with an order of the Chief of the General Staff of the Slovenian Armed Forces on his secondment on duty abroad. The order was issued without a prior signing of a special contract as envisaged by provisions of the Defence Act ("the ZObr"). The initiator also claimed that, with this secondment, his official title was illegally withdrawn. He did not carry out all stipulated training and additional training as extra training before the secondment abroad. The case had already been handled by the Defence Inspectorate of the Republic of Slovenia which has established as follows: the complaint that the initiator's could have been seconded

abroad only after prior signing of a special contract is not justified, neither is the complaint about the withdrawal of the official title. But the said Inspectorate did find that the initiator did really not perform all stipulated training that is why it was decided that the initiator should be recalled to the Republic of Slovenia. After the complaint lodged by the General Staff of the Slovenian Armed Forces against the decision of the Labour Inspectorate, the Ministry of Defence repealed the measure for the recall of the initiator.

The Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") obtained the relevant documentation from the Ministry of Defence and their standpoints on the initiation handled. It was assessed that the standpoint of the Labour Inspectorate, that the violation of applicable regulations was made when the initiator was seconded abroad without relevant training, was appropriate and that there was no violation when categorising the initiator into a lower official title. But we examined in detail the situation regarding the secondment abroad without the initiator's consent. In the Labour Inspectorate's opinion, the conclusion of a contract prior to a secondment abroad is not always necessary. The ZObr-v, Article 98 c, Paragraph 3, in fact stipulates that in these instances a special contract is, as a rule, concluded with which the rights and obligations of a worker are determined. Since the term used is "as a rule", the conclusion of the contract is supposedly not obligatory. The Ministry of Defence entirely agreed with such a standpoint, also as an appellant body.

The standpoint that a consent of an individual for his/her secondment abroad is not necessary owing to the use of the term "as a rule", in the Ombudsman's opinion, does not provide for a sufficient level of the protection of rights of employees in the Slovenian Armed Forces. As the term "as a rule" indicates, the secondment of employees to work abroad, as a rule, requires the conclusion of a special contract. This is a two-party legal document and it consequently indicates both parties' consent (will). By way of the term "as a rule", the statutory provision indicates that it is possible to exceptionally withdraw from such a rule but the Act does not mention cases when the exception may be used. Only one exception from the rule of concluding contracts is mentioned in the continuation of the same paragraph. It is defined that such a contract is, as a rule, not concluded in case of cooperation of a unit at military exercises or other forms of training and practice. Such an interpretation is also indicated by the wording of an internal document of the Ministry of Defence, since the Directive on Training of Peace Time Duties of Slovenian Armed Forces Abroad (GŠSV, No. 804- 551/2009-1-41274 of 21 December 2009; "Directive") stipulates that a member of Slovenian Armed Forces is seconded to carry out peacetime military duty abroad only on the basis of a contract on performing duties abroad without the term "as a rule".

The Ombudsman believes that, in cases of allocations of work under the ZObr, it is also necessary to take into account the provision of Article 149, Paragraph 2, of the Public Officials Act ("the ZJU"). The mentioned provision stipulates that a transfer, as a result of working needs (allocation owing to needs of the service under the ZObr), is only acceptable if, upon the transfer, the place of carrying out the work is not more than 70 kilometres away from the previous place of work, or more than one hour's drive by public transport.

It was concluded from the initiation, that the method of ordering the secondment abroad was also disputable, precisely by means of the instrument of order. An individual has no other legal remedy available against the instrument of order than an objection which does not withhold the execution of this instrument. It is explicitly defined in Article 98 of the ZObr that the instance of order is used in decisions on temporary allocation to another job. Such temporary allocation is possible for the maximum of one year. In the actual case, the initiator was seconded abroad for a period of time longer than one year. The legal basis for this decision was Article 98 (a) of the ZObr which, however, does not explicitly determine, that such secondment is decided upon with the instrument of order. We believe that it is not compliant with the protection of rights of employees, who are undoubtedly weaker parties

in a relationship towards an employer, that the employer may allocate an employee to work anywhere, freely and independently of the employee's will. Likewise, in the Ombudsman's opinion, possibilities for secondments abroad should be explicitly defined by law, specifically, by clearly defined conditions when an employee may be seconded to such work also without his/her consent. We also believe that such a broad interpretation of authorities held by an employer within the extent of issuing the instruments of order is inappropriate. A decision on a secondment abroad, is, in our opinion, considered such an interference with one of the essential elements of the employment contract which should provide labour law protection to the employee. Only in this manner would it be possible to ensure that such decisions would always be adopted by taking into account all rights of employees.

In its last standpoint, the Ministry of Defence characterised our position as wrong and based on false conclusions which are a consequence of a wrong and incomplete use of the law, and are non- compliant with the existing case-law (this was not explained in detail). They also warned us about a provision of Article 24 of the Human Rights Ombudsman Act ("the ZVarCP") under which we should not handle a case since judicial proceedings were already initiated in its regard.

The Ombudsman is familiar with the case law under which Labour Courts are not responsible for handling actions relating to the instruments of orders. In the actual case, the initiation was lodged precisely against the instrument of command, that is an instrument, against which there is no judicial protection. Neither is it possible to comprehend the reference by the Ministry of Defence to the Decision of the Constitutional Court of the Republic of Slovenia (U-I-101/95) since this decision gives the legislator, and not the Ministry of Defence, the possibility of an assessment of which questions, considering the special features and diversity of work and organisation and other requirements of professional work in the Armed Forces, must be arranged differently as in the area of other state authorities. Our findings referred precisely to the fact, that in our opinion, an unclear provision of the ZObr is interpreted by the Ministry of Defence in a manner which, in our opinion, does not provide for sufficient level of protection of an individuals' rights.

Regardless of the provision of Article 24 of the ZVarCP, we have formulated our opinion in accordance with the provision of Article 25 of the ZVarCp enabling us to formulate positions in cases which, under the provision of Article 24 of the ZVarCP, are otherwise excluded from the consideration. The Ombudsman is not a body of a statutory or judicial branch of power, hence not holding the power of binding interpretation of regulations. In accordance with our role, however, we have to draw attention to, in our opinion an unclear statutory arrangement. The Ministry of Defence objected to our standpoint regarding the usefulness of the provision of Article 149 of the ZJU. But the said ministry did not make a stand regarding our criticism of the use of provisions of the ZObr which is, in our opinion, essential. This can only be understood to mean that the given Ministry agrees with our criticism, but still does not intend to take it into account. The dubious question of this type does not relate exclusively to the initiator but to more individuals and it is not possible to disregard the possibility of this happening again.

It is also clear from the standpoint of the Ministry of Defence that the professional performance of military service should be defined more precisely and in more detail by way of special regulations. In spite of that, in the said Ministry's opinion, such indefinite elements cannot influence the observance of rights of employees. We cannot agree with this view since every statutory norm which is not clear enough and which provides a basis for decision-making of rights and obligations of employees, may lead to unjustified interference with rights. Hence the initiation was considered justified. **4.3-49/2010**

2.11 PENSION AND DISABILITY INSURANCE

GENERAL

The number of initiatives relating to pension and disability insurance dropped significantly (in regard to 2010, the index stands at 67.8%). But their content changed as well. The majority of initiatives related to the lack of information and expectations in relation to the new Pension and Disability Act which was rejected at the referendum. The rejection of the proposed law, however, also means that the Decision of Constitutional Court No. U-I-358/04 of 19 October 2006, (we drew attention to this Decision in the Annual Report of 2010) (p.230), has still not been implemented. Hence, neither the proposals nor the recommendations proposed by the Ombudsman in this field and approved by the National Assembly are thus achieved.

We were informed about a modified regime concerning the receipt of notification of pension transfers to certain pensioners after 30 September 2011. This regime was adopted by the Council of the ZPIZ at its session on 9 June 2011 According to this new regime, pension recipients, having residence in the Republic of Slovenia who receive their pensions and other cash benefits into a personal bank account, do not receive monthly notifications any longer but only upon a harmonisation or modification of the amount of the payment, the payment of annual bonus and the modification of the premium for voluntary health insurance. However, notifications are still received by those persons with administrative, judicial or tax deductions being made to their pensions.

We tried to understand the dissatisfaction of an initiator as a result of the modified arrangement on submission of notifications on pensions and other cash benefits since all beneficiaries had previously received notifications on transfers. Considering the fact of how long such a system was applied in Slovenia, for many pensioners the notification of the pension transfer signified the most authentic document on the eligibility to a pension. But it must be stressed that, in essence, the pension remittance is not linked to the receipt of notification on transfer. Hence, in our opinion, the modified arrangement regarding the sending of monthly notification on pension remittance does not interfere with any human rights and fundamental freedoms, including the right to a pension. All pension recipients who receive their pensions and other benefits into a personal bank account may verify their financial situation and inflow of money in the account, as before, at ATMs, through modern bank channels (klik, net.stik, etc.) or on a bank statement. Until the deployment of a special card used by pensioners for proving their status in order to benefit from various commercial discounts, when taking loans and similar, retired persons having their pension transferred to their personal bank account can prove their status by means of a bank statement. They will also have the possibility to request from the ZPIZ a written notification. When writing this Report, the ZPIZ had already started sending identification cards to beneficiaries.

Disability insurance is well arranged in terms of norms, but a lot still needs to be done for the implementation of legislation. We particularly have to ensure the realisation of all obligations adopted by ratifying the Convention on the Rights of Persons with Disabilities (“the MKPI”) and by including persons with disabilities more actively not only in the preparation of the legislation and programmes but also in their monitoring. At the same time we need to ensure transparent operation of societies bringing together approximately 160 thousand members. These societies are mainly financed from public funds. In the Annual Report for 2009 the Ombudsman also recommended that all regulations should be adopted which are required by the implementation of the MKPI. Unfortunately, yet again we have to report that the State has not adopted or prepared all regulations undertaken by adopting the above mentioned ratification of the Convention. This does not strengthen the trust in the rule of law.

2.11.1 Valorisation of pensions is not granted right

Since after the rejection of the new pension legislation an intervention act came into force, an initiator turned to the Ombudsman wishing to get the Ombudsman's opinion on a question: is a temporarily suspended valorisation of the amount of pensions a violation of human rights, is it an interference with granted rights?

Under conditions stipulated by the law, the Constitution of the Republic of Slovenia ensures all citizens the right to social security, including the right to a pension (Article 50, Paragraph 1). It is of key importance that the Constitution prohibits interferences (also statutorily) with the granted rights. However, in this case, the right granted is only the right to a pension and not also the right to its valorisation or its adjustment. In other words: the law may differently regulate the method of adjusting pensions to wages or costs of living but it cannot directly interfere with the amount of the already accrued (by means of a Decision) pension. Such interference would be constitutionally unacceptable while the modification of the method of valorisation is constitutionally acceptable. Such an intervention of the legislator in the established system of valorisation must be obviously justified and proportional to goals aimed at by the intervention. The Constitutional Court of the Republic of Slovenia has already made decisions on this issue. We informed the initiator of the Decision of the Constitutional Court of 1993 dealing with a similar initiative. In its grounds the Constitutional Court stressed: "/.../ the position is not justified that the Constitution prevents that the law would modify rights previously determined by the law and having a future effect if these modifications are not contrary to the constitutionally determined principle or other constitutional provisions. The extent of rights determined by the law may also be diminished by law, obviously only with its future validity and also taking into account the right to social security determined in Article 50 of the Constitution".

Some of the grounds for the decision of the Constitutional Court are also mentioned because in tightened economic conditions further limiting of all social rights is expected and increasingly greater dissatisfaction of beneficiaries with such interventions.

2.11.2 Observance of the Convention on the Rights of Persons with Disabilities

The Ombudsman was notified about the proposal of the Act Amending the Ownership Transformation of the Lottery Slovenia Act lodged in the summary legislative procedure by a group of Deputies. A non-governmental organisation reproached the proposers, saying among other matters, that the requirements of the Convention on the Rights of Persons with Disabilities were not observed and there should be "nothing about disabled persons without consulting disabled persons".

Every citizen has the right to participate in the administration of public affairs (Article 44 of the Constitution), directly in accordance with the law or through elected representatives. In our opinion, this also refers to the preparation of legislation. The National Assembly of the Republic of Slovenia adopted a Resolution on Legislative Regulation (OG RS, No. 95/09) in which is clearly stated: "The provision of legitimacy of adopted decisions and decreasing the democratic deficit by enabling the participation of a circle of entities, which is as broad as possible, in the preparation of decisions, are the background for the adoption of quality and efficient regulations and their implementation to realise policies in an individual field: "We believe that the Resolution does not bind only the public administration which, as a general rule prepares the regulations, but also to other authorised proposers of Acts. Also in this manner, the successful operation of the rule of law is ensured.

Since according to our data, organisations of persons with disabilities were not even informed about the drafting of the amendments of the law, it was assessed that not all minimum recommendations provided by the Resolution in regard to public participation (particularly the item (b), third indent, Chapter VII) were observed in the preparation of the Amending Act in question.

We also drew attention to the provisions of Article 4, Paragraph 3 of the MKPI binding the State Parties to "closely consult with persons with disabilities" in the development and implementation of legislation and policies to implement the present Convention. Since the Amending Act was developed without any knowledge from organisations of disabled persons it was assessed that the previously mentioned commitment of the State was not observed.

The above-mentioned irregularities are of a procedural nature. Hence it would be possible to improve them in subsequent legislative procedure, particularly by involving representatives of disabled persons in the discussions held in working bodies of the National Assembly. However, this cannot substitute for the shortcomings in terms of content which are the result of ignoring persons with disabilities in previous procedures. A discussion at sessions of working bodies is not dedicated to seeking the best solutions in terms of content and their legal and technical formulation. This stage in the development of a regulation must be made in advance by a proposer of a regulation and should not impose that burden on a legislator.

We informed the National Assembly and the Council of the Government of the Republic of Slovenia for Persons with Disabilities about these findings.

2.11.3 The Council of the Government of the Republic of Slovenia for Persons with Disabilities as an independent body?

In cooperation with the National Council, a panel discussion was organised in April 2011 on the issue regarding the monitoring of the MKPI since we were warned that supervision in our country is not suitably arranged, not in terms of content, nor in terms of organisation.

The MKPI binds Member States to establish one or more independent bodies for the promotion, protection and review of implementation of this Convention. This requirement was implemented by the Equalisation of Opportunities of Persons with Disabilities Act ("the ZIMMI") envisaging the establishment of a special Council of the Republic of Slovenia for Persons with Disabilities as a three-party body. The said body is to be composed of seven representatives from the organisations of persons with disabilities, professional institutions from the field of disability insurance and the Government of the Republic of Slovenia. Until its inception, these tasks are carried out by the Government Council for Persons with Disabilities with a similar composition (of five representatives).

The composition of the new Council, in the Ombudsman's assessment, does not guarantee its independence since, in addition to representatives of the Government, there are also seven representatives of institutions which are mostly public institutions financed from public funds. Such composition of the Council, therefore, does not even provide an image of independence. On the basis of a transitional provision of the ZIMI (Article 42), until 2013, the tasks of this body will be performed by the Council of the Republic of Slovenia for Persons with Disabilities, established back in 1996. The said Council has a similar composition but even its independence is not acknowledged not even by its title.

It is not important that the work of this body, i.e. the Government Council, is regulated in detail by the Rules which in decision-making require the majority of members of the body to be present. But, in practice, it may be shown that one of the constituent three parties is outvoted as a result of which, it will not be possible to reproach any mistakes in terms of

formality and in law. Because the mentioned body does not decide on individual rights, the potential outvoting by the Government over the representatives of persons with disabilities is not critical. But the opinion on the National Programme on Disability Policy might also be adopted, which would be unacceptable in terms of content. We are convinced that this will not happen but, even a theoretical possibility for such decision-making does not give any faith in the body's independence. If the above mentioned statutory provision prevents the establishment of a new body until 2013, the three-party relations in the Government Council for Persons with Disabilities should be, at least temporarily until the inception of the new body, adapted to the requirements and goals of the MKPI.

SUMMARY OF PROPOSALS AND RECOMMENDATIONS

- The National Assembly should supplement or amend the Pension and Disability Insurance Act so as to have the Decision of the Constitutional Court (U-I-358/04 of 19 October 2006) implemented.
- The responsible state authorities should prepare implementing regulations as fast as possible to enable the implementation of the Convention on the Rights of Persons with Disabilities and the Equalisation of Opportunities of Persons with Disabilities Act.
- The proposer of law and implementing regulations should consistently respect requirements of the Resolution with regard to the requirement of public participation.
- The Health Insurance Institute of the Republic of Slovenia ("the ZZZS") and the Pension and Disability Insurance Institute of the Republic of Slovenia ("the ZPIS") should agree on the required documents and procedures for enforcing the rights arising from pension and disability insurance. They require a coordinated procedure and the payment of health care services. Both institutions mentioned should inform all entities carrying out procedures.
- The Ministry of Labour, Family and Social Affairs should as soon as possible prepare a proposal for the restructuring of the Craftsmen and Entrepreneurs' Fund, in terms of its status and activities.

22. Pension and Disability Insurance Institute of Slovenia made decision on final old age pension assessment

An initiator retired in 1992 and received approximately 558 euros of pension. After 18 years, she received a new Decision by means of which the Pension and Disability Insurance Institute of Slovenia ("the Institute") decided that since the day of meeting conditions for the old age pension, that is, since 1 June 1992, she had the right to a pension amounting to 74.94 euros. Being convinced that her pension was increased to such an amount, the initiator did not lodge any complaint against the Decision. She realised that her pension had actually been lowered upon the next pension payment. She turned several times to the Institute and tried to clarify the conditions which had arisen but she was refused with an excuse that the Decision cannot be modified because it was final. The deadline to lodge the complaint had expired.

The Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") asked the regional unit of the Institute to communicate to us, why the modification of the initiator's old age pension occurred after so many years, and on what basis. The answer we received surprised us. They informed us that, for all these years, the initiator had only been receiving an advance pension payment. By way of the new Decision, her pension was finally assessed and calculated. The final assessment and calculation of her pension was made when on 15 September 2009 a formal letter from the Department for Pension and Disability Insurance was received together with a list of receivers of advance pension payments. On the basis of this document, a review of the case was made and it was determined that the final assessment and calculation of the initiator's pension had not been decided yet. In the reply to the Ombudsman, the Institute tried to justify their embarrassment with an explanation that anybody may carry out a procedure for the final assessment and calculation of a pension and issue a decision on this and that the initiator did not complain about the decision. They sent her a formal letter where legal facts influencing the issue of a decision on final (lower) assessment and calculation of pension were explained in detail. They also explained to the Ombudsman that the initiator would not have to return the difference between the already paid amount of the advance pension payments and the finally assessed and calculated amount of the pension.

We were not satisfied with this explanation. The fact that as much as 18 years have passed from the first issued Decision to the final assessment and calculation of pension is, simply, impossible to understand. We again turned to the Institute and asked when was the data for the issue of the Decision on the final assessment and calculation of the pension available to the Institute, and what were the reasons for not making a decision on the case. We also asked what was actually the reason that, only through the list of receivers of advance pensions for 2009, the Institute found out that the initiator's pension was not yet decided upon. We also criticised their Decision. On a standard form where the decision is written, there is no explanation or rather, it is completely incorrect. It does not even state a single reason to explain to the initiator why such decision has actually taken place. With a different (more individualised) Decision with a clear content and grounds, it would be impossible for the initiator to think that her pension had been increased. The complaint might have been lodged in time but, as a result of an incomprehensible Decision misleading the initiator, she missed the possibility to lodge an application for a legal remedy. We are still waiting for an answer from the Institute. **3.1-28/2011**

23. Unequal treatment when calculating overtime work in basis for pension assessment

An initiator highlighted a question regarding the calculation of overtime work in the basis for the old age pension assessment and unequal treatment. He carried out the job of a driver and a mechanic as a worker of the company Avtopromet Gorica. Driving the truck was often linked to work in extended working time, as was his intervention as a mechanic upon emergency events on the roads. The Pension and Disability Insurance Institute of the Republic of Slovenia ("the Institute") did not take into account his overtime work when assessing the basis for his old age pension although the employer's certificate on wages for his overtime work demonstrated that contributions were paid from these payments. The problem is interesting because the Institute acknowledged the overtime work to workers of the same company who retired only a few years before the initiator.

The initiator did not succeed with his application. The court also rejected his application. A judgement, in which the Court explained why it is not possible to calculate his work in the extended working time is not possible into his pension is final. It is also stated that this was a matter arranged by the work organisation which, by means of its general legal documents in accordance with then applicable regulations on arranging employment relationship set up workplaces for which a special work condition for the performance of work in the extended working time applied. A piece of evidence on how the company had arranged the work over the full working time (general legal documents), was not submitted to the Court by the initiator. This was also impossible after 38 years of work in the company since the company went bankrupt in 1996.

The problem of employees in the company and non-observance of the overtime work in the assessment of the pension was dealt with by the Ombudsman as early as in 2005. Unequal treatment was highlighted also then. That is why we inspected the "pension files" of some already retired workers. A general document of the company was not found in the case files, but we did discover two deeds of the Inter-municipal Inspectorate which importantly influenced the inclusion of their overtime work in the pension assessment since the overtime work was recognised in favour of these workers. As it seemed, then, the general legal documents of the company were not even important for making the decision.

Considering that, we can justifiably raise a question about the unequal treatment of insured persons who in the procedure to assess rights arising from pension insurance have not submitted a general legal document of the company or deeds which the Institute has used for the needs of some previous cases. We sent to the initiator some deeds found and proposed to initiate the procedure for a renewed assessment of his pension, on the basis of these (new) facts. The initiation was justified. **3.1-43/2010**

2.12 HEALTH CARE AND HEALTH INSURANCE

GENERAL

In spite of announcements, the Ministry of Health did not prepare the new health legislation. Instead the Thesis for the Improvement of the Health Care System until 2020 was satisfactory for the Ministry: the document was submitted for public debate in February and this was all. The said Ministry also did not prepare the needed modifications of the Mental Health Act which were also pointed out as being necessary by the Ombudsman. Likewise, the Resolution on the National Mental Health Programme, announced by the Government to be produced by the end of 2010, was lost somewhere.

For the most part, the solving of the issue, which we were drawing attention to in recent annual reports, had not even commenced and solving it is becoming even harder with tightened economic conditions. Since the majority of recommendations of the Ombudsman, approved by the National Assembly after the discussion of last year's annual report, is still unfulfilled, this year's Annual Report is prepared with the same sections. We have not repeated the already discussed findings but we have particularly pointed out the indefinite implementation of public powers, granting of concessions and inappropriate child and adolescent psychiatric treatment.

A negative assessment of the work of bodies responsible in the field of health care was also influenced by the fact that neither the Government nor the Ministry responded to the Ombudsman's proposal that the law should ensure health care to all children irrespective of their parents' payment of contributions for compulsory health insurance. Although the Ministry of Health agreed with the Ombudsman's proposal that children should be protected separately (and not through their parents), the Act Amending the Health Care and Health Insurance Act, solving the question of the health care of children of persons not paying their contributions, was prepared by a deputy group. A cynic would evaluate it as successful the following fact: the procedure concerning the adoption of the above mentioned amending act was not (overly) hindered by the Government.

The number of initiations handled in the field of health care and health insurance did not significantly change in the past three years and represents 4.5 percent of all cases considered at the Ombudsman's Office. In regard to the content of initiatives, a growth of violations reported in regard to dental care has been determined. This is probably the result of the fact that the compulsory health insurance covers only a small portion of costs in this field. There are increasingly more reports that private dentists do not issue invoices for their work performed. These irregularities do not fall under the Ombudsman's responsibility and we refer initiators to the Market Inspectorate.

It has been determined that health care service providers do not consistently carry out the provisions of the Patient Rights Act (Article 25) obliging them to inform a patient of "the calculation of service specified according to individual medical services, medicinal products and devices used". The above mentioned provision is consistently carried out only by pharmacies, hospitals and homes for the elderly. The Ombudsman believes that the notification on costs of medical services might importantly influence the cost-consciousness of patients and, in this manner, the rationality in the use of funds dedicated for health care. That is why it is proposed that such obligation of providers and a right of patients should start to be consistently implemented also by the introduction of a minor offences procedure. This is currently already enabled by the law (Article 87 of the ZPacP).

2.12.1 Health Services Act

Concessions

In spite of several warnings, the Ministry still have not arranged the granting of concessions for health services in a manner which would enable transparency of procedures, and most of all, the equality of candidates applying for private practice. We believe that the procedure regarding the granting of concessions might be regulated by way of suitable implementing regulations and have all applications put "on hold" or in accordance with the Administrative Procedure Act rejected. The granting of a concession as a permission to carry out a public service is not possible in the administrative procedure on a request of a client, since criteria and conditions for its granting are not known in advance. Such procedure is also not public. That is why the Ombudsman points out that the practice of the Ministry of Health of not granting a concession at all is acceptable at first sight but it is not acceptable if viewed as a duty of the state authority to reply to an application and to decide about it in reasonable time.

2.12.2 Medical examinations of students

A student (initiator) who had to take a general health check-up at the Student Health Care Centre turned to the Ombudsman. The initiator was interested whether a blood test might be refused at such an examination and whether she would still receive a certificate on a general health check-up which had been performed. The general health check-up is, in fact, a precondition for proceeding to the next year.

The Ombudsman accepted the initiative for its consideration. Several questions were raised with regard to the mentioned issue, among other matters, also a question relating to the obligation to perform the general health check-up. We noticed on the web page of the Student Health Care Centre for students of the University of Ljubljana that the general health check-up is carried out in the first and fourth or fifth year of the study programme (according to the new Bologna programme). It is also stated there that the check-up is mandatory and it is a condition for proceeding to the next year.

General health check-ups are regulated in detail by the Rules on Carrying Out Preventive Health Care at Primary Level issued by the Minister of Health in 1998. The Rules stipulate the goals of the preventive work and the scope of the general health check-up but it does not determine the obligation on the part of students to take the examination. Neither was this fact found in the Statutes of the University of Ljubljana. Hence, two enquiries were submitted: to the University of Ljubljana and the Student Health Care Centre. We were interested in the legal basis from which it arises that general health check-ups are mandatory for students and whether the blood test was a compulsory part of this examination. We also wished to know the reasons and goals owing to which the general health check-up is determined as a study obligation, i.e. , as a condition to proceed to the next year.

The University of Ljubljana stated in its reply that the preventive health care for students is, in accordance with the Rules, organised by groups per faculties, and per years, that is in the first and the last study year. It must be taken by regular as well as part-time students. Students who are employed and who have taken part in the examination before their employment do not need to take part in this examination which is organised within the work of the Student Heath Care Centre. The University of Ljubljana has also stated that, in accordance with the Rules, the stipulated mandatory examination also included a blood test examined by the laboratory. The University of Ljubljana, in its reply, refers to the preventive work aiming at active medical follow-up, as one of its goals. In their opinion, the higher education institutions undeniably carry a portion of responsibility in the care for public health and refer to the Constitution of the Republic of Slovenia which stipulates that

an individual may also be forced to take medical treatment if this is determined by the law. It is also stated there that the above mentioned constitutional provision indicates that in case of a conflict between certain constitutional rights with the right to public health, the latter is more important. The University of Ljubljana added that the Contagious Diseases Act ("the ZNB") stipulates that measures for the prevention and management of contagious diseases also include, among others mentioned, a compulsory medical and hygiene examination together with consultation. The letter refers to Article 4 of the ZNB. Since public health is a right which is given special importance also by the Constitution of the Republic of Slovenia and higher education institutions are, in their opinion, also responsible for it, the taking of the preventive medical examination is set as a condition to proceed to study in the higher years in order to ensure protection of this right. By reference to the above mentioned legal basis, the University of Ljubljana actually provides for the implementation of mandatory preventive health care. In the opinion of the University of Ljubljana, all activities within the extent of responsible provision and implementation of general health check-ups of students are carried out within the framework of the above mentioned legal documents which provide for the protection of public health.

The Ljubljana Health Care Centre notified us that the initiator turned also to them and that all dilemmas relating to the medical examination were eliminated in direct conversation with her. They submitted the correspondence they exchanged with the initiator. The Centre stated that, under the Rules, every school institution must have its own doctor. Through this doctor an active medical control of the population, being entrusted to the said institution, is carried out. That is why they ask a student what diseases are most frequently present in his/her family, risk factors are verified (weight, blood pressure, changes in blood sample). On this basis they give students advice on what precautions to take in order to avoid diseases posing a threat to them according to their profiles. In addition, there are exercises relating to areas of risks in health which are taken at many faculties and hence, more than a thousand students must be vaccinated against contagious diseases before these exercises. It has been added that an individual may always withdraw from vaccination when disagreeing with it for reasons of personal belief. The said health centre has stated an argument that although education after primary school is not mandatory, there are certain commitments to the school to which students enrol. One part of these commitments is also our health, before we become sick. It is related to preventive activity and it is the most rational thing to do to systematically carry it out. They also wrote that the warning on compulsory participation by an invitation to a medical examination is required by the University of Ljubljana. Some faculties and higher education institutions not within the structure of the University withdrew from this requirement, and communicated this to the Ljubljana Health Centre. The said medical centre also replied that any body intervention, in this case blood test, may be refused by a student and there is always someone who does this. There are various reasons for rejections: some bring along fresh results of tests and the given centre does not insist on repeating them, other students are afraid of taking blood, and the third take on the risk of an incomplete preventive examination.

The University of Ljubljana does not indicate the legal basis for giving grounds for the obligation to participate at the general health check-up but refers to the care for public health. The tasks of public health are, among other matters, also monitoring, implementing and evaluating the efficiency of health care measures. But regular monitoring and control of data must be carried out. This, however, is not clear in the reply from the Ljubljana Health Care Centre (considering the fact that a student may refuse the blood test if disagreeing with it or if the student takes responsibility for the incomplete preventive examination). The Ljubljana Health Care Centre has presented general health care check-ups of students from the position of what is in the best interests of students. The Ombudsman agrees with that but the said centre does not mention the regular monitoring and control of data from the aspect of public health as referred to by the University of Ljubljana.

The legal basis mentioned in both replies (the Rules, the Contagious Diseases Act, the Health Services Act, the Health Care and Health Insurance Act, the Medical Inspection Act), however, does not include a provision concerning an obligation to carry out general health check-ups. Only the extent of medical examination and goals of preventive work are stipulated in the Rules but they do not impose on students that they compulsorily take part in a medical examination. When dealing with the case, the Ombudsman determined that there is no medical regulation stipulating the obligation for a student to take part in a general health examination.

Article 35 of the Constitution provides for the right to inviolability of the physical and mental integrity of every person, his privacy and personality rights. The European Convention on Human Rights and Fundamental Freedoms stipulates in Article 8 that everyone has the right to respect for his private and family life, his home and his correspondence. The public authority must not interfere with the implementation of this right except if this is determined by the law and deemed urgent in a democratic state for reasons of national security, public safety or economic prosperity of the state so that a riot or a crime is prevented, that health or morality is protected and rights and freedoms of other people are protected. It can be noticed in the Commentary of the Constitution of the Republic of Slovenia that according to the traditional assessment of the European Court of Human Rights, the term “private life” also includes physical and mental integrity of a human being. Compulsory blood tests, compulsory vaccinations, and medical examinations in general belong to the first group. With regard to compulsory blood tests, medical and psychiatric and other examinations, in the opinion of the commentators of the Constitution, the question on the importance of the intervention must first be answered (Commentary to the Constitution of the Republic of Slovenia, 2002: p. 374). Although, as is stated by the University of Ljubljana, the obligation to take part in general health check-ups indicates protection of public health, this obligation must be stipulated by the law, since it is the legislator who weighs the interests and the right of an individual against publicly protected interests. Hence the Ombudsman believes that the obligation to take part in a general health check-up, which on its own, means an intervention into an individual’s physical integrity, must be based on the law since the arrangement of this field by way of the Rules is not suitable.

The Ombudsman has not noticed any determination of the obligation to take part in a general health check up in the legislation relating to higher education. We find this questionable, specifically because the general health check-up is set as a condition for proceeding to the next year. The Ombudsman has neither found any proportionality between the school obligation of a student and the obligation which should respect public health. The Ombudsman believes that general health check-ups are beneficial for students, which is why it makes sense to maintain this as a right of students. But they certainly cannot be a condition for enrolment in the next year if this is not strictly determined by the law since, as it was already mentioned, it is the legislator who weighs between the rights of an individual and the public interest, and this assessment, in the actual case, cannot be left with the University of Ljubljana. The Ombudsman is also aware that every higher education programme must be assessed separately since some do include risks of infection or for transmitting contagious diseases.

On the basis of the above mentioned we proposed to the Ministry of Health to examine the reasonability of the obligation of general health check-ups of students. If the Ministry finds that the obligation to take part in general health check-ups is reasonable (particularly from the aspect of public health) it is proposed that a new basis should be ensured with new health legislation which will stipulate rights and obligations of providers and users of general health check-ups.

We proposed that the Ministry of Higher Education, Science and technology examine the need that, by way of regulations in the field of higher education, the right or the obligation of students to take part in general health check-ups is arranged.

And we proposed to the University of Ljubljana, University of Maribor and University of Primorska to review their study programmes and determine whether their content is so linked to the medical condition of students that the participation in general health examinations is obligatory (for reasons of safety of a student: compulsory vaccination, protection against contagious diseases) for progressing to the next study year.

2.12.3 Fire in Hospital and death of a patient strapped to a bed

The Ombudsman dealt with an issue concerning a fire which took place in Izola General Hospital in February 2011. A patient died as a consequence of the fire. In regard to the mentioned event an enquiry was submitted to the Izola General Hospital. We warned the Ministry of Health about the absence of a suitable legal basis which would regulate the use of security measures (particularly the strapping of patients to a bed) outside psychiatric hospitals and social welfare institutions.

We addressed several questions, which referred to the circumstances of the case, to the mentioned hospital, the legal basis for ordering the security measure, who ordered it, how the implementation of the supervision was ensured and in what manner they carried out the security measure and how they strapped down the patient. The said hospital stated in their reply that there were three patients in the room during the fire. A patient who was strapped to the bed subsequently died in the Ljubljana University Clinical Centre due to burns and a patient who tried to save him was burnt. The decision to strap the patient to the bed was made in the said hospital because the patient tried to get out of the bed several times although he did not have proper use of the right-hand side of his body and it was feared that he might fall from the balcony of the third floor. According to the explanation of the said hospital, the security measure of strapping the patient to the bed was implemented due to a high probability that this patient would fall out of bed without suitable strapping. It had not even occurred to them that the neighbouring patient might light a fire. It is further explained that strapping is usually carried out by nurses who inform the doctor and the supervising nurse before doing that. Approving the strapping is a greater problem outside the regular working time hours of neurologists when this ward is under the responsibility of an internal specialist on duty. A nurse then informs a doctor on duty who approves the strapping by telephone. A supervision over the strapping is carried out by nurses who verify the patient's condition every 15 minutes. This was what happened in the case considered.

It was clear from the conduct pursued by the hospital that the security measures are only used and imposed "to the best of their ability" but without any legal basis. The Ombudsman has determined that health care institutions admit that they use security measures since the safety of patients would otherwise be threatened but they are aware that there is no legal basis which would allow for the use of security measures. The Ombudsman's opinion in this regard has always been clear: every intervention limiting rights or freedoms of an individual, regardless of his/her personal circumstances, must be envisaged by the law, together with the method of its implementation, duration and supervision over intervention.

On the basis of the above mentioned we proposed to the Ministry of Health to solve the issue in question by amending the ZDZdr or other legislation which will clearly define all measures allowed to be used by providers of health care or social welfare services in order to protect the life of an individual or his/her property, and not to limit human rights and fundamental measures by way of these measures (with or without a person's consent). The Ombudsman's action was evaluated as successful since the Ministry of Health agreed

with our opinion and committed itself to strive to arrange as soon as possible, by way of the law, the use of security measures, the method of their implementation, the duration of the intervention and its supervision also in other hospitals.

2.12.4 Child and adolescent psychiatric treatment and forensic hospital

After long-term promises and plans, in August 2011, the Forensic Psychiatry Ward in Maribor was finally opened. But the issue regarding the child and adolescent psychiatric treatment, pointed out in the last annual report, is still not solved.

2.12.5 Contagious Diseases Act

A non-governmental organisation warned us about inappropriate implementation of provisions of the Contagious Diseases Act regulating mandatory vaccination of children. The society pointed out the inappropriate conduct of doctors who do not provide enough information to parents about risks and side effects of vaccines. They attached to their initiative 90 statements of parents on various complications and irregularities during vaccinations of children.

Because parents did not give their consent to initiate a procedure before the Ombudsman, we were only notified about their statements. By way of inquiries at the Institute of Public Health and the Ministry of Health, we primarily tried to find out whether reported violations are enabled or even encouraged by the legislation, or, whether they are only a consequence of inappropriate conduct by individual doctors.

The Contagious Diseases Act ("the ZNB") stipulates compulsory vaccination against certain diseases and a person can avoid this only in medically justified instances and under procedures determined by the law. Since evading or disabling the obligation to vaccinate is also punished by way of a fine it is even more important that regulations also determine the people's rights which are interfered with by means of the obligation to vaccinate. The legislation must also clearly tell an individual who is expected to fulfil the obligation, what his/her rights are in fulfilling the statutory obligation.

It has been determined that when evaluating the fulfilment of the mentioned requirements several regulations need to be taken into account since the rights of a patient are separately arranged in the Patient Rights Act ("the ZPacP") which was adopted two years later than the ZNB. Considering the content of the both mentioned acts, however, they need to be applied together: since, only by means of an evaluation of the provisions of the ZPacP, can it be found out whether any mistakes have been made or rights violated in the vaccination procedure while the ZNB is applied for the compensation of any potential damage as a result of the permanent consequences of mandatory vaccination. In the Ombudsman's opinion, the mentioned Acts complement themselves in regulating the mandatory vaccination procedure in a manner which does not violate patient's rights at system level. But as usual, the problem lies in the implementation of individual statutory provisions.

The Institute of Public Health ("the IVZ") organises regular training and additional training for all providers of vaccinations, thus, providing for the quality and safe implementation of vaccinations. And parents may find information in a special brochure issued by the said institute (Vaccination of Children, IVZ, 2011) as well as on web pages of the Institution. The brochure is available to all parents in outpatient clinics. In order to improve their knowledge and to become informed of cases of good practice, all vaccination providers must carry out primary training on dealing with vaccines and at least once a year take part in special training

on vaccines and vaccination. The abovementioned institute has also issued a brochure "Vaccination and Vaccines - Good Practice of Safe Vaccination" which was distributed to all vaccination providers in the country. The Ombudsman believes the said institute has thus fulfilled its duties but it will be recommended to reconsider how to improve the knowledge of parents.

The Ombudsman believes that the legal basis and conduct of responsible bodies does not violate rights of patients or rights of children. Violations occur during individualised treatment of children when individual providers do not fulfil their duty of providing information to parents. But such violations, as also described in statements of parents, which we have reviewed, cannot be handled if persons affected do not report the violation. The ZPacP regulates the procedures concerning the handling of complaints rather accurately and enables, both, to persons affected and the violators, to settle all disputes in a mutual dialogue. The Ombudsman understands concerns and fears on the part of parents who do not wish to be put forward in complaint procedures. However, this is the only way for others to actually find out about irregularities and eliminate them. In such cases, the basis would be given for the Ombudsman's intervention.

The Ministry has assured us that they will impose on the above mentioned institute and the health care centres a requirement to dedicate special attention to this topic in their programmes of work for 2012.

2.12.6 Complementary and Alternative Medicine Act

The Ombudsman has been warned about the issue of homeopathic activity regulated by the Complementary and Alternative Medicine Act. The said Act has been in force even since the middle of October 2007 and yet, not all implementing documents enabling the Act's implementation have yet been adopted. The responsibility to issue these regulations is shared since the Act stipulates that some documents will be issued by the Complementary and Alternative Medicine Chamber and others by the Ministry of Health. Since the Chamber has not yet been established, the question is how can complementary and alternative medicine services be implemented at all? Until the establishment of the Chamber, the given Ministry has had the task of carrying out duties otherwise carried out by the Chamber as public powers but the Act also envisages some other duties which are apparently not carried out by anybody. Alternative medicine practitioners, hence, do not have a Code of Ethics relating to the conduct and standards of alternative medicine services which leads to a question of supervision. How can bodies responsible for supervision determine potential violations if procedures and methods of complementary and alternative medicine services have not been regulated at the normative level? Having only a statutory arrangement of alternative methods of treatment is not enough to consider this field as regulated since it does not provide for suitable safety and protection of rights for users of these services.

The Amending Act, enforced in 2011, will also enable a different treatment of foreigners who will have the possibility to carry out complementary and alternative medicine services together with their medical services in their country, while the General Practitioner Services Act prohibits doctors in the Republic of Slovenia from performing alternative medicine services.

- New health legislation should also raise the cost-consciousness of patients.
- Children should become an independent category of persons insured under compulsory health insurance without conditioning such insurance with their parents' payment of contributions. After 18 years of age until the end of schooling they should be insured through their parents.
- The Government should provide the legal basis for general health examinations of students and ensure the connection, in terms of content, between medical requirements and study obligations.
- The Ministry of Health should uniformly regulate the issue of respect for the deceased and their family at the time of death in all health care institutions.
- The health legislation should regulate the use of security measures outside psychiatric wards under special supervision and secure departments of social welfare institutions, that is, in all other hospital wards and departments of social welfare institutions.
- The Ministry of Health should analyse annual reports on the work of all advocates of patient rights and examine a possibility to expand their assistance and consulting services also to the rights arising from compulsory health insurance.
- The Health Insurance Institute of Slovenia should ensure greater professional qualification of all those who make decisions in administrative procedures.
- The Ministry of Health should ensure all bases so as to start implementing the Complementary and Alternative Medicine Act.

24. When do twins count as one child?

An initiator informed the Human Rights Ombudsman of the Republic of Slovenia with a formal letter by means of which she required explanations from the Ministry of Labour, Family and Social Affairs with regard to the implementation of Article 26 of the Parental Protection and Family Benefits Act ("the ZSDP"). The provision in question determines that one of the parents has the right to child nursing and care leave lasting for 260 days immediately after the expiry of maternity leave. Upon the birth of twins the above mentioned leave is extended for an additional 90 day period. The child nursing and care leave is also prolonged when, upon the birth of a child, parents care for and raise at least two children until the age of eight, specifically, by 30 days, and 60 days for three children and 90 days for four or more children.

The initiator gave birth to twins and before that she had cared for and nursed two children at home. She required the said Ministry to explain to her why only 30 additional days were granted to her and not 60 days, as should have been granted to her in her opinion.

The Ministry explained that in Article 26, Paragraph 6, the law explicitly discusses the care and upbringing of a child. According to the explanation of the Ministry, the initiator did not manage or care for and bring up the third child, since the delivery of the third and the fourth child took place at the same time (a few minutes apart). But the Ministry has emphasized that the initiator received the additional 90 days for the birth of twins, in accordance with Article 26 of the ZSPD, which was not contested.

The Ombudsmen drew attention to the problem of the interpretation of Article 26 of the ZSDP in the Annual Report for 2006. The position of the Ombudsman that the interpretation and application of individual provisions of a regulation, when these are not clear enough, to the disadvantage of an individual are unacceptable, has remained unchanged.

Hence, the Ombudsman repeatedly draws attention to this fact in the Annual Report for 2011. **3.3-41/2011**

25. Rights arising from health insurance for patients with multiple sclerosis

The Ombudsman received several initiatives relating to the protection of rights of patients with multiple sclerosis ("MS") and diagnosed chronic cerebrospinal venous insufficiency ("CCSVI").Initiators, some among them have already had vascular intervention of their jugular vein by way of ballooning while others have attempted to have it done as soon as possible. They expressed their expectation to the Ombudsman that the costs of diagnosing and treating CCSVI and MS (with the vascular intervention of jugular vein) should be covered from their health insurance.

We were informed that the company MC Medicor d.d. (hereinafter referred to as "Medicor") from Izola carried out research on pathological changes of the venous system of the neck and head in cases of patients suffering from MS. The Protocol of the research was presented to the Committee of the Republic of Slovenia for Ethics in Medicine. The said Committee also approved the research. 30 patients were included in this research project who have had the intervention of their jugular vein carried out within the extent of the research. Initiators who were not given the possibility to be included in the research or who did not have enough funds to pay for the above mentioned intervention believed that their right to integrated health care was violated.

The Ombudsman decided to handle the initiatives at systemic level. Hence we addressed inquires to the following: Medicor, Committee for Ethics in Medicine, the Expanded Professional Board for Neurology, the Neurological Clinic in Ljubljana and the Department for Neurological Illnesses in the Maribor University Clinical Centre. We were interested whether the mentioned institutions have already dealt with the abovementioned issue and if they had made a stand in any manner toward the new method of treatment. On the basis of answers received it was established that the discipline holds a uniform position with regard to researches on the use of the widening of jugular veins method to treat MS. Institutions addressed by our inquires support research relating to the method of widening jugular veins but they simultaneously express their disagreement on having this method used as a method to treat MS since supposedly too little was known about the method. We informed the initiators about the position of institutions and explained to them why the method of widening veins is not adopted as a valid method for the treatment of MS and it is not a right arising from the health insurance.

On the basis of explanations received, the Ombudsman has not determined any violation of patient rights in cases of patients whose costs for a non-approved method of treatment are not covered by the Health Insurance Institute of Slovenia, similarly in cases of those patients who are not given by individual providers of medical services the possibility of diagnosis and treatment with a method which has not yet been approved in terms of the discipline. But we evaluated the initiatives received as justified, primarily because we believe that the issue stated by initiators in their letters is current and demands a very clear answer from the persons responsible. The Ombudsman, in fact, is often asked questions which refer to the extent of rights arising from health insurance; when there are patients, on one hand, without any possibility on influencing the progress of their illness with existing medications or treatment methods, and, on the other hand, there is a method (or a medicinal product) which has not been accepted as an established method of treatment (and it therefore does not present a right arising from the health insurance) but has proved to be successful with individual patients who were treated by such a method. **3.3-42/2010**

26. Discharge of advocate of patient rights

In May 2011, an initiator turned to the Ombudsman stating that she had been sexually abused. She was allegedly abused by an advocate of patient rights who supposedly abused several other women. She also said that she reported the sexual abuse to the Police and that a legal case is underway in the above mentioned case. The Ombudsman addressed an inquiry to the Ministry of Health together with a short description of the issue and questions, i.e., whether the said ministry is familiar with the conduct of the advocate and how they intend to act. The Ministry explained to the Ombudsman that they had received two complaints against the same advocate in February and March 2010. Both complaints included elements of criminal offences. They informed the Murska Sobota Police Directorate about it. The Police Directorate submitted a criminal charge against the advocate to the District State Prosecutor's Office in Murska Sobota. The Ministry of Health, on the basis of complaints received, urged the advocate to account for reports on sexual abuses.

The advocate denied all statements. The Ministry replied to the Ombudsman inquiry stating that reasons for the discharge by the Government of the Republic of Slovenia of an advocate, under the Patient Rights Act, are such that an early discharge is made very difficult if the discharge is not requested by the advocate himself/herself. At the same time, the Ministry added that a presumption of innocence applies in the Republic of Slovenia in pre-criminal and criminal proceedings. They assured us that they would monitor the progress of the procedure before the responsible law enforcement authorities and reconsider the discharge of the advocate.

On 5 July 2011, the Ombudsman submitted an opinion to the Ministry of Health that legal basis enable the immediate discharge of the advocate. Article 50, Paragraph 8 of the ZPacP, as a matter of fact, stipulates that a person may be appointed as an advocate who is worthy of trust and has social and communication skills and is known for his/her professional reputation and integrity. And Paragraph 9 of the same Article states the reasons for the early discharge of an advocate. An advocate may be discharged, inter alia, as a result of mistakes determined during work, the said person does not enjoy trust any longer and does not now meet the conditions to perform the tasks. The position of the Ombudsman is that immediate action needs to be taken to protect patients and users seeking for help and advice of the advocate.

We also warned that the alleged criminal offences took place when performing the work of the advocate. The Ombudsman's view was based on the position that the work of an advocate is founded on trust, his/her good reputation and integrity. A suspicion that the advocate had allegedly committed the above mentioned criminal offences diminishes such trust and his integrity as well as the trust in the credibility and instrument of the advocate in general.

The Ombudsman is aware of the presumption of innocence in criminal proceedings, but, at the same time, believes that reports made by several persons against the advocate of patient rights due to the violation of inviolability of sexual integrity by abusing the position, sexual abuse of a weak person and fraud are a sufficient reason for the Ministry of Health to take action and to (temporarily) suspend the advocate from his function even though the investigation is still in progress.

On 8 September 2011, the Ministry informed us that the Government of the Republic of Slovenia, discharged the advocate at its regular session on 25 August 2011. On 13 September 2011, the Ministry of Health also submitted their answer to the opinion of 5 July 2011. In the Ombudsman's opinion, the procedure at the Ministry of Health lasted too long. New violations of patients' rights might have happened during this time and the delay in the immediate action of the Ministry of Health surely contributed to diminishing the reputation of an advocate of patient's rights. **3.4-24/2011**

2.13 SOCIAL MATTERS

GENERAL

The number of initiatives including social issues decreased, as a matter of fact, as compared to the past three years, mostly on the account of cases in the field of pension and disability protection. The content and number of initiatives was also greatly influenced by the lack of information on envisaged statutory amendments, but also on specific new solutions worrying individuals.

We believe that the Ministry of Labour, Family and Social Affairs should have done more to inform citizens so that everybody would receive information of interest in reasonable time and in an understandable form (and not only those with access to world wide web). We particularly have in mind special information officers at Centres for Social Work and other public institutions, free phone lines and publications in the media. The Ombudsman explains to initiators, within the extent of powers and duties, the statutory arrangement in an individual field and presents them channels for the enforcement of their rights but it cannot interpret statutory provisions or explain the purpose and goals of an individual law or regulation.

Several times in 2010, we have publicly explained our standpoint about provisions of legislation enabling the State to enforce the repayment of the paid social assistance benefit from the estate of a deceased recipient of such aid. The standpoint of principle of the Ombudsman is published in the Annual Report for 2010 (p. 260). But several questions in this regard were also received in 2011 since with the entry into force of the new legislation in the field of social assistance this problem is still critical.

The majority of our recommendations, which were also approved by the National Assembly after dealing with the Annual Report for 2010, have still not been achieved. We are particularly drawing attention to the fact that the preparation of the Long-Term Care Act has been put off from year to year in spite of increasing needs for institutional protection and care and assistance to the elderly. The conditions are unacceptable when new homes for the elderly do in fact obtain a concession to carry out welfare services, but the Health Insurance Institute of Slovenia rejects the payment for nursing services which are one portion of services in these facilities.

Several panel discussions were organised with various non-governmental organisations, within the extent of our cooperation with civil society. Valuable information is obtained at such meetings and they help us understand and handle wider questions relating to the implementation of human rights. A common finding of all meetings was that the State makes too little inclusion of representatives of civil society in the development of new statutory solutions (for example, in regard to voluntary services) and in training for the detection and handling of some of the most frequent problems, such as violence or poverty. According to findings of the civil society, the cooperation of the state and local communities is also too weak. We send the minutes of these meetings to responsible ministries, for their information and for taking a position on highlighted problems. We encountered many difficulties with the Ministry of Health: they did not send us answers after several repeated requests.

We have particularly highlighted the issue of the elderly who are not capable of looking after themselves on their own and their relatives cannot agree on who would take over the task of a custodian. Centres for Social Work, within the extent of their duties. cannot solve disputes

and disagreements of relatives, hence, these, in various manners, try to enforce their own role regarding their relative who cannot decide on his/her own any more. The withdrawal of one's legal capacity, in our opinion, is not the best solution in such cases. Instead, disputes between relatives should be settled in mediation procedures and suitable guardian for the person in question should be appointed to take care of the implementation of his/her interests and to satisfy his/her needs. Unfortunately, such disputes between relatives often lead to violence against the elderly but sometimes also against the staff of institutions in which the elderly people are accommodated. We believe that, in such cases, Centres for Social Work should take over the role of mediator and by means of providing advice to everybody involved ensure the best interests of an individual who is not capable of making decisions on his/her own.

The Ombudsman anticipates that the social issues will tighten in 2012, also as a result of new legislation which started to apply on 1 January 2012. Hence, the responsible state authorities should prepare and start implementing long-term solutions (strategies) as soon as possible, particularly in the field of managing poverty, homelessness, violence, dependency, housing conditions and health care of all citizens. It would be, however, possible to increase the accessibility of home help and social services now, and especially the extent of public works in the field of social security.

The new legislation does not prevent poverty from increasing since it is mainly oriented into preventing abuses of the system of assistance. In this manner it changes professionals at Centres for Social Work into supervisors of financial and material conditions of individuals and their relatives. The content of their main activity, counselling work, is thus being lost.

2.13.1 Faster decision-making on complaints against decisions on allocation of cash social assistance

We drew attention to lengthy resolutions of complaints against decisions on cash social assistance in the Annual Report for 2010. We received a few initiatives of this kind also in the first half of 2011. We again inquired at the Ministry of Labour, Family and Social Affairs about delays in decision-making and reasons for them. The reasons for delays are the same (staff issues, constant increase of caseload), but they have managed to shorten the deadline to submit a reply from seven to eight months. We did not receive any initiatives in the second half of the year owing to lengthy decision-making in these procedures. At the end of 2011, at a meeting with representatives of the Ministry, we learned that they had even shortened these procedures and complaints were currently solved within the statutory period of 60 days. The issue will be monitored in the future as it is expected that with the issue of decisions pursuant to the new legislation, the number of dissatisfied people will increase.

2.13.2 New law on social services

In the beginning of 2011, the Ministry of Labour, Family and Social Affairs published the proposal of the law on social services on its web pages. The public debate was planned to take place until 25 February 2011. The Ombudsman assessed that, on the basis of the published material, a constructive debate on individual solutions to be introduced by the law would not be possible as only provisions of proposed Articles of the Act were published and not also other elements which would subsequently present the proposal of the law in legislative procedure. Since the public debate on an individual draft law should not include only a formal part of the procedure relating to the development of the proposal of the law, the proposed material was assessed as incomplete and inadequate for the debate and the Ministry were informed accordingly. We stressed that we had particularly missed the evaluation of conditions and key open questions and the explanation of reasons why certain solutions, which largely deviated from the established ones, were proposed.

The finding of the Ombudsman that the bodies of the state administration do not observe the Resolution on Legislative Activity (OG RS, No. 95/09) was again confirmed. Our assessment was strengthened by comments of some expert organisations who were not even included in the development of the legislative proposal.

It is expected that the new Government will develop the law so as to include the professional public and other interested persons in the preparatory procedures since only a law developed and proposed in such manner may gain its legitimacy and also shorten or facilitate the discussion on proposed solutions.

2.13.3 Homes for the elderly

Some issues in this field are also described in the Chapter discussing the deprivation of personal liberty and in the report on the work of the National Preventive Mechanism.

The Ombudsman has been carrying out regular monthly visits to social welfare institutions within the extent of the programme of work in the field of institutional protection and care. These institutions also include homes for the elderly .

In 2011, we paid a visit to eight homes for the elderly (hereinafter referred to as "homes"). The smallest home has the capacity of 42 beds and the largest, 195. All visits were announced in advance. During our visits, we had an interview with the management of the institution, we were informed about the work of the institution and we inspected the premises. We also had interviews with randomly selected residents or a representative of residents. We prepared a preliminary report on each visit where we wrote observations and findings and potential recommendations. The response of the institution to the preliminary report was included in the final report which was submitted to the Ministry of Labour, Family and Social Affairs, for information.

As a rule, the rooms in all homes visited are one or two-bed rooms, only in two homes were there a few three-bed rooms and in one home also four- or five-bed rooms. The Ombudsman believes that multi-bed rooms do not provide for enough privacy to residents and their relatives. At the same time, such accommodation is not compliant with the prescribed standards. Hence, we proposed to such homes to turn, as soon as possible, the multi-bed rooms into two-bed rooms, at maximum.

The Ombudsman has determined that older and larger homes gradually become more pleasant and providing more home-like ambience after renovation works (new furniture, comfortably-equipped multi-purpose rooms, use of colours on walls). There was no uncleanness found in any home.

All homes visited also fulfilled the staffing norms relating to the health and social area, and in two homes, they are even slightly above the standards. We could hear during interviews with the management of homes that they wish to have more nursing staff in order to provide an even more individualised and personal approach to a resident. More staff, however, means higher costs of care which cannot be simply passed on by homes to their residents since now the prices of institutional care are too high for some residents.

The Ombudsman noticed cases of good practice during the visits which are recommended to all homes. These are: regular cooperation with relatives of residents and regular verification of their satisfaction by way of surveys. Homes might thus obtain valuable information for the improvement of cooperation or a confirmation that the cooperation is really good.

Likewise, the Ombudsman supports the follow up of the satisfaction of employees since this is one of the more efficient methods to identify satisfaction or lack of satisfaction which is shown in the employees' attitude to residents. We particularly draw attention to the

importance of an appropriate response in case of potential problems determined or distress on the part of employees.

Dissatisfied residents and their relatives mostly complain orally. But we have found out that some homes poorly inform their residents about what are, primarily, internal complaint channels and what the procedure for solving oral or written complaints is. We have not found a box for anonymous complaints in some homes which is why we proposed to arrange them (also in a secure department). We have also warned homes that, as providers of medical services, they should arrange complaints channels relating to these services in accordance with the Patient Right Act ("the ZPacP").

We have also found out, from interviews with employees, that increasingly more violence is detected against home residents but also against the staff on the part of their relatives.

In the homes visited, we also tested the staff response time by pressing the call-alarm bell in a randomly selected room Response time was short (in the range of a few minutes). Only in one case was this time 10 minutes. This was a good result which contributes to trust in the careful and efficient work of employees.

SUMMARY OF PROPOSALS AND RECOMMENDATIONS

- Responsible state authorities should prepare as fast as possible and start to implement more long-term solutions (strategies), particularly in the field of poverty and homelessness management.
- The Ministry of Labour, Family and Social Affairs should obligatorily include the professional public and other interested public in the development of regulations.
- The Ministry of Labour, Family and Social Affairs should examine possibilities for new solutions which will enable residents in social welfare institutions to return back into their primary families. In particular, as independent and decent a life as possible should be enabled to them, both in an institution and outside.
- Homes for the elderly should, in cooperation with and assisted by the Ministry of Labour, Family and Social Affairs organize additional training of employees in the following fields: work with persons with dementia, communication with relatives and in other fields of their work.
- Responsible persons in homes for the elderly should regularly record all complaints and appraisals and regularly verify the satisfaction of their residents, and employees by way of questionnaires.

27. Efficient assistance of Centre for Social Work in solving housing problem of initiator

On behalf of an initiator who found himself in severe social distress, his acquaintance turned to the Ombudsman first. In a telephone conversation with her and later with the initiator we found that the initiator is middle-aged, has numerous health problems and lives in a caravan somewhere in the middle of a marsh area, without drinking water. The owner of the land, in exchange for his work with animals, allowed him to stay there and provided his food. As a result of his poor health he has had difficulties in carrying out the chores and the owner has therefore become more and more physically and psychologically violent. The initiator told us that he feels to be in danger but he sees no possibility of moving anywhere else since he has been only receiving permanent cash social assistance. Owing to bad experiences in the past he has not trusted people or institutions but he asked the Ombudsman to inform the responsible bodies about his conditions. He wished to find a more appropriate residence with their assistance.

We turned to the responsible Centre for Social Work and we asked them to verify the initiator's living conditions and help him in accordance with their powers. We asked them to be careful when making contact since the initiator had warned us that he might have problems with the owner if the latter found out what this was all about. In agreement with the initiator we submitted the telephone number to the Centre for Social Work and they immediately contacted him. We agreed that they would inform us when they found out how they could help him.

After almost two months, firstly, the Centre for Social Work informed us of good news with regard to their cooperation with the initiator. He was included in the programme for permanent help whereby a public worker gave him support in solving his housing issue. They established a trustful relationship and they intended to extend this support to other types of assistance and help in establishing communication with people and institutions. A month later, in a conversation with the initiator, we found out that after he established contact with the mentioned Centre, he soon moved out of his old place of residence and that he was about to move in a rented apartment in the suburbs of a larger city. He was very satisfied with the help provided by the Centre for Social Work and emphasized that he realised he himself must also be active in solving his problems. He thanked us for our intervention and expressed his satisfaction for allowing his acquaintance to turn to the Ombudsman on his behalf. The owner of the land where the initiator lived had violated his rights but his rights were not violated by bodies supervised by the Ombudsman. The case has been published to express praise for the fast and professional response of the Centre for Social Work and their efficient help. **3.0-4/2011**

28. When dismissal from institution is not possible

An initiator who had been deprived of his legal capacity had been addressing his poorly written texts without any logical content to the Human Rights Ombudsman of the Republic of Slovenia. He lives in a home for the elderly in a special unit for the protection of people with special needs. In one of such texts he informed us about a letter of the Institution's Committee for admissions, transfers and dismissals. It was clear from the document that the Commission has dealt with his violations of House Rules and warned him that, if his behaviour continues, he would initiate the proceedings for his dismissal from the Institute, in accordance with Article 32 of the Rules on Procedures when implementing the right to institutional protection.

Since we were familiar with the initiator's condition and circumstances of the case, doubt arose as to whether it would be possible to provide the initiator with the services he needs outside the institution, and whether it was possible to dismiss him. Hence we turned to the Institution and asked for explanations. We received an explanation that the Institute did not intend to dismiss the initiator since they were aware that he cannot be provided with the services he needs outside the Institution. A written warning, also sent for their information to the Centre for Social Work, was thus only another cause to again warn the initiator about repeated violations of House Rules and urge him to resist them. All previous warnings were, in fact, ineffective. Considering the explanations received we made a conclusion that the Institution did not violate the initiator's rights during the procedure regarding his violations of House Rules. However, a question has remained open, and it has to be answered by discipline: does it make sense to "threaten" with punishments which are then impossible to carry out? **3.7-2/2011**

2.14 UNEMPLOYMENT

GENERAL

In 2011, 31 initiatives were handled, while 21 were handled in 2011. It has been established that almost none of our recommendations from the last year's annual report have been achieved. Even more: long waiting lists for inclusion into programmes of vocational rehabilitation have remained and the Government has even decreased the amount of funds for including the unemployed in public work. Neither have the initiators reported receiving payments within 30 days after finishing their work.

Since 1 January 2011, the new Labour Market Regulation Act started to apply regulating anew the fields of employment and unemployment. It is not possible to report on the actual effect of the adopted Act now. In the field of long-term unemployment, the most initiatives received in 2011 were those where severe social hardship arising from the long-term unemployment of a person could have been noticed. Some initiators have been registered at the Employment Service of Slovenia for 15 years and more and some, of mature years, have only short periods of employment. Reasons for unemployment are varied, but often they relate to disability or other different medical limitations. These are generally initiators who have turned to the Ombudsman in the past but their conditions have not improved over periods of years. It has been established on the basis of answers from the Employment Service on inquiries in these instances that, as a rule, great attention is also dedicated to long-term unemployed persons although this cooperation usually does not give desired results. Long-term unemployed persons who have turned to the Ombudsman have complained about the operation and (inefficient) assistance of the Employment Service but they are less aware of their weaknesses, unrealistic expectations and current situation in the labour market which is even less favourable for the unemployed and those without (or with very specific) work experience.

Considering unemployment benefit, initiators generally disagree with calculated unemployment benefit, its termination, and similar. It is clear from initiatives received that the Employment Service has made its decisions in accordance with regulations and no irregularities were found. This was also explained to initiators in our answers. We dealt with many initiatives referring to the deletion from the register of unemployed persons. Initiators generally disagree with their deletion from the register. Reasons vary. But they turn to the Ombudsman hoping that the Ombudsman may modify the decision of the Employment Service, and as a result of distress in which they are found after being deleted from the register (termination of their eligibility for cash social assistance, the repayment of unjustifiably received assistance, temporary loss of health insurance, temporary loss of rights of an unemployed person). Also in 2011, we handled problems in relation to subsidizing self-employment. The Ombudsman was informed of problems of individuals because of the freezing of funds intended for subsidizing self-employment in March 2011. Thus, individuals, who in this period when no funds were temporarily available for subsidizing self-employment, independently implemented their business and set up their status as a sole trader or founded a company. But, as a consequence, they were left without this incentive.

In any case, a period of time will have to be uniformly set in advance in which a subsidy recipient is obliged to keep his self-employment (the duration is contractually determined and it is determined by the Employment Service). In the period from May 2010 to August 2011, this was a period of one year. For those, who were included in the Self-Employment

Programme after August 2011, the obligation for keeping the self-employment status is two years. At the end of October 2011, the lack of financial funds led to a one-month suspension of the right to services provided under vocational rehabilitation and the termination of allocation of persons in the programme of services under employment rehabilitation.

In both instances, the Ombudsman addressed inquiries to the Employment Service and the Ministry of Labour, Family and Social Affairs. It is clear from the answers received that in both cases, the anticipated and expected interest for obtaining a subsidy for self-employment and the allocation of people to vocational rehabilitation was increased in 2011. The Ombudsman believes that this, as a result of insufficient regular monitoring of the use of funds which falls under the responsibility of public officials, has had the greatest impact on persons who have already been included in vocational rehabilitation and have been receiving a cash bonus.

SUMMARY OF PROPOSALS AND RECOMMENDATIONS

- The Ombudsman again recommends the adoption of measures, which will shorten the waiting lists for inclusion into vocational rehabilitation, for the Government and the Ministry of Labour, Family and Social Affairs.
- For the Government and the Ministry of Labour, Family and Social Affairs, the Ombudsman again recommends the adoption of such programme of public work, which will follow the needs of unemployed persons and providers of public work services and will respond to the needs of the labour market.
- The Ombudsman recommends the examination of the current method of subsidizing self-employment and modifications for the Government and the Ministry of Labour, Family and Social Affairs. This is to avoid differences between individual unemployed persons happening in regard to when a request for subsidy is lodged and how long they have to maintain their self-employed status. Subsidies for self-employment must actually mean an incentive for employment and not just a measure for reducing the number of the unemployed in official registers.

29. Lengthy decision-making on complaint against deletion from Register of Unemployed of Employment Service of Slovenia

Every year, more initiators turn to the Ombudsman as a result of their disagreement with the termination of them being listed in the register of the unemployed kept by the Employment Service of Slovenia. An initiator, who turned to the Ombudsman after she had already lodged a complaint against a decision of the Employment Service, was deleted because she refused to be included in the Job Hunting Club without any justified grounds. She turned to the Ombudsman because she was in severe distress and was fearing the decision on her complaint. The only income of her family was in fact the cash social assistance. If her complaint was unsuccessful, a part of this income would be lost for six months, since, for this period of time following the final decision, she would not be able to register at the Employment Agency. She was even more worried that she would also have to repay the debt owing to the unjustified receipt of a part of cash social assistance from the day of deletion to the final decision, as determined by applicable regulations. She wished for the Ombudsman to intervene, in order to have her complaint decided.

Since the lawful time period for deciding on the complaint had not expired yet, and the Ombudsman does not handle cases which are still in progress, we firstly just asked the Employment Service for a copy of a decision to be issued to the initiator. Because the initiator did not receive any answer to her complaint after the expiry of the lawful deadline, we again urged the said Service to immediately decide on the complaint. We submitted our opinion to the given Service in regard to the issue in question and urged them to take a position about it. We warned them that the initiator is a long-term unemployed person and receives only cash social assistance which is why waiting for the decision on her complaint causes great uncertainty for her. In the Ombudsman's opinion, making a decision within a statutory stipulated time period is essential and we also express our concern in relation to the applicable arrangement which, in addition to the prohibition of registration with the Employment Service for six months, gives rise to a debt being accrued to people as a result of unjustified receipt of cash social assistance. The Employment Service decided on the initiator's complaint after the stipulated time period, but the decision was in her favour and hence no damage was incurred. Although her initiative was early at first, and not all conditions were met for its consideration, it was later proved justified due to lengthy decision-making of the authority. In terms of its content, the initiative pointed out the unreasonably strict statutory arrangement which only deepens the social distress of an individual. **3.5-51/2010**

30. Loan for unemployed guaranteed by State

An initiator turned to the Ombudsman who could not understand why the Centre for Social Work decreased his cash social assistance for the amount of instalment he has been paying for the loan taken for the unemployed guaranteed by the State. This was, as a matter of fact, not done by the said Centre for the previous loan the initiator was paying off. Before that, the Centre for Social Work and the Ministry of Labour, Family and Social Affairs explained to him that this type of loan taken by a beneficiary of cash social assistance has no impact on the amount of the cash social assistance.

The Centre for Social Work gave an explanation to the Ombudsman's inquiry that the initiator was informed of Article 27 of the Social Security Act ("the ZSV") which stipulates that one's own income also includes the indirectly determined income and earnings which are not reported by a single person or a family but is later determined that the said person is paying for goods and services which are not related to subsistence and which would not be affordable with the determined income. A loan for the unemployed taken and received by an individual is therefore not considered an income when determining the eligibility to cash

social assistance since it is a “future” income which has to be returned by an individual. But individual loan instalments are then calculated within one’s own income of an individual, specifically, as indirectly determined income, if it is determined that the individual actually pays them, although no own income has been reported. Since when taking the previous loan the initiator reported income, which, had no influence on his eligibility for cash social assistance, and for which he was able to pay instalments, those instalments were then not considered by the Centre for Social Work as indirectly determined income and the initiator was eligible for a higher amount of cash social assistance. But when he did not report his own income, the Centre for Social Work considered the instalments as indirectly determined income. As a result, he was granted a lower amount of cash social assistance.

The Ombudsman understood the initiator’s disappointment. The State has enabled loans to be made to private individuals with a guarantee given by the State to help those groups of population who were most hit by the economic and financial crisis, among other people, also to a certain group of the unemployed. By means of the guarantee scheme the State did facilitate access to bank loans but it obviously did not dedicate enough attention to the question of how these loans would be repaid by unemployed persons who are eligible for cash social assistance and these monies are their only income. An adverse effect was actually reached for this group of people since they found themselves in even greater social and financial hardship. In spite of such findings we could not help our initiator as expected since the Ombudsman cannot engineer that somebody receives higher cash social assistance than the one he/she is eligible for under applicable regulations. **3.5-33/2011**

2.15 PROTECTION OF CHILDREN'S RIGHTS

GENERAL

The number of cases handled in the field of the rights of children slightly decreased (from 337 in 2010 to 314 in 2011, but a 27.1-percent increase was noticed in the field of advocacy of children (from 59 to 75), attributable to the increasing recognition of the project which is described in the remainder of the text.

In terms of content, our work in the field of children's rights was very much related to adopting the Family Code. The said Code was rejected in the beginning of 2012 by referendum. The debate on the new statutory arrangement was, unfortunately, limited to a few innovations to be brought by the Code but very important modifications which have also been proposed by the Ombudsman several times remained in the background and untouched. Due to rejection of the Family Code at a referendum, and considering the applicable legislative arrangement for at least a year, we will remain one of the few European countries which does not take a stand against the physical punishment of children at least declaratively. Some family relations will continue to be decided on by Centres for Social Work in administrative procedures (instead of courts in judiciary proceedings), and the establishment of an Advocacy of Children charter will be put aside for some unspecified future date.

In November 2011, upon the adoption of the Convention on the Rights of Children, a free-of-charge bulletin was issued, publishing some interesting cases from the Ombudsman's practice which were supplemented with reflections and art work on the rights of children by pupils and students. The bulletin was sent to all primary and secondary schools. We invited them to continue with our cooperation because we wish to obtain opinions on individual questions directly from children.

It has been determined that the awareness on the rights of children is becoming deeper which is also demonstrated by questions which we have not received in the past. Professionals frequently write to us having encountered a new question relating to children's rights but being unable to find a clear answer in regulations. For illustration purposes, we mention a letter drawing attention to the danger that the education of children will develop into children being exploited for private benefits. A question was raised in regard to a community activity in which children from a primary school painted transformer stations. It was not possible to find out on the basis of available data that by organising their work any rights of the children were violated in the case in question. The goal of the activity was raising the awareness of the children and adults in relation to open questions of ecology. In this sense, we have characterised the activity - expressing children's ideas by colouring transformer stations - as a good and useful idea. Since it was a once-only activity, we did not agree with the idea that the children were unlawfully exploited. Hence we stressed that we support such activities since they strengthen the consciousness of children and their parents on the importance of ecology while they also enable children to express their opinion, and thereby fulfils the implementation of provisions of the United Nation's Convention on the Rights of the Child.

Also in 2011 we were actively involved in the work of the Children's Rights Ombudspersons' Network in South and Eastern Europe (CRONSEE). This network is mainly intended for exchanging cases of good practice and experience and cooperation in solving common questions. At the annual conference organised by the Ombudsman of the Republic of Macedonia in Ohrid, we dealt with the issue of "the children of the street", i.e., questions of protection of children against

exploitation and abuse with a special emphasis on children's begging. We wished to support the Ombudsman's position regarding these types of abuses by a report which also included actual data from our country. Since the phenomenon of children's begging is not statistically handled, we asked all Centres for Social Work and the Police for information on how many cases of children's begging had been noticed in the past three years and how they had been handled. The answers surprised us: none of the 19 centres replying to our question have dealt with this issue. This obviously does not mean that children's begging does not occur in practice but it seems that the problem is relatively well handled and the bodies responsible are suitably prepared. The Police do not keep any special registers on children begging in the streets although it can be concluded from their data that 499 breaches of the law on the protection of public order and peace punishing intrusive begging were treated in 2010. Under the law, until 14 years of age, children are not punished for an offence, while, until they are 16, only an educational measure may be ordered.

The Ombudsman has determined that the regulatory framework preventing economic exploitation of children is suitable but we are aware of the fact that it is very difficult to detect such conduct within a family and even harder to punish it. It is assumed that the issue in question will grow in the future, particularly with the deepening of the economic crisis in the country but also around the world.

Following an invitation of the organisation: Save the Children Norway, we visited Palestine in autumn of 2011 and were shown the work of their organisation for human rights. The purpose of the visit was informing Palestinian authorities with the method of our work in the field of the rights of children and with the advantages and disadvantages of a special institution of Children's Ombudsman. Such meetings are very beneficial since we can directly exchange experience and determine cases of good practice. We found out at the beginning of this year that they have decided to establish a special Ombudsman for the Rights of Children.

2.15.1 Advocate – Child's Voice Project

General

Since we have written about this project in previous reports, we would only like to provide basic data this time. The Project has been run by the Human Rights Ombudsman since 2007 in cooperation with Government institutions and non-governmental organisations. Representatives of participating partners (21 experts) compose the Group for Implementation of the Pilot Project ("the Group") The Group, in cooperation with all members, developed a training programme, numerous Protocols, Code of Ethics and other legal documents on which basis the advocacy is implemented. Advocates have completed a 60-hour training course and passed an exam. They are regularly supervised (once a month) and assessed by means of peer-review. In 2011, there were 56 active advocates, four in suspension and 24 candidates for advocates who concluded their training in May. During the project, some advocates decided not to participate any more. An advocate appointed to an individual child with the parents' consent or by a decision of a Centre for Social Work ("the Centre") is obliged to submit a report to a coordinator or a project manager after every meeting with a child. On the basis of this report, potential dilemmas are solved and the necessary explanations are given. At the end of the meeting, the advocate formulates a child's opinion; a message that the child wishes to communicate. The number of meetings varies from two to a maximum of 16 (only once was the full and the minimum number of meetings needed). An average number of meetings is 4.6.

Analysis of advocates' work

In 2011, 70 initiatives were received for appointing an advocate. Some initiatives requested the appointment of an advocate for more children (brothers, sisters) at the same time. In total 89 children were involved. An advocate was appointed to 65 children and for as many as 24 children an advocate was unfortunately not appointed for various reasons.

The biggest number of initiatives were submitted by Centres, for as many as 47 children, mothers sent initiatives for 13 children, fathers for 6 children, grandmothers for 4 children, minors for 3, the District Court for 2 and other initiators for 1.We note with pleasure that increasingly more initiatives are submitted by the Centres, mostly those who have already cooperated with advocates, finding that a new quality of cooperation was found in their work with an advocate. A child is given an important role with the assistance of an advocate and the best interests of children are truly becoming the leading guidance in all activities. Unfortunately, there are still some Centres from which no initiative has been received although the role of the advocate is known to them. Some professionals have expressed their concern that their proposal to appoint an advocate might be understood to signify that they cannot perform their work in a quality manner. Remarks were also heard that advocacy would not have been necessary if Centres did their job well. This is obviously not true and indicates ignorance of the work of an advocate as well as the work of Centres. In procedures, a child, as a matter of fact, needs a neutral person not representing the institution but "belonging" to him only, and who takes as much time as the child needs, and at a time when the child needs him/her, who the child can trust and from whom he/she receives support. The frequency of contacts is determined by a child and not the institution.

Problems of children justifying the appointment of an advocate were various: problems regarding the progress of contacts (33), decisions on child custody (10), foster care (13); placing in foster care (2), proposal for termination (7), refusing placing (2), contacts of children with parents during foster care (2), abduction of a child from parents (8), suspicion of family violence against a child (7), suspicion of negligence and endangerment of a child (5), transfer of child custody (2), problems in placing a child in relevant institution (2), disagreement with transfer to special school (2), abduction of a child from his/her mother and arrangement of child custody (1), death of a mother (1), non-attending classes (1), arrangement of child custody (1), retreat of a mother into a maternity home (1), a minor in criminal proceedings (1).

An advocate was appointed to 57 children with the consent of their parents, and to 8 with the decision of responsible Centres for Social Work. When appointing an advocate, a lot of attention is dedicated to obtaining the consent of their parents since a child's distress is then less and the solving of the problem more successful if parents agree on such cooperation. Hence, at the beginning of an advocate's work, parents giving their consent are informed in detail about the course of work, unclear issues are explained and we agree on the first few meetings with a child. We inform them of the child's opinion obtained by the advocate at the end of the meeting. The child's opinion is suitably taken into account and parents are warned of the responsibility each of them has. It may be claimed that the success achieved by the advocacy in the cases implemented is encouraging and above our expectations. More detail is given in the description of cases.

Advantages of the advocacy

1. Although time is frequently needed to establish trust and provide assistance to a child, it has been established that children can state their opinion very clearly. They have some difficulties in managing the situation in the beginning, they do not understand why it might be good to express their opinion, viewpoint and wishes since they were not used to it or adults have not seriously considered their opinions until now. When gaining trust in an advocate, they become very self-conscious.

2. Children are very satisfied that an advocate dedicates all his/her attention to them, to take time for them and to represent only them.

3. The insisting of advocates in seriously taking into account a child's opinion and for giving the child a suitable place has received increasing attention on the part of professionals and progress has already been noticed in this field.

4. It is most satisfying that Centres for Social Work and also some courts and professional services where an advocate has already represented a child are more and more accepting the advocate as a reinforced voice of a child, as a colleague in seeking a solution which is the most suitable for a child. Through an advocate, a child is thus actively involved in the search for a solution which has helped in dealing with lengthy unsolvable issues in several cases.

5. It has been noticed that in more and more cases professionals advise parents to ask for an advocate or lodge an initiative by themselves and sometimes even obtain their consent.

6. When an advocate must be appointed by a decision of the Centre, it is not now as difficult as it was in the beginning of our work although there are still Centres without this practice and too frequently they pose an unbridgeable barrier.

Issues of advocacy

1. Advocates meet with children who do not trust anybody any longer, feeling guilty about conditions in the family or, as a result of their parent's pressure or they fear hurting them, or offending them if expressing their wishes. A gradual approach, assistance in relieving the burden from the child and establishing trust are very important in these instances.

2. In cases of a suspicion of sexual abuse, the assistance of an advocate may be of long duration as a result of lengthy pre-trial proceedings and periodical interruptions are needed. During this time, a child needs help owing to the child's feeling of guilt, various dilemmas, pressures to deny what has been stated. Assistance is also needed in solving legal problems, such as a loss of rights to free legal aid with the age of maturity.

3. We also encounter cases when some parents exercise pressure on advocates and a project manager because they cannot accept the will of a child which is different than expected.

4. In some cases, luckily not very frequently, we face the disappointment of parents and some professionals as they expect that the advocate's message will be much broader than the voice of a child. They have difficulties in accepting the fact that advocates do not take a stand towards the child's statement but they transfer it as stated. Many still believe that a child is not capable of expressing his will and that the child's opinion must be "translated". Hence, constant warnings must be made about the need to observe the will of a child since it was obtained precisely for being heard in its true meaning.

5. It has been noticed in some lengthy cases that help to a child would be really successful only if parents also received adequate help (too little stress is given to the parental responsibility).

6. Unfortunately, we have also dealt with situations when a child makes a decision that he/she is forced to leave home, but it is later found that there is no suitable institution for his accommodation available (combined problems).

7. In two cases until now, it was not possible for the advocate to establish a real contact with a child because the advocate's regular contacts with the child were disabled by one of the parents living with the child.

8. Some initiatives were lodged too late when there was no time for obtaining a child's opinion as a result of a lack of already anticipated activities in legal proceedings.

Reasons why an advocate was not appointed to 24 children:

1. We failed to obtain the consent from one of the parents for 14 children and from both parents for 5 children. Conditions to appoint an advocate by means of a decision of the responsible Centre for Social Work (in accordance with the existing legislation) were not met in these instances since, in their opinion, the children's position was not critical enough. Unfortunately, it was later showed that by appointing a child's advocate, the situation would be resolved more favourably. When the appointment of an advocate is urgent, this is settled with the decision of the Centre for Social Work. The work in these cases is harder, both for an advocate and a child, and it is usually longer. Hence, the advantages of the timely appointment of an advocate are pointed out. It is still noticed that the work of a child's advocate is not known well enough and that it is not trusted enough by parents and some institutions, too. It has also been determined that many people, unfortunately, including some professionals, still doubt that a child is capable of formulating his/her opinion, even if suitable conditions and possibilities are enabled.

2. In the case of two children, conditions were not met for appointing an advocate (presence during contacts under supervision).

3. In case of three children, the issue was settled upon obtaining the consent. It is most satisfying that, in some cases, in conversations on obtaining consent, parents realise how they have disregarded a child as a result of their own problems and start to cooperate so that an advocate is not necessary at all.

Conclusion

Ever since 2007, the goal of the project has been the same: the setting up of an independent instrument of advocacy. Owing to lengthy amending of the Family Code which is supposed to be the legal basis for the regulatory framework of the advocacy, the Group, aiming at a normative framework and institutionalising the role of advocacy, developed the proposal of the Advocate of the Child Act at the end of 2010 and submitted it to the Ministry of Labour, Family and Social Affairs. Unfortunately, this is where it stopped. The advocacy is thus still only a project carried out within the scope of the Ombudsman's Office. During the project it has been demonstrated that the advocacy is justified for children since desired results were achieved and it was highly urgent in instances when parents cannot or are not able to suitably represent their children. By appointing an advocate, a child is strengthened and assisted in having his voice heard and taken seriously. A child is thus given the place and the role attributed to him/her under the Convention on the Rights of Children and under our legislation and is actively involved in the solving of questions which are important for him/

her. When waiting for a legal basis, the advocacy has long since crossed the boundaries of being an initial project. That is why it is unacceptable and irresponsible on the part of the State to continue in delaying its decision on the establishment of the instrument of the advocacy for children. We also want to point out the signing of the Optional Protocol to the Convention of the Rights of the Child to provide a Communication Procedure (28 February 2011). Our State was actively taking part in this development. It was also one of the first countries which had worked towards the signing of the Protocol as fast as possible. Hence it is urgent that it starts actively participating also in the setting up of the instrument of advocacy.

2.15.2 Family relationships

Parents' rights with regard to their child after a dissolution of marriage or after the termination of common-law marriage are still a very complicated issue for everybody involved. Frequently, a parent, who has been given a child's custody, understands this trust given by the court to mean that he or she is the only one to decide on all issues relating to the child while the other parent should only pay the child support which has been imposed and maintains certain contacts. This thinking is obviously not in line with the statutory arrangement of relationships among family members nor is it in line with the best interests of a child. The Court Decision on child custody does not mean that only one of a child's parents is the child's legal representative but that both must decide on matters which may have a significant influence on the child's development. Hence, it was assessed that a decision on the publication of children's photographs on a social network cannot be made by one parent only, and in case of a dispute, a decision should be made by the Court.

Contacts with child in foster care

It was reported to us that the Centre for Social Work who decided on an abduction of a child in accordance with the law, had prevented parents from having contact with the child. There is no doubt that, in accordance with applicable legislation, the Centre for Social Work is authorised to take a child away from his parents if all legal requirements are met but it has no authority to decide on contacts between parents and children. The above mentioned means that contacts between children and parents are determined and limited only by the court. This position was presented to the Ministry of Labour, Family and Social Affairs and the result was that the said Ministry prepared a suitable instruction for Centres of Social Work in cases of child abduction. Upon the abduction of a child, the said centres must immediately formulate a proposal on suitable contacts between parents and children and propose to the Court the adoption of a decision in this regard. As a rule, together with their proposal for defining the contacts, the Centres must also submit a proposal for the issue of an interim decision. If the said Centre does not do so and the Court does not determine (or limits) contacts, in the Ombudsman's opinion, the limitation of contacts has no legal basis and the rights of children and parents are violated if individuals or legal entities limit actual implementation of their contacts.

We are aware of problems which may be caused to foster parents by such a position but contacts of a child cannot be arranged outside the applicable legal procedures. We also believe that, in a procedure concerning decision-making on contacts, foster parents should not have an influence on decisions on contacts or pose any conditions for the implementation of contacts since they must not represent their interests in this type of procedure.

2.15.3 Rights of children in kindergartens and schools

There were significantly fewer complaints submitted to the Ombudsman than in previous years, due to capacities in kindergartens being too small. It seems that municipalities have taken efficient action and that enrolment of children was transparent enough, hence fewer complaints. In spite of that, we received some initiatives, especially because people having permanent residence in Ljubljana have priority in their children's admission to Ljubljana kindergartens.

On the basis of information from an initiative, the Ombudsman dealt with the issue of home-schooling Before the amendment in November 2011, the Primary School Act ("the ZOsn") stipulated in Article 90 that the knowledge of a pupil who is educated at home is only verified once, at the end of classes of each school year. We were of the opinion that this is not the best solution. In our opinion, an amendment of Article 90 of the ZOsn Act would be positive since the method and frequency of verification are now under the responsibility of the school. We believe that the school may organize verification for individual subjects several times, considering its reasonableness due to the potential special needs of a pupil or other special circumstances. The problem is that the ZOsn has come into force but will be applicable only from 1st September 2012.

Also in 2011 we dealt with issues regarding the withholding of information from a father on a child's happiness, progress and success at school or kindergarten in instances when one parent has not been living with a child. Even if a child is entrusted into the care and custody of one of the parents, they share joint custody. The other parent has always received information in these instances, after the Ombudsman's intervention.

There were fewer initiatives in relation to the provision of vegetarian food in kindergartens and schools in 2011 than in previous years. It is assumed that, in accordance with the Practicum of Healthy Diet Menu, responsible persons have started adapting food in kindergartens and schools so as to cause fewer problems in this field.

Children with special needs

There were more problems relating to the education of children with special needs dealt with by the Ombudsman than in the previous year. We handled 15 complaints, while there were 10 in 2010.

Most problems were encountered in the field of placement of children with special needs since procedures last for an inexplicably long time. According to data from initiatives considered, a few children have been waiting for a decision on placement for more than two years. We have made inquiries in this regard at the Education Institute of the Republic of Slovenia. There they explained to us that the reason lies in a disproportional workload of relevant individual commissions. On the basis of data given by responsible persons, great differences are noticed in the number of cases considered by relevant individual commissions. Hence, the fact is that there were 49.1 percent of decisions on placement issued in a lawfully set time period (in six months) and almost 51 percent after the expiry of this deadline. In our opinion, the problem lies in the organisation of work which could have been improved and the workload could have been distributed more evenly. But responsible persons explained that there are only eight (out of twenty-three) salaried presidents of commission performing their function. Other presidents are contractual collaborators and, in addition to management tasks of running the commissions, they mostly carry out other work which influences the speed of their operation. It was proposed that in all fields and all regional units of the Education Institute at least one professional president should be employed in order to reduce the backlog. The Ombudsman supports the abovementioned proposal.

Problems were detected from initiatives when including children in relevant educational institutions and when parents disagreed on the decision about the placement. In one instance a mother insisted that she would keep her child at home until the final decision of the Administrative Court was made. Her complaint was against a decision of a second-instance body which had determined that inclusion in a special programme was more suitable for the child since no progress had been made in the usual school. In spite of a clear message from the Ombudsman that the child's rights to education had been violated, we could not convince the mother. The child lost one school year.

Also in 2011 we also dealt with a problem of accommodating children and minors with such severe disorders emotionally and behaviourally that they are often dangerous to themselves and others. The Ombudsman has been warning about these issues ever since 2003 but there is still no suitable solution. These children are transferred from one institution to another until they end up in a psychiatric hospital. Since they do not belong there, as they have not reached their age of maturity, they are there "on hold".

We again verified with responsible persons what stage had been reached in solving problems of an inter-disciplinary nature (education, social affairs, health) and whose solving has made little or no progress, although every year there are some children who can not be handled by educational institutions. These children were not dealt with either adequately or in a sufficiently professional manner The Ministry of Health informed us that the inter-departmental working group developed a proposal for a protocol for taking action in the placement of these children. They have also strived to prepare suitable systemic solutions. The persons responsible at the Ministry of Education and Sport confirmed that, in the middle of 2011, the interdepartmental working group developed some kind of Agreement on Coordination of Activities and Coordination of Work in envisaged procedures when dealing with children and minors with emotional and behavioural disorders. Only the main issues or duties held by each of the sectors in the treatment of these children were supposedly included in this document. But the aforementioned document does not solve the problems. They also communicated that a special group for accepting these children was formed in the Educational Institution Planina. The Ministry of Education and Sport provided for suitable personnel for carrying out pedagogic work. Negotiations for additional experts from the field of health are underway. We can only hope that the problem will eventually be satisfactorily solved in a year or two.

Some initiatives related to problems in communications of the management of the school with parents of children with special needs. Behaviour of these children in classes may often be disturbing. Teachers who can not handle them require their transfer to another class but on several such occasions problems occurred since parents were not informed in time about such intentions, nor were they suitably informed.

Violence in schools

We received many questions in relation to violence among peers on internet and social networks (Facebook and Twitter). It seems that this is violence (threats, teasing, hate speech among peers) that parents of affected children cannot manage. Young people entertain themselves with this in the afternoon or in the evening at home but the problem can manifest itself on some other day in school. Hence, counselling workers from schools have turned to the Ombudsman several times with a request for advice since parents have demanded from a school that it solve the problem between peers.

It seems that social violence among peers has been spreading more and more. We will have to take a stand against it by means of innovative, internationally developed, measured, and pro-social approach. We believe that schools will need the help and support of responsible

experts, institutions and the Ministry, especially in the form of information and raising awareness on existing possibilities for preventing and taking action on the occasion of this type of violence: SAFE.SI project (Safe Use of Internet for Children, Parents and Teachers), Spletno oko project (registration point about illegal contents on the internet), ProSAVe project (by means of pro-social approach against violence and exclusion).

2.15.4 Children in sport

We were informed that children who accompanied football players at a match between the USA and Slovenia were not properly dressed according to weather conditions. With an outside temperature of around 2 degrees Celsius, children were wearing shorts and T-shirts.

Accompanying national football team players was surely a big event for children and it also meant a lot to their parents or guardians but this should not be a reason for exposing children to the cold. We assume that parents did not even think that this was endangering their children's health or they would have demanded from the organiser to have these children more suitably dressed. Tracksuits in the colours of the club (or the State) would fulfil this requirement.

Since the Ombudsman is not responsible for handling violations of human rights committed by entities recognised by civil law (sports societies and associations and individuals), the above mentioned position was published on our web page with an expectation that organisers of similar sports events will also take weather conditions in the future.

2.15.5 Health care of the children

In the beginning of June we were informed about the issue of the low number of vaccinated Roma children in the Administrative Unit Novo Mesto. The Association of Centres for Social Work informed us about the instruction of the Ministry of Labour, Family and Social Affairs submitted in this regard to all Centres for Social Work. The Ministry warned the said Centres that in contracts on active resolution of social issues an obligation may be determined that parents bring their children to compulsory vaccination against childhood diseases and this obligation would also be a condition for obtaining social assistance.

We warned the Ministry that Article 32 of the Social Security Act does not provide for such a legal basis to the state authorities and the said Centres to include any obligations an individual may have on the basis of other regulations in other areas in the said contract for the active resolution of social issues. Social assistance to an individual may be conditioned by means of his/her treatment of dependency but its granting cannot be conditioned with the observance of regulations relating to their family members.

Rights which appertain to an individual may be limited or conditioned only in cases and under conditions determined by the law. Hence, in order to achieve the goal to have more vaccinated socially deprived persons in a manner proposed by the Ministry, Article 31 of the Social Security Act should be supplemented, in the Ombudsman's opinion.

Forcing parents into compulsory vaccination of children as proposed to the Centres has no legal basis and interferes with the rights of individuals, in the Ombudsman's opinion. Even if a lack of observance of provisions of the Contagious Diseases Act is dangerous for other people or if a child's development is endangered, these are not reasons to terminate eligibility for social assistance. In mentioned cases, the observance of statutory obligations has to be ensured in a manner envisaged by the legal order. Truly, other methods are far more simple than the proposed termination of social assistance.

We also warned the Ministry that, in our assessment, the proposed method is creating differentiated treatment of individuals based on their social conditions: More wealthy individuals, who ignore the provisions of the Compulsory Vaccination Act, will not be deprived of anything as a result since they do not receive any social assistance. Meanwhile, others will be deprived of aid and will be responsible for an offence which will actually indicate double punishment. It is also important that the issue in question was raised in relation to the Roma population which might raise questions on discrimination on the basis of nationality. Irrespective of the considerations above, the Ministry replied and explained that the instructions to Centres regarding the vaccination of children had been supplemented. Hence we believe that our intervention was justified.

Health insurance of children

In the last report we drew attention to problems in providing health care to children who are not independent entities in terms of health insurance (Annual Report of the Human Rights Ombudsman for 2010, p. 244). Our proposal that children should be independent holders of rights was additionally confirmed in 2011. A foreigner was imprisoned in one of our prisons and gave birth to a child but, in accordance with regulations, she was only given emergency medical treatment, although other medical services would also be needed. The problem was solved by means of releasing her on parole and she returned to her mother land with her child. The Head Office of Prison Administration, however, promised to develop the relevant amendments to the health legislation.

2.15.6 Children in political propaganda

The media warned the Ombudsman that children also took part in the public gathering against the adoption of the Family Code. The mentioned gathering was, in our opinion, of a political nature, which surely arises from the time and place of the gathering and its political nature was not hidden by organisers. Nothing is obviously wrong with such gatherings which are also one of the methods of establishing civil society for which a constitutional right is granted to citizens. But some media asked us if the participation of small children in political activities indicates a violation of their rights.

We published the following position on our web page:
"The Ombudsman has stressed that the participation of children at a gathering was decided on by their parents who should be the first to protect their interests. The Ombudsman cannot comment on the reasons why they have brought their children to the gathering but an assessment can be made that the participation of younger children in this type of event is inappropriate if they can not and are not able to understand their meaning. Children actually participated at the event which was oriented against a regulation which, in the Ombudsman's assessment, would significantly improve the position of children in particular.

At the same time we reiterate our publicly published position that children (under the Convention on the Right of the Child, all young people until they are 18 years old) have the right to freedom of expression, which is specifically guaranteed under Articles 12 and 13. That is why taking a stand by children in relation to "political" questions is not problematic in principle since this is how they express their actual will which is assessed in accordance with their age and maturity. We believe that questions relating to politics and politicians should not be absolutely prohibited to children but their suitability should be separately evaluated in terms of content in each individual case and in the context of all circumstances of the case:"
Since we also received come criticism regarding the above mentioned position, we wish to stress again that the Ombudsman opposes any abuse of children for political purposes as well as their participation in political propaganda since children, especially young children, cannot understand the meaning of political activities.

- The Ministry of Labour, Family and Social Affairs should develop expert bases for a proposal for the Advocacy of Children Act
- The Ministry of Education, Science, Culture and Sport should examine the proposal to make the pre-school education of children free of charge for all parents after a certain age of a child.
- The Educational Institute of the Republic of Slovenia should examine the possibility of regular employment of presidents of all Commissions for placing children in special programmes.
- Amendments of health legislation should ensure that children of prisoners will be suitably insured.

31. With parents disagreeing on child attending kindergarten, children's best interests must be protected by the state

Parents of a child (not living together) could not agree on a question of whether their child should attend kindergarten or not. Hence, in accordance with the provisions of Article 113 of Marriage and Family Relations Act (ZZZDR), this question was decided by the Court which ordered that the mother must enrol the child in the kindergarten. The decision was given in detail that this is a case of a question of such significant influence on the development of the child that parents are responsible for deciding upon it unanimously. By means of an interim decision the Court decided that the father may also enrol the child in kindergarten if the mother would not voluntarily do so within a certain period of time. The father enrolled the child in the kindergarten. The very next day, the mother de-registered the child from the kindergarten. The initiator was of the opinion that the kindergarten did not proceed correctly when deregistering the child without the father's consent. He sought help first at the Inspectorate of the Republic of Slovenia for Education, and he later lodged an initiative with the Human Rights Ombudsman of the Republic of Slovenia.

We first warned the initiator that neither the Inspectorate nor the kindergarten can force the mother to take the child to the kindergarten. Such decision, against somebody's will, may be implemented only by the Court. When verifying the initiator's statements, it has been found that the principal of the kindergarten assessed that the Court Decision was fulfilled by the father enrolling the child in the kindergarten and she did not see any barrier for the mother not to sign the child out the very next day. She stressed that, in the operative part, the Court did not write that the child must remain enrolled in the kindergarten and that the Court Decision was not final and that court proceedings were still in progress. The Inspectorate did not find anything to challenge the principal's standpoint. The evaluation of the Inspectorate was that the kindergarten respected the Court Decision with the fact that the child was enrolled. As regards the deregistration from the kindergarten, this was a new fact of dispute, in the Inspectorate's opinion, about which the Court had not decided yet. During the course of our procedure, the initiator succeeded in getting another interim order issued in which it was expressly determined by the Court that the child must be enrolled in the kindergarten. That is why our intervention for elimination of violations of human rights was not necessary. But we submitted to the Inspectorate our opinion: that it is clear from the first interim order issued that the Court has decided on the child's enrolment in kindergarten because the parents could not reach an agreement. It is also clear from the statement of grounds that the Court considered this such an important issue for the child that a decision cannot be made by only the parent who has care of the child and with whom the child lives. We agreed with the standpoint of the Inspectorate that only the operative part of the judgement is binding but the role of the statement of grounds is that it explains in detail the purpose and reasons for the decision. Only by knowing the purpose and reasons for a decision, is it possible to find help in case of any lack of understanding of the operative part. In the actual case, it was, however, very clear.

It is clear that the Court had decided on the child's enrolment in kindergarten and for him to remain enrolled. To understand that such decision indicates that it is only necessary to enrol the child in kindergarten and immediately then deregister the child, is, in our opinion, contrary to the best interests of the child as determined by the Court and explained in the grounds. When the Court determined that the child's attending kindergarten was such an important issue that parents are responsible for deciding unanimously, it is clear that the consent of both parents (or a new decision by the Court) is also necessary for the deregistration

from kindergarten. It is impossible to understand the position of the principal of kindergarten who devalues the Court Decision to the level of a document binding her to observe the order by making a mockery of it. It is even more difficult to understand the position of the Inspectorate that there is nothing wrong with this. The lack of the finality of the judgement was the argument of the Inspectorate (well, the essence of the interim order is its taking effect prior to the final decision in the proceedings) and the fact that the judicial proceedings are still in progress (interim order is, as a rule, issued only prior to the conclusion of the judicial proceedings).

It was obvious that parents have problems in reaching agreement on the child's best interests, and how to achieve them. The Ombudsman believes that the role of state authorities and holders of public powers is to assist in enforcing a child's best interests when parents interfere with them (or one of them), and not to deepen conflicts between parents with an unrealistic perspective on the content of the Court Decision. **11.5-33/2011**

32. Limitation of child's contacts with father in detention

An initiator who was detained turned to us and claimed interference with his rights and the rights of his child. Since he has been detained he has had no contacts with the child. He stated that he did not have contacts due to a prohibition of a professional from the Centre for Social Work. We made inquiries relating to the case in the said Centre. In its report, the Centre wrote that the family had been deal with since 2008 due to alleged family violence. The Centre detected the possibility of the child's endangerment in the family, and from both of the parents, and as a result, had continued with determining that fact. It regularly verified the situation in the family. The Centre denied accusations that it prohibited contacts of the child with the father. It was explained that the professional only warned the child's mother to ensure that the child would not be exposed to threatening circumstances. In this relation the professional also proposed to limit contacts of the child with the initiator since this was also the agreement reached when handling the child and mother as victims of family violence. It was also clear from the received report that the child's mother believes that the detention room is not a suitable environment for the child that is why she will not enable the child's contacts with the father during his detention.

We explained to the initiator that the child has the right to contacts with both parents unless this is in the child's best interests. If the child's mother assesses that the child's contacts with the father are harmful, only the Court may decide on this issue. The Centre for Social Work cannot decide on this since it has no such authority. If the Court determines that the child's contacts with the father are not harmful, it will also define the extent and the schedule of contacts. This Court Decision will also be binding for the child's mother. **11.0-3/2011**

33. Postponing provision of child's best interest for financial reasons

We received several initiatives in relation to proceedings where the court has appointed a court expert to evaluate the child from a professional point of view. The Court decided that parents should pay an advance payment for the costs of the expert, specifically, both up to one half, and issued a warning that the evidence from the expert would not be implemented if the advance payment were not paid within the deadline.

It is permissible to produce an expert opinion involving an underage child when this is necessary and for the best interests of the child. We believe that it is not acceptable to expose the child to the proceedings needed to develop an expert opinion, if the interests of somebody else are thus exclusively assured. But if it is necessary and in the best interests of the child, it is not acceptable, in the Ombudsman's opinion, not to take into account such

evidence if one (or both) of the parties does not pay the advance payment for the work of the expert. In particular, since one of the parties may thus influence the implementation of evidence proposed by the other whereby it is not necessarily true, that the conduct of the first client is in the best interests of the child. Hence we believe that Courts, in proceedings implementing evidence which are used to assist in determining the child's best interests, must, when necessary, withdraw from the general rule on proof and the settlement of costs for evidence as referred to in Article 153, Paragraph 3 of ZPP: Not taking into account such evidence on the account of non-payment of the advance payment would in fact not be in the child's best interests. Likewise, it is not in the best interests of the child to wait for both parents to pay the advance payment since this may also mean the unnecessary delaying of the proceedings relating to the rights and best interests of the child.

The speed of judicial decision-making is even more significant for the provision of the child's best interests in such interests. The Ombudsman believes that the development of expert opinions in proceedings where a court expert would perform his work by the treatment of the child, should be, as a rule, decided ex officio by the Court. The enforcement of such evidence should not be linked to proposals and other activities of the parties. In these proceedings the Court should or may enforce the evidence in accordance with the provisions of Paragraph 153, Paragraph 4 of the ZPP. The initiative was considered justified. **11.0-97/2011, 11.0-73/2011**

34. State Prosecutor's Office and Court not observing best interests of the child

The Centre for Social Work warned us that an investigating judge on duty decided on a mother's contacts with the child in pre-criminal proceedings against a mother of an underage child who is suspected of an attempt of her child's manslaughter. When doing so she completely overlooked the interests of the child. The Centre for Social Work submitted the initiative to the Ombudsman and informed her of an inappropriatedecision by the investigating judge, wishing for the Ombudsman to intervene in case the District Court would not respond to their formal letter.

The Centre submitted us the letter addressed to the District State Prosecutor's Office, for our information. The Centre expressed their surprise since the investigating judge did not have any legal basis for this decision. The Centre also expressed their infuriation that the District Court decided on contacts under supervision while only taking into account the needs of the mother and not determining the best interests of the child. It is clear from the District Court Order in this case that, by means of the same Order, the Court ordered a mother of an eight-year child based on reasonable grounds for suspicion of a criminal offence of an attempt of manslaughter of a child and ordered a restraining order while simultaneously determining contacts under supervision.

The District Court replied to the Centre's formal letter that they sent the letter to the Ministry of Labour, Family and Social Affairs and asked for their intervention or opinion. The Ministry submitted an extensive explanation, obviously not to the Centre but to the District State Prosecutor's Office, in regard to the legal basis for determination of contacts. It also warned that the District Court decided in pre-criminal proceedings upon the request of the District State Prosecutor's Office on ordering the restraining order pursuant to Article 195 of the Criminal Proceedings Act but it should not decide on contacts. The District State Prosecutor's Office submitted this reply to the Centre, for their information and wrote that they disagreed with the standpoint taken by the Ministry.

We asked ourselves what would happen if the Court had not taken such a decisive stand for the best interests of the child and who would suffer as a result of these decisions: surely the child will suffer. Hence we wish to draw attention to the responsibility, in this instance of the investigating judge, of persons making decisions with a significant impact on the future

of the child. They are bound to follow the principle that the best interests of the child must be the main guideline when deciding on matters relating to the child. This should never be neglected. **0.5-3/2011**

35. Violence in front of school

On the basis of reports on violence of children in front of school in the media, the Ombudsman opened her own initiative. We summarised the following story from the media: a fourteen year old was beaten up before classes in front of the school and received some physical injuries. Although this took place in the school courtyard, none of the employees noticed it and no action was taken to prevent it. Pupils present there called the Police. How can it happen that persons responsible did not notice what was going on?,- is what we inquired of the school. We asked the principal for an explanation as to what actually happened and what the reasons for the incident were. We also required an explanation if the school views violence as a problem and what action plans are being developed to handle the issue.

We received their reply within the deadline set. It was fair and presented in detail, and the principal answered all questions raised by the Ombudsman.

She explained that the reporting of the media on the violence over children was not fair and no truth was revealed. She wrote that all professionals were at a working meeting, as on every Monday morning before the classes. The meeting was interrupted by a ear-nine pupil informing them about the event in front of the school. Few teachers immediately left to go to the scene of the event and the principal joined them soon afterwards. She immediately called the Police and the rescue team. The pupil was given first aid by teachers until the rescue team arrived. The principal's assistant informed parents of the incident. Other pupils present described the incident. On the basis of these notes, in the following days, counselling workers first dealt with affected children and their parents. It was established that verbal, psychological and physical violence of some older pupils against younger ones had taken place at school for some time. Findings were clarified with pupils and parents, events were dealt with by the school bodies: the Parent's Council, School's Council. Having intensive interviews with children, violence through the internet was also detected. They carried out meetings with parents class by class and a common meeting of parents of all pupils and counselling workers of the school. The principal presented to parents a series of measures that the school would implement in future: Police experts would carry out training sessions on the subject of the increasing web violence for pupils of the last three years, for the whole faculty and parents. The Institute of Public Health would carry out training courses on the suitable and healthy use of computers (for children and parents) and the issue of violence would be discussed during class meetings and several boxes for reporting all undesired phenomena at school would be placed in the school, mediation will be introduced for pupils involved, video camera will be installed and information will again be employed. The measures planned were supported by the school bodies, the Parent's Council and School's Council. The Ombudsman assessed that the action of the responsible persons was appropriate. **11.7-4/2011**

Information on the
Ombudsman’s work

3. INFORMATION ON THE OMBUDSMAN'S WORK

The most important information on the Human Rights Ombudsman of the Republic of Slovenia ""the Ombudsman") in 2011 is presented in this chapter, the legal bases for our work are given, and the method of work and procedure when handling initiatives are described together with relations with key public groups, including initiators, civil society state authorities, local self-governing bodies and holders of public powers, the media an international institutions. The accessibility to the Institution and communication tools most frequently used in relations with the public are presented, together with our publishing activities. In the 2011 Report, the Ombudsman's international activities have been included in table-format reviews in texts on thematic sections of our work. The chapter also includes information on the amount of financial funds allocated by the state budget for the work of the Institution in 2011, as well as their use. The number, organised structure and educational level of employees at the Ombudsman's Office as of 31 December 2011 is also mentioned. The statistical review presents the reader with data on the number of initiatives received and handled and how many of the concluded initiatives were justified.

Legal bases for the Ombudsman's operation

The Ombudsman was introduced in the Slovenian constitutional system with the Constitution of the Republic of Slovenia which was adopted on 23 December 1991. The Ombudsman was defined in Article 159 stipulating that for protecting human rights and fundamental freedoms in relation to state authorities, local self-government authorities and holders of public authority the office of the Ombudsman for the rights of citizens shall be established by law.

The fundamental legal document for the operation of the Ombudsman is the Human Rights Ombudsman Act ("the ZVarCP") adopted on 20 December 1993 and which entered into force on 14 January 1994. The Human Rights Ombudsman was established pursuant to this document and formally started to operate on 1 January 1995. The ZVarCP stipulates that the Ombudsman is elected by the National Assembly with a two-third majority of votes cast of all Deputies, upon the nomination of the President of the Republic. Such a large majority of votes is not required for the election of any other official. In performing his function, the Ombudsman acts in accordance with the provisions of the Constitution and international legal documents on human rights and fundamental freedoms. While intervening he must invoke the principles of equality and good administration. The Ombudsman is autonomous and performs his function independently. His task is to determine and prevent violations of human rights and other irregularities.

The legal framework for the operation of the Ombudsman is also found in some other legal documents. Articles 23 (a) and 50 of the Law on Constitutional Court, Article 55 of the Patient Rights Act, Article 52 of the Defence Act, Article 65 of Consumer Protection Act, Article 14, Paragraph 2 of Environmental Protection Act, Articles 59 and 60. 60 of the Personal Data Protection Act, Articles 213 (b) and 213 (c) of the Criminal Proceedings Act, Article 68 of the Lawyers Act, Article 212 of the Enforcement of Penal Section Act, Article 80 of Tax Procedure Act and Article 3 of Classified Information Act. Under the Act Ratifying the Optional Protocol to the Convention against Torture and Other Cruel Inhuman of Degrading Treatment or Punishment, since the spring of 2008, the Ombudsman has been carrying out tasks of the National Preventive Mechanism against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the NPM"). In this role the Ombudsman cooperates with NGOs selected on public calls to tender.

3.1 INITIATION HANDLING PROCEDURE

The method and organisation of the Ombudsman's work and the procedure for handling initiatives are defined in detail in the Rules of Procedures published in the Official Gazette of the Republic of Slovenia, Nos. 63/1995, 54/38, 101/2001, 58/2005. The operation of the Ombudsman is founded on the fundamental mission of the Institution, protection of an individual in his relations with state authorities, local self-government authorities and holders of public authority and the supervision of their work, particularly the proper and fair treatment in relation to an individual. The Ombudsman has certain authorities in relation to these duties and may inspect all data and documents under the responsibility of national or local authorities. All state authorities must help the Ombudsman in the implementation of any investigation and suitably assist him upon his request.

The Ombudsman has no authority in relation to the private sector (e.g., business entities), hence, we most often advise initiators complaining about a violation of their rights in the private sector to report the alleged violations of rights to inspection services and other supervisory institutions. These may or must, within the extent of their authority, carry out an inspection of the employer and, upon determined irregularities, adopt the necessary measures against an employer. Inspectorates also provide professional assistance in relation to the implementation of laws and other regulations, collective agreements and general legal documents under their responsibility.

The Ombudsman does not handle cases involved in judicial or other legal proceedings unless it is a matter of undue delay in proceedings or obvious abuse of power.

The procedure before the Ombudsman is confidential, informal and, for parties, free-of-charge. Regulations on protection of confidentiality of data bind the Ombudsman and his Deputies, as well as officials employed at the Office. The principle of confidentiality of the procedure is a very important principle. We wrote several times in the Ombudsman's annual reports on the issue of the confidential nature of procedure before the Ombudsman, in relation to the Act on the Access to Information of Public Character. More can be read this year on this issue in Chapter 2.1. As a rule, initiators lodge their application for initiating the procedure before the Ombudsman in a written form including personal data and sign it They may also send it by e-mail to the following address: info@varuh-rs.si. They have to state the circumstances, facts and evidence upon which the initiative is based and inform the Ombudsman if legal remedies have been used in the case and if so, which.

The Ombudsman, therefore, carries out his activities by solving individual initiatives addressed to his Office by individuals, complaining of alleged violations of human rights, fundamental freedoms or stating other irregularities of state authorities, local self-government authorities or holders of public authority.

The Ombudsman may initiate procedures in individual cases also on his own initiative. The Ombudsman also deals with broader issues which are important for the protection of human rights and fundamental freedoms and legal certainty in the Republic of Slovenia. In 2011, 138 initiatives (5.4 percent of the total) were started on the Ombudsman's own initiative. If the Ombudsman initiates procedure on his own initiative or the initiative is lodged by somebody else on behalf of an affected individual, for commencing the procedure, the Ombudsman obtains the consent of the affected party. The Ombudsman strives to lead the procedure in an impartial manner, hence the standpoint of the affected or involved parties is obtained and after the examination of the case an independent opinion and evaluation regarding a potential violation of human rights is issued.

Initiatives are also accepted when operating outside the Ombudsman's offices usually taking place at the Chief office of a selected municipality and upon other visits carried out by the Ombudsman in relation to the implementation of the Ombudsman's responsibilities,

also under the NPM for protection of persons deprived of liberty. Individuals may obtain information on conditions on filing initiatives and their (already lodged) initiatives on a free-toll telephone number 080 15 30. More information may be obtained on our web pages (www.varuh-rs.si).

We are aware that it is most important for an initiator to obtain a solution to his/her problem as soon as possible. In instances, when a procedure is too lengthy without justified reasons, we intervene with the relevant authority in order to speed up the case, especially if the reasonable time period for consideration of the case or its postponement has already been exceeded and if this does not indicate a violation of case priority. We propose the solution of the problem in an amicable manner, to any given authority, if this is also agreed by the initiator. If irregularities cannot be eliminated, it is proposed to the authority that it apologize to the initiator for the mistake made. In certain cases, though, the Ombudsman does not handle the case and refuses it. When the Ombudsman decides to refuse an initiative or does not commence its consideration, the initiator is, as a rule, informed about it within fourteen days, explaining the reasons and referring the initiator to any other relevant institution for solving the issue. The Decision of the Ombudsman on not receiving an initiation in its subsequent consideration or for refusing it is final. But it has to be emphasized that the Ombudsman considers all letters and all received initiatives and replies to all of them, unless the initiative is anonymous or insulting. In 2011, the Ombudsman received 41 anonymous initiatives.

3.2 RELATIONS WITH THE OMBUDSMAN'S KEY PUBLIC GROUPS

The Ombudsman's key groups of the public are: initiators, civil society, state authorities, local self-government authorities and holders of public authority, the media and international institutions or organisations. Relations of the Ombudsman with all the above mentioned groups are presented in detail in the remainder of this text.

3.2.1 Initiators

People turn to the Ombudsman individually or as a group (on behalf of affected groups of individuals) due to alleged violations of human rights and fundamental freedoms. It is in their interests to eliminate alleged violations as soon as possible. The responsibility of the Ombudsman is to carry out a swift, professional, and efficient solving of initiatives in order to eliminate determined violations. The Ombudsman also makes propositions for adopting systemic measures which would eliminate the possibility of their repetition.

Contacts between initiators and the Ombudsman's staff take place in various ways: by phone, e-mail or in person. An information officer accepts telephone calls every day between 8.00 and 16.00 hours and on Fridays until 14.30, to the free-toll telephone number 080 13 50 or a fixed line: 01475 00 50. In 2011, 8,300 calls were recorded, on average, 34 a day. E-mail is received at the following address: info@varuh-rs.si. Initiators can pay a personal visit to the Ombudsman's Office in Ljubljana every working day. Every working day, information on the phase of the handling of their case may be obtained and a meeting may be organised with a professional dealing with the initiative upon prior agreement. The current Human Rights Ombudsman generally holds conversations with initiators on the phone every Tuesday between 13.00 and 14.00 hours.

The Ombudsman is also accessible to initiators when operating outside the seat, taking place every month in another place. In 2011, the Ombudsman carried out 11such meetings which are described in the following chapter.

The Ombudsman operates in Slovenian but initiators may also turn to the Ombudsman in their mother tongue if writing in Slovenian poses problems for them. All initiators and those seeking information, receive the Ombudsman's replies in their own language or a language understandable to them. The Ombudsman therefore strives to be accessible to various groups of the public, particularly initiators whose rights are protected in relation to state authorities, local self-government authorities and holders of public authority. Over the past four years, the Ombudsman has received on average 2,640 new initiatives per year. The Ombudsman makes conclusions on the basis of initiatives handled and other sources of information on the state of observance of human rights in general or by individual fields. This is described in the whole of Chapter 2 of this Annual Report and in the chapter on statistical data.

3.2.2 State authorities, local community authorities and holders of public authority

In performing his work, the Ombudsman supervises the work of state authorities, local community authorities and holders of public authority in instances of alleged violations of human rights and fundamental freedoms. With this purpose in mind, the Ombudsman submits proposals, opinions or recommendations which they have to handle and must reply to in a time period determined by the Ombudsman. To an authority where an irregularity has been found, the Ombudsman submits his opinion from the point of view of the protection of human rights and fundamental freedoms in a case being handled, regardless of the type or phase of procedure taking place before such authority. The Ombudsman rarely uses public warnings and gives priority to mutual conversations or written communications. Open issues relating to questions on respect for human rights are generally satisfactorily solved within their own context. But when this is not possible, the Ombudsman also publicly presents the issue.

The Ombudsman and her Deputies are available to state authorities, local community authorities and holders of public powers in various ways. They meet with individual Ministers and discuss open and current issues falling under their responsibility. In regard to 2011, working meetings with the Minister of Finance, Dr Franci Križanič, and the Minister of Labour, Family and Social Affairs, Dr Ivan Svetlik and the Minister of Education and Sport, Dr Igor Lukšič, have to be especially mentioned.

Also in 2011, we met with Heads of authorities where violations of rights have been detected, together with inefficiency and unresponsiveness. More on these meetings and communication with state authorities and local authorities is evident in descriptions of cases and findings of the Ombudsman (Chapter 2 of this Report) and in tables of events by individual thematic fields of the Ombudsman's work.

The Ombudsman reports every year to the National Assembly on her work, the work of the Institution and finding on the level of the respect for human rights and fundamental freedoms and legal certainty of citizens in the Republic of Slovenia. Before the plenary discussion at the session of the National Assembly, the Report is dealt with by individual working bodies of the National Assembly. The Ombudsman, together with her Deputies, takes part in these meetings. At the session of the National Assembly, the Ombudsman also verbally presents her findings. Every year, the Annual Report is handed over by the Ombudsman to the President of the Republic of Slovenia, and following prior agreement, also the Prime Minister. The Ombudsman's Annual Report is also dealt with in the National Council. Individual findings are also discussed at various conferences, congresses, round table panels, meetings and other events organised by state or local authorities and research and scientific institutions and organisation of civil society. More is presented in table-form reviews of the Ombudsman's activities.

Work of the Ombudsman outside its office

Operations outside the Ombudsman's office take a standard form of operation taking place in three parts: the initial interview with the Mayor, followed by the central part, i.e., interviews with initiators and the external day operation is concluded with a press conference for local media. At the interview with Mayors, the Ombudsman obtains information on questions relating to the provision of possibilities for the implementation of human rights and fundamental freedoms at the local level. But, primarily, how does the municipality take care of vulnerable groups of inhabitants (children, the elderly, children with special needs, and in the last year, also poverty-stricken persons)? Information on when and where interviews with initiators will take place are published in the mass media and on the Ombudsman's web page. A person must apply for an interview at a toll-free telephone number 080 15 30. On the basis of applications, the Ombudsman determines the group of collaborators to carry out interviews with initiators. The Ombudsman is available to the Mayors and other representatives of the local community on various other occasions.

In 2011, the Ombudsman held external day operations in the following places:

26 January 2011
Celje

The Mayor, Mr Bojan Šrot, received the Ombudsman and her collaborators. Interviews with 17 initiators were held; various problems were mentioned, some highlighted their dissatisfaction with the conduct of Celje Centre for Social Work. Five new initiatives were opened and the solving of three was in progress. At the press conference, the Ombudsman expressed her concern due to environmental pollution in the Celje region but complemented the operation of the Citizens Municipal Service, providing answers to questions in 24 hours, and the operation of the City Treasurer for paying money orders. The city may be labelled as friendly to people with disabilities and the elderly since all traffic lights are equipped with a sound signal.

2 March 2011 and
30 March 2011
Koper

The Ombudsman and her colleagues met the Mayor, Mr Boris Popovič. Due to numerous initiatives, we carried out our visit in Koper in two parts: on 2 March and 30 March. Every time we had interviews with 16 initiators. In total number, 15 new initiatives were opened and six were already being dealt with. The biggest number of cases referred to the work of courts and lengthy procedures, some initiators pointed out various problems in administrative procedures, they were dissatisfied with the work of Health Committees and procedures before the Pension and Disability Insurance Institute. The Ombudsman's approval of the municipality was given at the press conference, since it is one of rare municipalities without waiting lists for the admission of children in kindergartens. The municipality is old people -friendly, and in the last years they have built 200 new apartments. The problem remaining is the environmental pollution and the company Kemiplas is accountable for this.

23 March 2011
and 13 April 2011
Maribor

The Ombudsman and her co-workers met the Mayor, Mr Franc Kangler, who presented new developments at the municipality and mentioned problems in relations between the state and local community. 53 initiators applied to interviews, and 49 attended, which is why our operation in the field in Maribor was organised twice. 13 new initiatives were opened and 11 were already being solved. Also this time the content of initiatives concerned lengthy judicial proceedings, social problems and unemployment, problems relating to employment relationships and housing problems. A special issue is unsolved procedures relating to children's rights. Interviews after the first visit were followed by a press conference, emphasizing findings obtained during the visit.

11 May 2011 Murska Sobota	The Ombudsman and her colleagues were informed about conditions in the municipality at the meeting with the Deputy Mayor, Mr Jože Casar. Successes in integration of the Roma and in education of their children were also presented. The Ombudsman complimented the participation of the municipality in activities of the PIP Institute (Law Information Aid), House of Fruits of Society and ZGNZ Foundation (Party with Head). 27 initiators applied for interviews. 13 new initiatives were opened and three were being solved. The content of initiatives was frequently linked to judicial proceedings and social problems. Many problems were linked to hardship of people due to bankrupted companies. Insufficient employment of people with disabilities and a high unemployment level raise concerns. Unlawful termination of employment contracts are also problematic. Interviews were followed by a press conference.
18 May 2011 Novo mesto	The Mayor, Mr Alojz Muhič, received the Ombudsman and her colleagues. Interviews with seven initiators followed highlighting their social issues, in particular, and problems experienced when co-existing with the Roma. They warned the Ombudsman about peculiarities of their way of life (marriages and teenage pregnancies). Four new initiatives were opened. The Ombudsman presented her findings at the press conference.
8 June 2011 Tolmin	The Deputy Mayor, Mrs Maša Klavora, and the Director of the Municipal Administration, received the Ombudsman and her colleagues. Problems worrying them were discussed and their prompt resolution was highlighted. Health care and unemployment in the Bača-Podbrdo area are most problematic. Three initiators applied for the interview, four came. Two new initiatives were opened. A short press conference followed.

3.2.3 Media

The Ombudsman has taken care to maintain good relations with the media, being aware of quality cooperation with them on providing a higher level of respect for human rights and fundamental freedoms
in society.

Pre-conditions for good relations are mutual respect, knowledge of the nature of work and mission and possibilities for taking action. In January 2011, the Ombudsman prepared an unofficial meeting with editors and journalists of some media companies organising brunch where we could freely talk and discuss forms of cooperation and current social topics. The central theme was the ethics of public statements but we also talked about children in media reporting, and questions of public openness and privacy and other current issues.

We sometimes still encounter examples of lack of understanding of the legal framework of the Ombudsman's work. We seek to settle unclear issues in direct conversations. We are available to representatives of the media houses for additional explanations on the work of the Ombudsman. We also provide explanations on the background of certain cases dealt with by the Ombudsman or the cases that the media had started to examine them. When it happens that there are interpretations distorting our findings or opinions, we respond within options given by the Media Act.

In 2011, in a public statement "Relationship of the Ombudsman to Initiatives and Phenomena Regarding Ethics of Public Statements in Media and other Forms of Public Communication, the Ombudsman explained the methods of her participation on the occasion of phenomena which decrease the level of ethics of public statements in the media and other forms of public communication. More on this topic can be read in the Chapter Ethics of Public Statements. Likewise, more can be found there on the role of journalists as initiators, that is persons whose rights are being violated or in the role of violators of other people's rights.

The Ombudsman promptly publishes positions, opinions and recommendations in relation to some topics on web pages where they are available to the media and other groups of the public. They are also found in the Ombudsman's annual reports. The Ombudsman's opinion on archive material received a lot of attention. We expressed our conviction that the Protection of Documents and Archives and Archival Institutions Act should be amended, in the opposite case, human rights of individuals might be violated. Details are described in Chapter 2. We also informed the public of findings in relation to treatment of persons suffering with dementia in homes for the elderly. There are other cases, for example potential endangerment of bees. During the campaign on the Pension Reform Referendum, the Ombudsman warned that individual messages in the campaign include elements of prejudice and inappropriate attitudes to women.

The Ombudsman takes care to ensure a qualitative and fair response to initiatives from the media and their questions. We strive to provide fast and fully informed answers to questions. The Ombudsman's method of work is linked to handling initiatives , hence, many times we cannot provide any commentary since procedures before the Ombudsman are of a confidential nature. The examination of a question from the aspect of respect of rights demands more than can be made available to media houses which is why, many times, the Ombudsman's comments are of principled nature. When we study the question in detail and a professional standpoint has been reached in its regard, we inform the public. The Ombudsman, therefore, provides a public response when it is assessed that this is necessary considering its role and authority. It is also taken into account that the frequency of statements does not contribute to their efficiency. The Ombudsman responds to individual cases only when relevant data from responsible bodies are obtained.

In 2011, the Ombudsman received approximately 160 questions from journalists. It has been noticed that the question regarding the social nature of our state, which was very real a year before, has still remained in the centre of the media attention but most questions in 2011 referred to the rights of children. The Ombudsman, also with the assistance of the media, actively follows what is happening in society which is why the Ombudsman frequently takes action on his own initiative, in regard to certain wider issues. But it happens that at the same time, the Ombudsman also receives a question from journalists which may be a case of good practice in the field of cooperation with the media.

We actively followed the position of workers and increasing unemployment which is written about in Chapter 2. In regard to this topic, journalists were interested in questions about payment of social security contributions, taxation of subsidised funds for self-employment and questions relating to employment of people with disabilities and those with personal bankruptcy. We also informed the public about the Ombudsman's position regarding the act on undeclared employment, the act on volunteering, the work of the Employment Service and activities on the occasion of violating rights of workers of the Port of Koper and other companies. Journalists from the East of the country were interested in a question of the influence of social conditions on the level of knowledge of primary school pupils in the Pomurje region. In regard to social hardship, a pressing question referred to the arrangement of health insurance of children of sole traders.

With passing years, the public and media are becoming increasingly more sensitive to abuses of children which may also be deduced from questions received from journalists. The central topic of 2011 was the case of a girl from the Koroška region which was not concluded by the end of the year, though. Questions related to this topic mostly considered abuse of children and the right of children to privacy and how to enforce them. A case of sexual abuse in Prlekija received a lot of attention, and cases in relation to pornography in literature were also sensitive, together with questions of sexual abuse in the Roman-Catholic Church. The public was upset in autumn by the selection of books for the Cankar competition and we formulated our position towards teaching of transcendental meditation in schools and the suitability of food and drink machines in schools. Every year there are many questions from journalists in relation to the compulsory vaccination of children. We also received a question on the method of carrying out general health examinations in primary schools. In 2011, as compared to previous years, we received fewer questions concerning the privacy of children, and there were some relating to abuse of children for political purposes (gathering of civil initiative against the Family Code involving children) and relating to the publication of photographs of children in the media. The public has become very sensitive in these instances and demands instant action.

The developments relating to the Family Code remained a current topic for the whole year, also due to "hate speech". The publication of family photos of a politician, Mr Grims, and a Nazi, Mr Goebbels in the Mladina magazine attracted great attention of the public, consequently also reflected in questions submitted to the Ombudsman. The Ombudsman labelled the publication of children's photos within the context of a comparison made with the family of a war criminal an especially reprehensible act and expressed her expectation that responsible bodies would determine signs of criminal effects and initiate suitable proceedings. The public questioned itself whether an actor, Ivo Godnič, with his statement that Barbara's pit[1] was empty, only exceeded the boundaries of decency or whether it was, after all, an example of "hate speech". In June, the public questioned itself in what type of state we were living and whether some fundamental values had lost all their purpose. We warned of disturbing banners in the Pride Parade. The Ombudsman, in her statements given, warned about the urgency for zero tolerance to violence: firstly, in regard to the event of a tourist from Great Britain who was beaten up in the middle of Ljubljana, a homosexual, and secondly, in regard to an attempt to attack the head of a Buddhist community Dharmaling in Slovenia, the Lama Šenpen Rinpočej. The Human Rights

1 Note by translator: It was a hidden war grave which was found recently but the actor claimed was empty, and this was insensitive of him.

Ombudsman, Dr Zdenka Čebašek - Travnik, again urged all inhabitants of Slovenia to use common endeavours for a society of tolerance and zero violence.

In May, the question regarding violation of rights of the elderly was discussed a great deal, precisely, in regard to their living in homes for the elderly. In summer, the issue of high temperatures in public institutions in which measurements are carried out by the Ombudsman, were again put at the forefront. We were asked questions about the hunger strike in Slovenian prisons, and in autumn, conditions in Murska Sobota Prison were on the agenda of the media. We also received a question on a forced detention of a patient in a psychiatric hospital. Some questions were related to fine enforcement by imprisonment. A lot of attention was given to the case of violating the rights of Novo Mesto Police Station's Captain.

It has been noticed that in accordance with the continuing solving of the issue of "erased persons", the interest of the public and the media in this topic dried up. In regard to the Roma, ethnic communities and foreigners, quite a few questions were posed by journalists in 2011. It happened several times that the media and the Ombudsman were acting "in parallel" in relation to certain topics. The Ombudsman started a case on his own initiative and the media raised questions at the same time. We were informed that the Roma in Dobruška vas were supposedly without drinking water, hence we verified the news in the field. We promptly informed the public and tried to satisfy the curiosity of the public and media. We acted likewise when graffiti were found in Prekmurje and stickers with the "Roma Raus" slogan. We also received one question regarding neo-Nazi assemblies. The electoral campaign passed by without any intolerant outbursts but after the elections, the public was upset by a note written by Tomaž Majer on a web page of the SDS political party, and the media also expected a commentary from the Ombudsman.

Although the Ombudsman dedicated a lot of attention to the right to a healthy environment and organised a press conference on this topic, not much interest of the public or the media was expressed for environmental topics which was shown throughout the whole year. We wish that the national media would dedicate more attention to these topics while at the same time we have detected with satisfaction the policy on this topic among some local media.

The public was also interested in questions relating to denationalisation, corruption, amendments of legislation on road transport and the position of women in Slovenia. In relations with the media and other groups of the public, the Ombudsman used various communication means which are discussed in detail in the remainder of the text. Press conferences, personal meetings, use of web pages, social networks and other channels were used.

3.2.4 Civil society

When civil society enters into a dialogue with the State in order to enforce its interests, the Ombudsman gives support and strengthens all their initiatives contributing to the implementation of human rights and fundamental freedoms and elimination of their violations. Likewise in 2011, the Ombudsman continued the established practice of monthly meetings with representatives of civil society, non-governmental organisations ("NGOs") which, by way of their activities, have an important influence in various fields of life in the implementation and protection of rights of the people they represent. In our opinion this type of meeting contributes to a better mutual knowledge of issues in individual fields, to the analysis on the efficiency of the existing legislation and supervisory mechanisms, to common formulation of proposals for the adoption of systemic measures or supplementation of the existing ones. They indicate a good opportunity for exchanging opinions and seeking methods for preventing new problems or eliminating them. A special attention was dedicated to meetings with civil society in the field of the environment and spatial planning. As many as 9 such meetings were organised in 2011. In the remainder of the text, the overview of the Ombudsman with civil society in 2011 is presented.

Meetings with NGOs relating to organisations engaging volunteers: 24 January 2011

We first invited representatives of organisations engaging volunteers, in the European year of volunteering. Participants (13) pointed out problems which would be caused by the (proposed) Volunteering Act and Prevention of Undeclared Work and Employment Act as a result of lack of their harmonisation. In the opinion of all of the participants at the meeting, volunteering, either as organised or non-organised help to fellow human beings in distress, must not and cannot be defined as not-declared work. It is a value which has to be promoted and supported by society and we should create suitable conditions for its development. However, it also has to be supported by the State. Laws should enhance mutual solidarity and assistance, and not just prevent or punish irregularities. Participants said that they missed more possibilities of cooperation in the development of regulations, which has also been pointed out by the Ombudsman. A more suitable regulation of mentorship was proposed together with training in the field of implementation of human rights. The enhancement of volunteering is urgent, also by means of its promotion, raising awareness and education. We agreed to provide our cooperation in the future.

Meetings with NGOs from the field of repatriating of applicants for international protection: 25 February 2011 and 8 March 2011

At the meeting, representatives of NGOs presented, in their opinions, some unacceptable practices by state authorities in relation to applications of foreigners for international protection or asylum. The practice of the International Protection Department at the Ministry of the Interior was highlighted as an example. The said body rejects a request for recognising international protection to a person asking for it at the border crossing by way of a Decision prepared in advance. Such Decision was also received by those who had been in the Republic of Slovenia for two or three months already, and who were not informed of the concept of a third safe country. We agreed for cooperation in developing proposals of amendments and modifications of legislation and other systemic measures. The Government of the Republic of Slovenia adopted the proposal of amendments of the Aliens Act, at its regular session in February. Upon our subsequent meeting with the NGOs in March, we agreed to formulate together our positions towards proposed amendments of the mentioned law and new proposals. Questions regarding the unsuitable arrangement of permissions to stay for underage unaccompanied foreigners (proposal for the new article 77 (a) was highlighted), together with the urgency for amending provisions on integration of the family and the right to integrity of the family and the permission for residence due to other justified reasons and the interests of the Republic of Slovenia. The provision of Article 84 of Aliens Act was particularly highlighted at the meeting. Unaccompanied minors are frequently returned back across the border without any procedures for minor aliens which is why formulation of a proposal for the amendment of the mentioned Article is urgently needed.

The representatives of the NGO have established that children from EU countries are well taken care of. They are accommodated in crisis centres and then returned to their mother country. But it is not clear why different treatment should be applied for children who are not members of the EU.

Meetings with NGOs in the field of dependency: 24 March 2011

13 representatives of NGOs attended the meeting. They explained that possibilities given by NGOs, institutions and other entities of civil society operating in this field are not yet satisfactory. There is too little cooperation between responsible ministries (primarily, the Ministry of Health, Ministry of Labour, Family and Social Affairs) which is shown in the indeterminate nature of legislation, when providing relevant guidelines and professional training and in obtaining financial funds for activities of societies and institutions from this field. They agreed that there is not enough sensitivity present in society for detecting various forms of dependency. As a result not enough attention and too few financial funds were dedicated for their successful operation. Cooperation with the Ombudsman will be enhanced and they will turn to us when encountering actual problems.

Meetings of NGOs in the field of unemployment, poverty and social exclusion: 24 May 2011

The meeting was attended by six representatives of NGOs. The conversation was dedicated to exchanging information on operation, their experiences and realisations. Participants were unanimous that Slovenia must actively accede to the Food Bank Project and start to actually implement it. In addition to a lack of financial means, attention has to be drawn to great mental distress since, in these instances, human dignity is threatened. Hence, more attention must also be dedicated to other forms of assistance. People present stressed that the State doesn't listen to what NGOs are saying, that their proposals are little taken into account and consequently disregarded in matters of finances. There were many comments on the Social Entrepreneurship Act and inappropriate tax incentives for the development of this type of entrepreneurship which will have an important role for the employment and creation of new jobs. The Ombudsman assured that findings and proposals from this meeting will be submitted to responsible bodies. Our cooperation will continue.

Meetings with NGOs in the field of family violence and violence in society: 27 June 2011

10 representatives of NGOs acting in the field of prevention of family violence attended the meeting. Our conversation was dedicated to the exchange of information on operation and experience. It was agreed that, in Slovenia, it is necessary to accede more actively to the identification and prevention of all forms of family violence and ensure zero tolerance to violence in general. The cooperation with NGOs and state authorities and institutions (schools, health care institutions, Centres for Social Work, courts, the Police, etc.) needs to be enhanced, as well as with persons responsible for detection, identification and prevention of violence in the family.

Representatives of NGOs lack (compulsory and prescribed) training and raising awareness of all institutions and individuals encountering victims of violence. An inter-institutional group is established and summoned; this group is truly the only one that may give help in an integrated manner, both to a victim and a perpetrator, may stop the violence and seek to reduce its consequences. People present emphasized also this time that the State does not listen well to NGOs, that their proposals are little observed and consequently ignored in terms of finances. The lack of staff in some bodies was specifically highlighted, for example, Centres for Social Work and the Police, then the fear of professionals who recognize the violence but are afraid of, or do not wish to report it (schools, kindergartens, health institutions). NGOs need more training courses on the question of violence and specific features in the treatment of this phenomenon (courts). They also warned about almost "forgotten" groups of people (people with problems in mental health, the elderly) who are frequently victims of violence. The Ombudsman will submit their findings and proposals expressed at this meeting to responsible bodies, and the cooperation with NGOs will continue.

Meetings of NGOs in the field of homelessness: 28 September 2011

Findings and proposals of the first meeting from a year before were submitted to responsible national authorities and bodies of local self-government, together with a request for their feedback information on the efforts for a suitable resolution of the homelessness issue. Except for the Ministry of Health, all other ministries sent their answers. The Ombudsman also received them from the following municipalities: Ljubljana, Slovenj Gradec, Murska Sobota, Ptuj, Nova Gorica and Velenje. We found that the two great obstacles in solving the broader issues relating to homelessness are mainly poor coordination between ministries and avoidance of or transfer of responsibility to other bodies. Problems occur also as result of lack of understanding of the multi-layered nature of this issue and lack of financial funds. We were particularly critical of the Ministry of Health for not even sending their reply although a substantial part of the issue in question refers to the (lack of) provision of primary health care and post-hospital treatment of homeless persons.

Participants concluded that they would continue to strive for developing national strategy in the field of homelessness which will include the setting up of a network of shelters, enable more intermediary programmes for the transfer from shelters to independency (similar to the "The Kings of the Street" programme) and provide for suitable health care of all homeless persons (for example, a mobile van for check-ups of the medical condition of homeless persons in Slovenia). It was also stressed that Slovenia is not ready for the homelessness of families even though the general crisis may lead to this, as well as bankruptcies of numerous entrepreneurs and expulsion from housing.

Meetings with NGOs in the field of protection of the elderly: 20 January 2011

The meeting was attended by five representatives of NGOs who believed that progress could be noticed within society in solving some issues and problems relating to the position and quality of life of the elderly. The poverty threshold touches the elderly very often, particularly women above 65 years of age. The elderly remain in apartments which are large, cold, and many times empty since they cannot pay for all monthly liabilities.

Owing to increasingly low pensions, as much as 80 percent of the elderly cannot pay in full for the care services provided in homes for the elderly. Humanitarian agencies have found out that there are as many as 30 percent more applicants for aid in the form of food and other necessities. Due to unfavourable trends in society and overburdened relatives, particularly those employed, it is expected from the participants of the meeting that local communities will dedicate more support to developing local programmes of home care for the elderly, especially programmes of social services. These should be acceptable to everybody and not only those who are able to pay for the service, specifically, so that exemptions from payments of some services will be provided. They also warned about the increase in all forms of violence against the elderly and established that 10 percent of the elderly is experiencing physical, economic or a mental form of violence. It is expected that institutions will integrate better and act more efficiently, both, as regards the prevention of violence as well as in raising awareness of the public, especially relatives, and in the assistance to victims.

Participants have also determined that personnel in homes for the elderly are not qualified enough and that they lack time for an individual, especially in the field of care for the dying, and a decent farewell from relatives and roommates. Professional institutions and associations from the field of social security should be more engaged in the preparation of suitable training programmes and additional training. At the end we agreed for further cooperation and common action in the promotion of rights of the elderly. Only informed and active elderly people may be fully included in the society.

Meetings with NGOs in the field or environmental protection and spatial planning in 2011

At the first meeting which was attended by the Minster of the Environment and Spatial Planning, Prof. Roko Žarnić and his colleagues, the topics of meetings were formulated and the following conclusions were adopted:

1. The Minister accepted the offer for systemic cooperation between the Ministry of the Environment and Spatial Planning and civil society. Systemic cooperation will be gradually put in place.

2. With regard to amendments on the Decree on Limit Values Due to Light Pollution in the Environment, the Minister committed himself to verify at the Ministry how the monitoring is arranged and how it can be arranged. An answer will be developed for the Ombudsman.

3. In the field of protection of underground waters and the issue regarding the pollution of Karst caves, the Ministry will continue to actively cooperate with the Caves Association of Slovenia.

4. As regards the issue of flood safety of Celje, the Minister promised, that the project to improve the flood safety of Celje, for which the European funds were already obtained, will not be threatened as a result of Slovenia's contribution. Likewise, the Government's conclusion is that projects from Cohesion Funds will not be threatened as a result of the contribution requested from Slovenia.

5. Regarding the issue of environmental pollution of the Celje basin, the Ministry will order an additional analysis of dust particles by origin. The principle of "polluter pays" will apply in regard to the costs. Both sides, the Ministry and the Ombudsman, have committed themselves to strive for the active inclusion of the Ministry of Health in the resolution of the issue in question.

6. In the field of participation of the public in procedures concerning the adoption of spatial planning documents, the Ministry will develop a report for municipalities for earlier inclusion of the public in the adoption of spatial planning documents. During the year, the Ombudsman verified whether the adopted conclusions were achieved and found that the majority of them were already implemented by the Ministry.

Three meetings were dedicated to the consideration of the Environment Protection Act. At these meetings, representatives of civil society explained their understanding of the Act and gave their opinions of parts in need of modification. Meetings were used for unifying positions of representatives of NGOs to submit joint comments about the law upon its presentation. The State Secretary, Mr Ivan Eržen, attended one meeting 0n behalf of the Minister of Health, Mr Dorijan Marušič. The topic discussed at the meeting were adverse effects of pollution and of developments in the physical space to the health of people. Participants informed the State Secretary of actual cases in which it is detected that activities of polluters and spatial planning, together with the lack of inter-disciplinary cooperation, decrease the quality of life and health conditions of inhabitants. Agreements on short-term and long-term activities were adopted, to be implemented by the Ministry of Health for faster and more efficient solving of issues in question. The Director General of the Environment of the Slovenian Environment Agency, Dr Silvo Žlebir, was a guest at one of the meetings. Some conclusions were also adopted at this meeting, in particular:

1. the said Agency will provide for the implementation of simultaneous sampling of wet sediment in Marija Dobje in two months.

2. The said Agency will provide for the implementation of the analysis of landfill leachate from Za Travnikom disposal facility. A representative from Civil Initiatives of Celje will be present upon the taking of the sample.

3. It is proposed to the Ministry of the Environment and Spatial Planning that it adopt a regulation as fast as possible which will define in more detail the conditions which must be met by a producer of an environmental impact assessment, methods of substantiating them, methods of obtaining letters of authority and their withdrawal.

We also met with the representatives of the General Police Directorate since the topic of the meeting was environmental crime. Having a constructive dialogue with representatives of the Police, participants received actual answers to the questions raised and general explanations on responsibilities of the Police in matters relating to violations in the field of the environment. Participants jointly determined that many problems of this type arise from the non-coordinated work of state authorities and warned about the need for systemic solutions in this field.

Dr Gorazd Meško, the Dean of the Faculty of Criminal Justice and Security, University of Maribor, presented the activities of the faculty in the field of environmental crime and results of research dealing with this topic and continued with the series of events dedicated to considering environmental crime.

The last meeting in December was dedicated to the field of crime in the environment and took place in the form of two events: a workshop, entitled “Understanding Legal Instruments and How to Achieve the Implementation of a Constitutional Right to a Healthy Living Environment”, and a round-table panel, entitled “Corruption as a Threat to Human Right to a Healthy Environment”. They were prepared by the Commission for the Prevention of Corruption and an NGO, Greenpeace in Slovenia.

3.3 REVIEW OF THE OMBUDSMAN'S ACTIVITIES

In the Annual Report of the Human Rights Ombudsman for 2011 in English which is an abbreviated version of the one in Slovenian, only the review of our international cooperation is presented. The table-form reviews of activities in all thematic areas of the Ombudsman's operation are published in the report in Slovenian.

Review of international cooperation

Cooperation with the UN

1 February 2011 Brdo pri Kranju	Martina Ocepek and Simona Šemen, the Ombudsman's Advisors attended the international consultation session entitled: Urge for Taking Action Regarding Social and Economic Determinants and Equality in Health. Ministers and experts from various disciplines discussed possibilities and methods of more efficient elimination of inequalities in health. The consultation was organised by the Ministry of Health in cooperation with the WHO Regional Office for Europe.
4 May 2011 Zadar, Croatia	Liana Kalčina, the Ombudsman's Advisor, attended the international seminar entitled Strategic Planning and Developing a Communication Plan for the NHRIs (National Human Rights Institution). It was organised by the United Nations Development Programme, Bratislava Regional Centre, in cooperation with the Croatian Ombudsman. The seminar was intended to deal with questions linked to strategic planning and development of communication plans in the Ombudsman's institutions.
28 October 2011 The Ombudsman's Head Office, Ljubljana	Jernej Rovšek and Ivan Šelih, the Deputy Ombudsmen, and colleagues met with representatives of the United Nations High Commissioner for Refugees (UNCHR). They discussed the possibilities of cooperation between the Ombudsman and the UNCHR Regional Office in Budapest, particularly in dealing with actual cases and development of training formats for employees of the Ombudsman and financial support for their participation at international conferences regarding international protection.

Cooperation with the Council of Europe

14 March 2011 Paris, France	Andreja Srebotnik, the Ombudsman's Advisor, took part at the 4th Thematic NPM Workshop: Security and Dignity in Places of Deprivation of Liberty. It was organised by the Council of Europe and European Commission in cooperation with French NPM. The topic was the proportionality between providing security and dignity and respect of dignity in all forms of action and conduct with persons deprived of liberty.
7 April 2011 The Ombudsman's Head Office	Dr Zdenka Čebašek - Travnik, the Ombudsman, together with the Deputy Ombudsman, Jerne Rovšek, received the Commissioner of Human Rights of the Council of Europe, Thomas Hammarberg and his colleagues. The issue of "the erased persons" was discussed and also questions relating to the Roma community.

5 May 2011 Athens, Greece	Mojca Valjavec, the Ombudsman's Advisor, took part in the consultative meeting of contact persons of the Peer-to-Peer NHR Network (European Human Rights Structures). It was organised by the Council of Europe in cooperation with the Greek Ombudsman. The central theme of discussions was the designing of common migration policy in Europe (in the Council of Europe) with the aim of improving its efficiency and coordination among European countries, particularly by including migrants themselves (including with the fight against xenophobia, intolerance and discrimination), respect of standards of the protection of human rights in asylum procedures and returning of migrants and other measures.
23 May 2011 Kiev, Ukraine	Tone Dolčič, the Deputy Ombudsman, attended a meeting at which the role of National Human Rights Institutions was discussed in relation to the protection and promotion of persons with disabilities. The meeting was organised by the Council of Europe and the Ukrainian Ombudsman. They informed us of various practices of implementing the Convention on the Rights of People with Disabilities and expressed the need for a prompt establishment of the supervisory mechanism regarding the implementation of the Convention. Attention was also dedicated to the integrated handling of disabled persons and their voting rights.
14 June 2011 Tallinn, Estonia	The Deputy Ombudsman, Ivan Šelih, attended the presentation of the international project on independent medical experts in the performance of tasks in the role of the Ombudsman within National Preventive Mechanisms. The conference was organised by the Council of Europe and the European Commission within the scope of their joint project: Setting up an active network of national preventive mechanisms against torture, an activity of the Peer-to-Peer Network. During their five-day conference, a workshop was held on the collection of information during visits to institutions accommodating persons who have been deprived of their liberty.
19 September 2011 Chisinau, Moldova	Kornelija Marzel, M.A., the Deputy Ombudsman, attended the international conference entitled: Rights of Persons with Disabilities - Reality and Prospects for People with Special Needs. The conference is a part of a joint programme of the Council of Europe and the EU for the development of democracy in Moldova. The hosts of the conference were the Parliamentary Moldovan Ombudsman and the Human Rights Centre of Moldova. The Deputy Ombudsman presented the equal opportunities and non-discrimination of people with disabilities in the Republic of Slovenia.
20 September 2011 Madrid, Spain	Jernej Rovšek, the Deputy Ombudsman, took part at the round table session of the European Council's National Structures regarding the possibilities of enhanced cooperation in providing efficient operation of the European Court of Human Rights and integrated system for the protection of human rights and their supervisory mechanisms. The round table panel was organised by the Council of Europe and the Spanish Ombudsman.
28 September 2011 Sarajevo, Bosnia and Herzegovina	Živa Cotič, the Ombudsman's Advisor, took part at the fifth thematic PEER-TO-PEER conference for contact persons, within the National Human Rights Structures, entitled: The role of National Human Rights Structures in Protecting Against All forms of Discrimination It was organised by the Council of Europe in cooperation with the Ombudsman's institution of Bosnia and Herzegovina.

3 October 2011
the Ombudsman's Head Office

Ivan Šelih, the Deputy Ombudsman, and his colleagues, in the role of the National Preventive Mechanisms under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, hosted colleagues from Albania and Macedonia operating in the same field for three days. The Slovenian model of NPV for the control of institutions where there are persons deprived of liberty was presented. Participants exchanged experiences and information, cases of good practice and together they visited the Murska Sobota Prison (a department of Maribor Prison).

5 December 2011
Kokra Hotel, Brdo pri Kranju

The Human Rights Ombudsman of the Republic of Slovenia hosted the Third Annual Meeting of the European Network of Institutions acting as National Preventive Mechanisms ("the NPM"). These meetings take place within the scope of a joint programme of the Council of Europe for promotion of independent national mechanisms for the protection of human rights, especially in the fight against torture. On the first day of the meeting, in her introductory speech, the Ombudsman emphasized the importance of the NPM in the light of protecting human rights and expressed her satisfaction that the Ombudsman hosted such meeting on the day before a day celebrating human rights, 10th December. Heads and contact persons of these institutions in individual European countries, representatives of the Sub-Committee on Prevention against Torture and the European Committee for the Prevention of Torture attended the meeting lasting for two days.

8 December 2011
Kokra Hotel, Brdo pri Kranju

The Human Rights Ombudsman of the Republic of Slovenia hosted the 5th annual meeting of contact persons of the PEER-TO-PEER Network of National Human Rights Structures. The Deputy Ombudsman, Jernej Rovšek, attended the meeting on behalf of the Ombudsman. Results of recent cooperation were discussed at the meeting, experiences were exchanged together with cases of good practice relating to the operation of similar institutions, and opportunities for future cooperation were reviewed.

Cooperation with OSCE

10 June 2011
Ohrid, Macedonia

Jernej Rovšek and Ivan Šelih, Deputy Ombudsmen, attended the regional conference on the role of Ombudsmen in the fields of the fight against discrimination and prevention of torture. The conference was organised by the OSCE, in cooperation with the Macedonian Ombudsman and the Swedish International Development Agency. It was established that some Ombudsmen have taken over the role of a discriminatory body, pursuant to special laws (Bosnia and Herzegovina, Montenegro, Kosovo) while a special body or commissions have been established in the majority of countries (Macedonia, Albania, Serbia, etc.) In Bosnia and Herzegovina, mediation procedures and settlement accords are frequently and successfully used in this field, and there is also a possibility of initiating action before special courts. A person alleging discrimination in Serbia, must first turn to the "poverjenik" (a confidant) and only then to the Ombudsman. However, exceptions are also possible. The Montenegrin Ombudsman will also take over the possibility of initiating a lawsuit by means of amending the law, however, the question relating to discrimination in the private sector remains open.

11 June 2011
Vilnius, Lithuania

Dr Zdenka Čebašek - Travnik, the Ombudsman, attended the international conference organised by the OSCE in cooperation with the host country, Lithuania. The main topic was the position and operation of National Human Rights Institutions established under the Paris Principles and Ombudsmen (separately or being united in one institution). The OSCE assured their cooperation in the enhancement of all structures and all institutions for the protection and promotion of human rights.

17 and 18 October 2011, the Ombudsman's Head Office	Dr Zdenka Čebašek - Travnik, the Ombudsman, Deputy Ombudsmen and the Secretary General of the Ombudsman and her Deputy received representatives of the Ombudsman of Tajikistan for a working visit. The work of the Slovenian Ombudsman and his operation as an NPM was presented.
18 October 2011 the Ombudsman's Head Office	Jernej Rovšek, the Deputy Ombudsman, and Gašper Adamič, the Ombudsman's Advisor, met with representatives of the OSCE mission, Nicola Schmidt and the Deputy of the Head of the Office for Democratic Institutions and Human Rights (DIHR OVSCE) and Tamara Otishavili, Advisor for election activities. The role of the Ombudsman in the calling and implementation of elections and electoral campaigns was discussed.
1 December 2011 the Ombudsman's Head Office	Dr Zdenka Čebašek - Travnik, the Ombudsman, and Jernej Rovšek, the Deputy Ombudsman, received representatives of the ODIHR - OSCE Mission in the Ombudsman's Office. The said representatives were monitoring early parliamentary elections in Slovenia and were informed by the Ombudsman and her Deputy of cases dealt with by the Office in the field of voting rights.

Cooperation with the EU, European Ombudsman and European Agency for Human Rights

24 and 25 January 2011, Brussels, Belgium	Ivan Šelih, the Deputy Ombudsman, and Robert Gačnik, the Ombudsman's Advisor, attended the round table panel and professional meeting entitled "Round Table on Detention for Criminal Offences in the European Union" discussing the issues of imposing and implementing detention and on the development of the Green Book on detention in Europe and rights of suspects in criminal proceedings. The topic, whether the Community rules are needed in the field of detention in Europe, was discussed, as well as the questions of European Detention Order, European Supervision Order and mutual recognition of judgements in criminal matters.
21 February 2011, Trier, Germany	Mojca Valjavec, the Ombudsman's Advisor, attended a seminar on the implementation of the anti-discrimination directives (2000/43 and 2000/78) in practice. The EU - PROGRESS programme was discussed (implementing goals of the European Union in the field of employment and social matters and contribution to attaining goals of the Lisbon Strategy in these fields). It was organised by the Academy of European Law in cooperation with the European Commission.
5 April 2011 Vienna, Austria	Dr Zdenka Čebašek - Travnik, the Ombudsman, attended the fourth meeting of the European Agency for Human rights ("the FRA") and National Human Rights Institutions ("the NHRI"). Experiences, findings, cases of good practice and information on operation in the future were exchanged. The possibilities of the NHRI for the work of the FRA were discussed. The Ombudsman presented the operation of the Human Rights Ombudsman of the Republic of Slovenia.
26 May 2011 Brussels, Belgium	Lan Vošnjak, the Ombudsman's Advisor, attended the international two-day working meeting, entitled European responses to missing children and the need for child-friendly justice. It was organised by the European Commission in cooperation with the Missing Children Europe (European Federation for Missing and Sexually Exploited Children). The Child Alert System with a uniform telephone number for missing children - 116 0000 - was presented, together with problems in the operation of the system.
13 October 2011 Vienna, Austria	Nataša Kuzmič, the Ombudsman's Advisor, attended the 6th European NHRI Communication Workshopand the meeting of the European Agency for Human Rights. The organisers and participants dedicated their attention to the question of a proactive operation of the NHRI and the Ombudsman's Institutions, their strategies which are a requirement for communication strategies and conveying messages through stories. At the meeting organised by the FRA, communication specialists were determining how institutions use the FRA products and how the FRA should adapt them to the needs of institutions operating in the network.

Cooperation with Ombudsmen of Individual Countries and International Conferences

10 January 2011 Zagreb, Croatia	Tone Dolčič, the Deputy Ombudsman, attended the round table panel on the role of the Ombudsmen and other institutions for the protection of human rights in regard to the protection and promotion of rights of persons with disabilities. The goal of the conference was to exchange experience and encourage cooperation of institutions in the region.
4 February 2011 Zagreb, Croatia	Dr Zdenka Čebašek - Travnik, the Ombudsman, and Tone Dolčič, the Deputy Ombudsman, and Martina Jenkole, Lan Vošnjak and Jasna Turk, Advisors to the Ombudsman, visited a specialised polyclinic for traumatised children. Diagnosing and therapy treatment is performed in the clinic, and expert opinions for the needs of courts are prepared in the clinic. The staff works in teams composed of specialists of psychiatry, clinical psychology, social educationalists, psychologists, social workers and others. A lawyer is also employed. All consulting rooms for working with patients are equipped with four-angle cameras recording and monitoring activities and conversations.
3. March 2011 Warsaw, Poland	Tone Dolčič, the Deputy Ombudsman, attended the presentation conference upon the commencement of a campaign against violence against children, entitled "I Love, I Do Not Beat Children. All Europe Against Abuse of Children." Within the scope of the EU Presidency, taken over by Poland on 1 July 2011, Poland started a special campaign to combat family violence against children. The campaign started on 8 September 2011. The organiser expected all European countries to participate in their campaign.
16 April 2011 Belgrade, Serbia	Dr Zdenka Čebašek - Travnik, the Ombudsman, presented experience and findings made during the work of the Human Rights Ombudsman of the Republic of Slovenia to the employees of the Serbian Ombudsman, within the twinning project. The field of the NPM for protection of persons deprived of liberty and issues relating to the protection of minorities and the Roma were highlighted.
18 May 2011 Ohrid, Macedonia	Tone Dolčič, the Deputy Ombudsman, attended the meeting of the Children's Ombudsman Network of South-East Europe, called CRONSEE. The role of Ombudsmen in the protection of children against physical and psychological violence was discussed. The meeting was organised by the Macedonian Ombudsman.
14 June 2011 Baku, Azerbaijan	Kornelija Marzel, MA, the Deputy Ombudsman, attended the international conference entitled "Cultural Rights of National Minorities and Migrants: the legal aspect and implementation." The Conference was organised by the Ombudsman of the Republic of Azerbaijan.
7 June 2011 Zagreb, Croatia	Dr Zdenka Čebašek - Travnik, the Ombudsman, and Tone Dolčič, the Deputy Ombudsman, attended a meeting with the "Pravobraniteljica za djecu" (Croatian Guardian on Children's Rights), Mili Jelavić. The attendees of the meeting dedicated their attention to general topics of operations for the protection of children's rights and cooperation with authorities. Experiences and positions in fields of foster care, family violence and conditions in homes where children are accommodated were exchanged.

3. September 2011 Warsaw, Poland	Lan Vošnjak, the Ombudsman's Advisor, attended the 15th Annual Meeting of the European Network of Ombudspersons for Children where questions relating to the position of children in institutional care were handled. Experience and findings on numerous questions were on the agenda, such as: lack of suitable institutions, unclear legislation - great discretionary power, frequently incomplete supervision over "voluntary" admissions to care (i.e., those lacking a Court Decision), problematic interpretation of the child's best interests, poor support given to the family during the accommodation, a narrow list of schools to be attended, poor preparation for a departure from the institution.
6 September 2011 Ohrid, Macedonia	Tone Dolčič, the Deputy Ombudsman, attended the meeting of the Children's Ombudsman Network of South-East Europe, called CRONSEE. The role of Ombudsmen in the protection of children against economic exploitation was discussed. The meeting was organised by the Macedonian Ombudsman.
13 December2011 Tashkent, Uzbekistan	Kornelija Marzel, MA; the Deputy Ombudsman, attended the international conference on the topic of International Legal Standards and Experience of Uzbekistan on the Establishment of the National System of Protection of Human Rights and Freedoms. The conference was organised upon the 15th anniversary of the operation of the Centre of Human Rights in Uzbekistan.

Cooperation with International Ombudsman Institute (IOI), Europeische Ombudsman Institut (EOI) and Association of Mediterranean Ombudsmen (AOM)

4 April 2011 Vienna, Austria	Dr Zdenka Čebašek - Travnik, the Ombudsman, attended the meeting of Ombudsmen discussing the operation of the international Ombudsman Institution in the head office of the Austrian Ombudsman. The association was established in 1978 and is an independent global organisation connecting and encouraging the cooperation of more than 150 independent local, regional and national Ombudsmen.
27 Malta 2011 Malta	Dr Zdenka Čebašek - Travnik, the Ombudsman, attended the international conference entitled: The role of OM in Reinforcing Good Governance and Democracy. It was organised by the Association of Mediterranean Ombudsmen. The conference attendees discussed how to encourage good governance in various Mediterranean cultures and government systems, on the influence of political changes to the operation of the Ombudsmen and how the state should adapt to the needs of citizens and what might be done by the Ombudsman in this regard.
3 June 2011 Vienna, Austria	Ivan Šelih and Kornelija Marzel, MA, the Deputy Ombudsmen, and Martina Ocepek, Advisor to the Ombudsman, attended an expert seminar, entitled "Sharpening your Teeth" where information on the management of systemic investigations in the Ombudsman Institutions were obtained. The seminar was organised by the International Ombudsman Institute.
20 October 2011 Copenhagen, Denmark	Dr Zdenka Čebašek - Travnik, the Ombudsman, and Jernej Rovšek, the Deputy Ombudsman, attended the 8th Seminar of the European Ombudsman Network, where law, politics and Ombudsmen in the period following the conclusion of the Lisbon Treaty was debated. The seminar was organised by European Ombudsman in cooperation with the Danish Ombudsman.
13 December 2011 Rabat, Morocco	Tone Dolčič, the Deputy Ombudsman, attended the international conference organised by the Association of Mediterranean Ombudsmen. Participants presented various practices of the Ombudsmen and the NHRI in regard to the protection of human rights.

Cooperation with other International, Inter-Governmental and Non-Governmental Organisations and Universities

3. February 2011 Ljubljana, Center Evropa	Dr Zdenka Čebašek - Travnik, the Ombudsman, held a lecture on the cooperation of the Ombudsmen from former Yugoslavia as an additional channel in protecting human rights. Her speech was given within the scope of lectures organised by the International Institute for Middle-Eastern and Balkan Studies (IFIMES).
13 April 2011 Belgrade, Serbia	Dr Zdenka Čebašek - Travnik, the Ombudsman, attended the 3rd Conference of Military Ombudsmen entitled: Protecting the Human Rights of Armed Forces Personnel. The conference was organised by the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and the Ombudsman of Serbia. In her lecture, she discussed the comparative advantages and disadvantages of external and internal complaint mechanisms in the Slovenian Armed Forces from the aspect of protecting rights of members of the armed forces. The Belgrade Declaration regarding questions of the protection of human rights in the armed forces was adopted at the conference.
27 November 2011 Ramallah (Palestine) and Jerusalem (Israel)	Tone Dolčič, the Deputy Ombudsman, attended the international conference on possibilities for the establishment of the Children's Ombudsman in Palestine, at the initiative of the NGO: Save the Children of Great Britain.

Cooperation with Embassies of Other Countries in the Republic of Slovenia and Representation Offices of the Republic of Slovenia

12 January 2011 and 12 September 2011 Ljubljana	Dr Zdenka Čebašek - Travnik, the Ombudsman, met the Ambassador of the United States of America, Joseph A. Mussomeli. She also met him in September when the issues regarding the Roma community and the reports of the State Department on violations of human rights in individual countries were highlighted.
26 January 2011 Ljubljana	Dr Zdenka Čebašek - Travnik, the Ombudsman, attended the reception upon the national holiday of India. The reception was organised by the Ambassador of the Republic of India in Slovenia.
7 February 2011 Ljubljana	Dr Zdenka Čebašek - Travnik, the Ombudsman, discussed the rights of children, equal opportunities for both sexes, the issue of "the erased persons" and other questions with the Deputy of the Finnish Ambassador.
10 March 2011 Ljubljana	Dr Zdenka Čebašek - Travnik, the Ombudsman, attended the reception given by the Ambassador of the Republic of Italy, Alessandro Pietromarchi, upon the celebration of the 150th anniversary of Italian unification.
10 March 2011 the Ombudsman's Head Office	Dr Zdenka Čebašek - Travnik, the Ombudsman, and Bojana Kvas, MSc, Secretary General of the Ombudsman, discussed the position of the German speaking ethnic minority in Slovenia following the adoption of the Declaration of Minorities in Slovenia with the Austrian Ambassador, Dr Erwin Kubesch, and his Deputy, Günther Salzmann. The German and Austrian minorities are not mentioned in the said Declaration.

19 April 2011 Brdo pri Kranju	Dr Zdenka Čebašek - Travnik, the Ombudsman, attended the reception organised by the President of the Republic of Slovenia, Dr Danilo Türk, upon the visit of the Austrian Federal President, Dr Heinz Fischer in Slovenia.
8 June 2011 Ljubljana	Dr Zdenka Čebašek - Travnik, the Ombudsman, attended the reception organised by the Embassy of Great Britain in Slovenia to honour the official birthday of the Queen Elizabeth IInd.
13 June 2011 Ljubljana	Dr Zdenka Čebašek - Travnik, the Ombudsman, presented the findings of the Human Rights Ombudsman of Slovenia in the field of the protection of human rights to Blanka Jamnišek, M.A., the Ambassador and Permanent Representative of the Republic of Slovenia at the Permanent Representation of the Republic of Slovenia to the UN; OSCE and other International Organisations in Vienna;potential forms of cooperation in the future were also discussed.
23 June 2011 Ljubljana	Dr Zdenka Čebašek - Travnik, the Ombudsman, attended the meeting “Morocco meets Slovenia”, organised by the Embassy of the Kingdom of Morocco in Slovenia.
12 September 2011 Ljubljana	Dr Zdenka Čebašek - Travnik, the Ombudsman, Jernej Rovšek, the Deputy Ombudsman, and Bojana Kvas, MSC, the Secretary General of the Ombudsman, attended an informal meeting with the American Ambassador, Joseph A. Mussomeli, and his colleagues at his residence.
26 October 2011 Ljubljana	Dr Zdenka Čebašek - Travnik, the Ombudsman, attended the celebratory reception which was organised by the Austrian Embassy in honour of the Austrian national holiday. She discussed with the representatives of the German minority in Slovenia topics relating to their position and other open problems.
7 December 2011 Ljubljana	Dr Zdenka Čebašek - Travnik, the Ombudsman, attended the celebratory reception of the Ambassador of Japan held in Cankarjev dom, upon the occasion of the birthday of the Emperor of Japan, His Imperial Majesty the Emperor Akihito.

3.4 THE OMBUDSMAN'S COMMUNICATION TOOLS

For implementing the mission of the institutions as well as duties and authority of the Human Rights Ombudsman of the Republic of Slovenia, the use of varied and contemporary communication tools is very important. They assist us in reaching various target groups of the public. Hence, we have a very intensive communication with the media, press conferences are convened, expert conferences, round table panels, consultation panels, training sessions are organised, various types of publication material are published and our web pages are updated every day. Employees at the Ombudsman's Office attend various meetings and events where information is obtained and then submitted to others.

3.4.1 Cases handled by the Ombudsman presented to the public

In 2010, we again started to published anonymous cases of the Ombudsman's operation on our web pages. We publish cases in order to inform all authorities and raise awareness of issues and also to inform the public. Such publications encourage many persons to turn to the Ombudsman with their problems. Hence, we also inform the public of forms and methods of our work. The publication of current cases has been well received by the media since an actual story may be a good source of information for the preparation of their articles and further investigation of potential violations or other irregularities in the society.

Cases may be a source for initiating public debates and for assessing and weighing the acceptability of positions of various social groups through the perspective of the protection of human rights, respect for the Constitution and international standards. One of such cases, handled by the Ombudsman and used by the media to develop their stories or report a summary of the event was the case of a suspicion of the abuse of patients allegedly committed by the Advocate of Patient's Rights. A case of alleged pornography in literature was also at the forefront of articles in the media.

Unfortunately we do not have any information on the response of other groups of the public in regard to the published cases but responses on Facebook are positive.

3.4.2 Press conferences

In 2011, the Human Rights Ombudsman held 14 press conferences: in the Ombudsman's premises four times; and ten times on the occasion of our operations outside the head office. At a first press conference in 2011, in the central premises of the Ombudsman, the Ombudsman and colleagues presented the endeavours of the Ombudsman for the implementation of the right to a healthy environment, to celebrate the international year of forests. In July, she and Deputy Ombudsmen presented the central topics from the Ombudsman's Annual Report for 2010. In October we marked the 22nd anniversary of the Convention of the Rights of Children by publishing a brochure on the rights of children and organising the exposition of children's works of art and giving a press conference. In December we presented the operation of the Ombudsman as the National Preventive Mechanism. At press conferences held upon our operation outside the main office, the Ombudsman presents her findings established during external operations, and answers other questions raised by journalists and participates in interviews with the local media. Audio recordings of press conferences are published on the page of the Ombudsman, similar to the first video-recording of a press conference at which the content of the Annual Report for 2010 was presented by the Ombudsman.

3.4.3 Website

The Ombudsman informs the public on its operation through the website: www.varuh-rs.si. We seek to adapt web communication to individual groups of the public, particularly with regard to the topic (the environment, children, NPV, actual cases by fields and other issues). In 2010, the website for children and adults taking responsibility for the rights of children was designed: www.pravice-otrok.si.

Since 2 November 2009, the Ombudsman monitors the visits to its website by means of the Google Analytics application. This time we compared a period from January to December 2010 with the same period in 2011 and the following has been established; in comparison to the previous year, 9,219 more visits were recorded to our website (155,442 in 2011 and 146,223 in 2010). Visitors of our website are mainly interested in general information about the Ombudsman or whether they can be employed in our Office. Our website is still the source of secondary information on human rights and considering the demand for information by topic, the need for a larger base of information on human rights has been indicated (international documents, general conditions, cases of good practice, etc.) The most visited links are: Universal Declaration of Human Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms, and, in spite of the site dedicated to children, still the UN Convention of the Rights of the Child. Current cases are also sought, while in the second half of 2011, the interest in access to the institution and possibilities of assistance increased.

In 2011, the website for children, www.pravice-otrok.si, launched in November 2010, was visited by 26,227 visitors. Visitors were mainly interested in the rights of children and young people, and there was a lot of browsing through the simplified Convention of the Rights of the Child. The International Conference on the Rights of Children and Protection against Violence from 2009 attracted great attention. The current cases and frequent questions are still the most interesting pages for visitors.

In November 2009, the Ombudsman became a member of the social network: Facebook, and the circle of receivers of information was thus spread. Information on the operation of the Ombudsman by means of FB is followed by just over 1200 virtual friends and their friends.

3.4.4 Adapted access to information for various groups of the public

The Ombudsman strives for openness and transparency of its operation and access of the public to the information of a public character from the Ombudsman's work area. In order to increase the accessibility.

The Ombudsman responded to the invitation of the Union of Association of the Deaf and Hearing Impaired of Slovenia and became involved in the project aiming at decreasing the information boundary between hearing and the deaf, the deaf and the blind, the hard hearing and people with assistive listening devices. From now on, the deaf, the deaf and blind, the hearing impaired and people with assistive listening devices can obtain basic information on the mission and forms and methods of work of the Ombudsman in the language format adapted to their needs, sign language. Business cards of employees at the Ombudsman's Office are equipped with the Braille.

Leaflets providing information on the Ombudsman have been published in Slovenian, English, Hungarian and Italian languages as well as in Braille. In 2011, the leaflet was translated into four dialects of the Roma language used by members of this minority in Slovenia: in Dolenjska region, Prekmurje and for the Roma from the Republics of the former Yugoslavia and in the widely understood Romani language. By means of four versions of the leaflet for the members of the Roma community, the Ombudsman made a step forward towards better cooperation with the Roma.

3.4.5 Publications and presentation material

In 2011, the Human Rights Ombudsman published three reports, two posters, three bulletins and six brochures:

The Sixteenth Regular Annual Report of the Ombudsman of the Republic of Slovenia for 2010 was published in June 2011. In accordance with the law, the Ombudsman must submit the annual report for the previous year to the National Assembly no later than 30 September. 1,400 copies were printed, submitting them to all Deputies of the National Assembly and National Council, institutions of local and state authorities, parliamentary and non-parliamentary political parties, NGOs, libraries, schools and universities and to anybody who so requested. On 19 July 2011, the Ombudsman, Dr Zdenka Čebašek - Travnik, handed a copy over to the President of the National Assembly, Dr Pavel Gantar, and on 13 September 2011, to the President of the Republic of Slovenia, Dr DaniloTürk, and on 5 September 2011, to the Prime Minister of the Republic of Slovenia, Borut Pahor.

The Abbreviated Version of the Annual Report for 2010 was issued in English and printed in 700 copies. This report was also sent to the state authorities of the Republic of Slovenia, to all Representation Offices of the Republic of Slovenia abroad, Permanent Representation Offices of the Republic of Slovenia to international organisations, to the Embassies of foreign countries in Slovenia, to all Human Rights Ombudsmen in Europe and selected institutions from across the world (those who also submit their reports to us).

The Third Report of the Human Rights Ombudsman of the Republic of Slovenia on the Implementation of the Tasks under the National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman, Degrading Treatment or Punishment was produced in Slovenian and English. The Convention and the Protocol, together with the Ombudsman's documents (Rules of Procedures, forms, public calls to tender regarding the cooperation with NGOs and a model of a contract to be concluded) were published within the Report. The Report presents the work under the NPM and the findings, making it valuable material for various authorities in other countries where the tasks of the NPM have been taken over recently or where the assuming of this role is only just being prepared. We published a poster and a brochure on the NPM for the protection of persons deprived of their liberty in the Republic of Slovenia, specifically, in Slovenian and English.

Three volumes of a free-of-charge **Bulletin of the Ombudsman** were published:

- **Bulletin Number 14** — The Rights of the Elderly: expert articles were published therein and conclusions of a consultation panel and round table discussion organised by the Ombudsman on this topic on the Day of Human Rights, 10 December 2010. We published a selection of initiatives handled by the Ombudsman, useful information for the elderly, and attached a poster: My Numbers - for entering telephone numbers of important persons and institutions for the elderly.

- **Bulletin Number 15** — Forests and the Right to a Healthy Living Environment: expert contributions were published therein relating to numerous dimensions of this issue, the work of the Ombudsman was presented and a selection of initiatives handled, together with useful information from this field. The bulletin was designed with art work by pupils from the primary schools of the Zasavje region. A special crossword (the topic: the right to a healthy living environment) was published and awards were given (T-Shirts with the print of one of the works of art of the participating children).

- **Bulletin Number 16** — Children's Rights: the central attention of this bulletin was focused on violence and the right to freedom of expression (or, how to understand Article 12 of the Convention on the Rights of the Child), the work of the Advocates of the rights of children were presented and initiatives handled by the Ombudsman were presented. Articles written by children and young people on the topic of human rights were published, together with works of art produced by pupils.

3.5 FINANCES

In Article 55, the Human Rights Ombudsman Act ("the ZVarCP") stipulates, that funds for the operation of the Ombudsman shall be provided for in the budget of the Republic of Slovenia. The amount of funds is determined by the National Assembly upon the proposal of the Ombudsman (Article 5, Paragraph 2 of the ZVarCP). Upon the proposal of the Ombudsman, the funds in the sum of 2,311,319 euros for the operation of the institution in 2011 were allocated by the National Assembly of the Republic of Slovenia.

Funds were divided in three sub-programmes, in particular:
- Protection of human rights and fundamental freedoms;
- Implementation of tasks and authority under the NPM;
- Office of the Advocate of Children (this is also the title of the budget item).

Transferred earmarked funds from the previous budget period amounted to: 1,135 euros from the disposal of assets; 690 euros received from compensations. The total of transferred earmarked funds amounted to 1,825 euros. At the end of 2011, the Ombudsman concluded an Agreement with the Council of Europe for the organisation of the Third Annual Meeting of Heads and Contact Persons of National Preventive Mechanisms, Committee and Sub-Committee for the prevention of torture, the Third Annual Meeting of Contact Persons of National Preventive Mechanisms and the Fifth Annual Meeting of Contact Persons of National Structures for the Protection of Human Rights. 27,580 euros of grants were received from the Council of Europe for the implementation of these events. The NPM and NHRI events took place from 5th to 7th December 2011.

Hence, in 2011, there was a total amount of 2,340,724 euros made available for the Ombudsman. Due to the budgetary restrictions and austerity measures adopted by the Slovenian Government in 2011, while taking into consideration tightened financial and economic conditions, the Ombudsman transferred back to the budget the amount of 58,121 euros, and at the end of the year, an additional sum of 32,180 euros, while the funds donated by the Council of Europe, i.e. 27,580 euros were transferred into the budget funds for 2012. The NPM and NHR conference took place in December 2011, therefore obligations relating to the payment of implementing services relating to the conference matured in January 2012. As a result, the earmarked funds donated by the Council of Europe were transferred to the budgetary funds for 2012.

The total residual balance of the Ombudsman's funds in 2011 thus amounted to 117,881 euros (58,121 euros, 32,180 euros and funds from the Council of Europe in the amount of 27,580 euros). Funds spent by the Ombudsman for its operation in 2011 (implementation of statutory obligations and the mission and the attainment of goals set) were an amount of 2,222,843 euros.

The table FINANCE OF THE OMBUDSMAN IN 2011 shows a detailed distribution of funds and their spending with regard to individual sub-programmes of the Ombudsman.

	Allocated funds (BR) in EUR	Available funds in EUR	Applicable budget (AP) in EUR	Used funds in EUR	Residual balance as compared to BR in EUR	Funds returned into the budget during the year in EUR	Total residual balance of funds with regard to available funds in EUR
HUMAN RIGHTS OMBUDSMAN OF the REPUBLIC OF SLOVENIA	2,311,319	2,340,724	2,282,603	2,222,843	59,760	58,121	117,881
SUBPROGRAMMES							
Protection of human rights and fundamental freedoms	2,087,697	2,115,277	2,071,257	2,015,093	56,164	31,642	87,806
Wages	1,514,000	1,514,000	1,508,622	1,488,175	20,447	0	20,447
Material costs	476,697	476,697	454,197	449,939	4,258	22,500	26,758
Investment activities	97,000	97,000	73,021	73,021	0	23,979	23,979
Investment activities and invest. maintenance of national authorities	97,000	97,000	73,021	73,021	0	23,979	23,979
NPH and NHRS Conference	0	27,580	27,580	0	27,580	0	27,580
Implementation of tasks and authorities under NPM	133,622	133,622	136,500	134,729	1,771	2,500	4,271
Wages	112,000	112,000	117,378	116,324	1,054	0	1,054
Material costs	13,000	13,000	10,500	10,169	331	2,500	2,831
Cooperation with NGOs	8,622	8,622	8,622	8,236	386	0	386
Office of Advocates of Children	90,000	80,858	80,858	76,979	3,879	9,142	13,021
Increased workload and contributions	8,780	15,530	15,530	13,002	1,349	0	1,349
Material costs	81,920	65,328	65,328	63,977	2,530	9,142	11,672
Earmarked funds from previous budgetary periods	0	1,825	1,825	0	1,825	0	1,825
Funds from compensations	0	690	690	0	690	0	690
Funds from disposal of state assets	0	1,135	1,135	0	1,135	0	1,135

3.6 EMPLOYEES

As of 31 December 2011, there were 42 persons employed at the Office of the Human Rights Ombudsman of the Republic of Slovenia. There were six high officials (the Ombudsman, four Deputy Ombudsmen and the Secretary General), 25 officials, 10 employed in expert service, and 1 trainee. Twenty-nine employees hold a University degree (two of them PhD, six Masters of Science and one specialist degree), seven hold a vocational higher education degree (two a specialisation degree), two employees hold a higher education degree and four a secondary education diploma. There are 21 employees in the professional service carrying out tasks in official work posts. The expert service of the Ombudsman carries out professional tasks for the Ombudsman and Deputy Ombudsmen under individual fields of authority of the Ombudsman: classifying initiatives, taking care of the progress of handling of initiatives and dealing with initiatives, developing opinions, proposals and recommendations, carrying out investigations and producing reports on the findings in relation to initiatives. It also submits information to the initiators with regard to their initiations. There are five officials carrying out tasks in the Secretary General Service and the Ombudsman's Office, together with ten expert workers. The Secretary General Service carries out, independently or in cooperation with external collaborators, all tasks in the fields of organisation, legal affairs, administration, material affairs, financial affairs and HR, it carries out tasks of an administrative and technical character, informational tasks and other tasks necessary for the operation of the Ombudsman's Office.

3.7 STATISTICS

This subchapter presents statistical data regarding cases being handled by the Human Rights Ombudsman in the period from 1 January to 31 December 2011.

1. **Open cases in 2011:** open cases are initiatives that reached the Ombudsman's address.

2. **Cases being handled in 2011:** in addition to open cases in **2011**, cases also include:

- transferred cases – unfinished cases from 2010 which were dealt with in 2011;

- reopened cases – cases for which the handling procedure before the Ombudsman was concluded as of 31 December 2010 but their consideration continued in 2011 as a result of new substantial facts and circumstances. Since these were new procedures in the same cases, new files were not opened in these instances. As a result, the reopened cases are not taken into account among the open cases in 2010 but only among cases handled in 2011.

3. **Closed cases:** all cases being handled in 2011 and concluded by 31 December 2011 are taken into account.

Open cases

In 2011, 108 fewer initiatives were received than in the previous year. From 1 January to 31 December 2011, 2,512 cases were opened (in 2010: 2,620). The most cases were received directly from initiators, mostly in written form (2,269 or 90.3%), 72 were received when operating outside the main office, 4 over the telephone, 19 by means of official notes and 6 initiatives as cases referred to from other state authorities. The Ombudsman opened 138 cases on her own initiative (5.4 percent of all initiatives). The Ombudsman also received 41 anonymous initiatives.

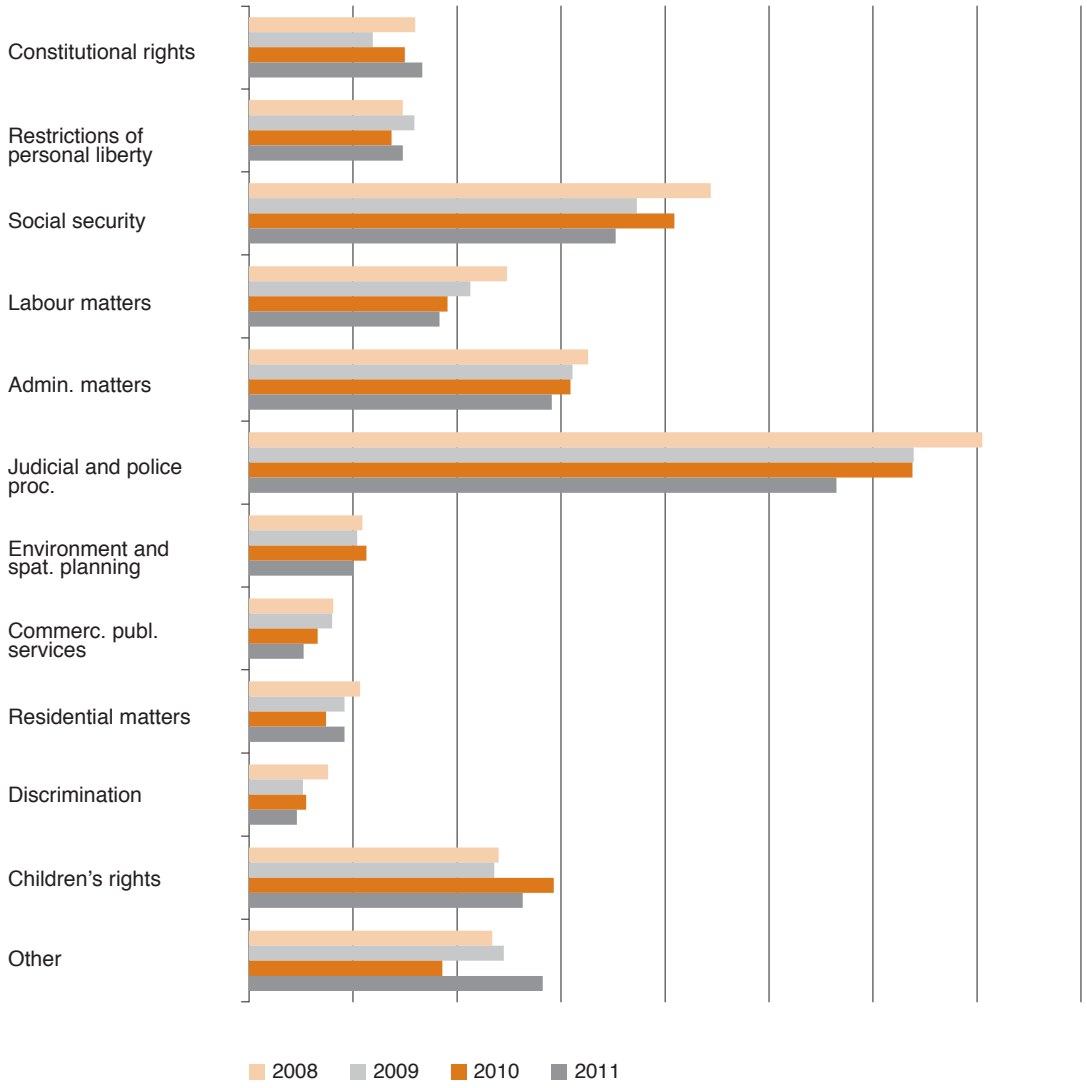
Table 3.7.1: The number of open cases before the Human Rights Ombudsman of the Republic of Slovenia for the period from 2008 to 2011, by individual areas of work

AREA OF WORK	OPEN CASES								Index (11/10)
	2008		2009		2010		2011		
	Number	Share	Number	Share	Number	Share	Number	Share	
1. Constitutional rights	160	5.6 %	119	4.5 %	150	5.7 %	165	6.6 %	110.0
2. Restrictions of personal liberty	148	5.1 %	159	6.1 %	137	5.2 %	144	5.7 %	105.1
3. Social security	444	15.4 %	373	14.2 %	409	15.6 %	352	14.0 %	86.1
4. Labour law	248	8.6 %	213	8.1 %	191	7.3 %	187	7.4 %	97.9
5. Administrative matters	326	11.3 %	311	11.9 %	309	11.8 %	292	11.6 %	94.5
6. Judicial proceedings and police procedures	705	24.5 %	639	24.4 %	638	24.4 %	544	21.7 %	85.3
7. Environment and spatial planning	109	3.8 %	104	4.0 %	113	4.3 %	99	3.9 %	87.6
8. Public utility services	81	2.8 %	80	3.0 %	66	2.5 %	52	2.0 %	78.8
9. Housing matters	107	3.7 %	92	3.5 %	74	2.8 %	93	3.7 %	125.7
10. Discrimination	76	2.6 %	52	2.0 %	54	2.1 %	49	2.0 %	90.7
11. Children's rights	240	8.3 %	236	9.0 %	293	11.2 %	261	10.4 %	89.1
12. Other	234	8.1 %	245	9.3 %	186	7.1 %	274	10.9 %	147.3
TOTAL	**2,878**	**100.0 %**	**2,623**	**100.0 %**	**2,620**	**100.0 %**	**2,512**	**100.0 %**	**95.9**

Also in 2011, **the most** cases were opened in the following fields: judicial proceedings and police procedures (544, or 21.7 percent), social security (352, or 14 percent) and administrative matters (292, or 11.6 percent of all open cases).

It is clear from the table 3.7.1 and figure 3.7.1, that, in comparison to 2010, the number of open cases in 2011 **increased** in the field of housing rights (from 74 to 93, or by 25.7 percent) and constitutional rights (from 150 to 165, or by 10 percent). The greatest decrease of open cases in 2011 as compared to 2010 is recorded in the fields of judicial proceedings and police procedures (by 24.7 percent) and social security (by 23.9 percent).

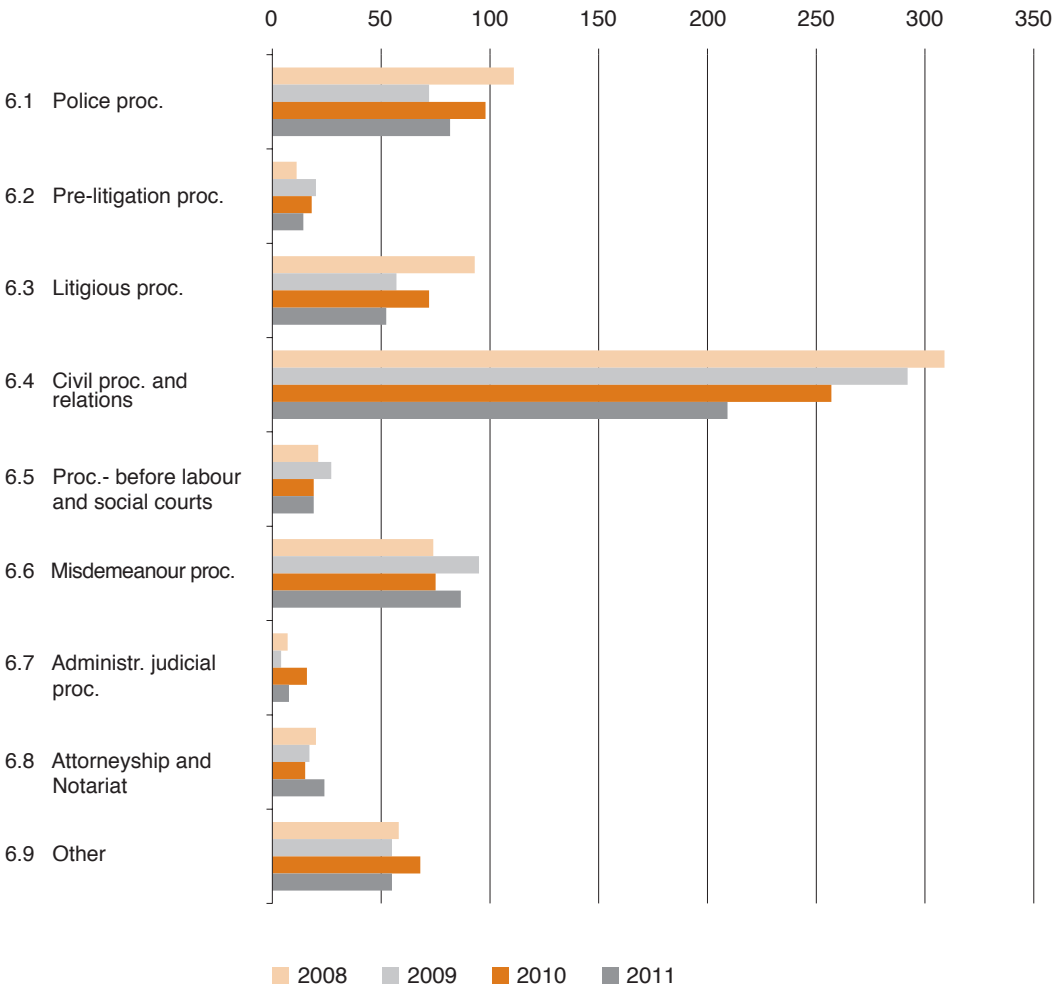
Figure 3.7.1: A comparison between the number of open cases by individual areas of work of the Human Rights Ombudsman of the Republic of Slovenia in the period from 2008 to 2011



In spite of a marked decrease of initiatives in the field of judicial proceedings and police procedures, we decided to graphically present the distribution of cases in this field by categories also in this year.

Figure 3.7.2 thus shows the structure of classification and trend of open cases from 2008 to 2011 by individual sub-areas in judicial proceedings and police procedures. As is evident from the figure, the greatest proportion of these cases is still occupied by the sub-field of civil procedures and relationships. But at the same time, a fall in initiatives in this sub-area is noticed (from 705 initiatives in 2008 to 544 in 2011). The raised awareness of initiators on powers of the Ombudsman in judicial proceedings and reduction of court backlogs at (lower-instance) courts has contributed to the fall in number.

Figure 3.7.2: Comparison made between the number of open cases in the field of judicial proceedings and police procedures before the Human Rights Ombudsman of the Republic of Slovenia in the period from 2008 to 2011



Cases handled

Table 3.7.2: Number of cases handled before the Human Rights Ombudsman in 2011

AREA OF WORK	NUMBER OF CASES CONSIDERED				Share by area of work
	Open cases in 2011	Transfer of cases from 2010	Reopened cases in 2011	Total cases handled	
1. Constitutional rights	165	17	1	183	5.95 %
2. Restrictions of personal liberty	144	35	8	187	6.08 %
3. Social security	352	61	5	418	13.58 %
4. Labour law	187	46	5	238	7.73 %
5. Administrative matters	292	77	10	379	12.32 %
6. Judicial proceed and police proc.	544	135	22	701	22.78 %
7. Environment and spatial planning	99	30	3	132	4.29 %
8. Public utility services	52	4	4	60	1.95 %
9. Housing matters	93	14	2	109	3.54 %
10. Discrimination	49	11	1	61	1.98 %
11. Children's rights	261	42	11	314	10.20 %
12. Other	274	20	1	295	9.59 %
TOTAL	**2,512**	**492**	**73**	**3.077**	**100.00 %**

It is clear from the table that **3,077 cases were handled** in 2011, of this number, 2,512 cases were opened in 2011 (81.6 percent), 492 cases were transferred into handling from 2010 (16 percent) and there were 73 reopened cases (2.4 percent). The table 3.7.3 indicates that there were **0.2 percent fewer cases handled** in 2011 as compared to 2010.

The greatest number of cases dealt with in 2011 were related to the following fields: judicial proceedings and police procedures (701 cases, or 22.8 percent), social security (418 cases, or 13.6 percent) and administrative matters (379 cases, or 12.3 percent). As compared to 2010, the number of cases handled increased the most in the field of housing matters (from 85 to 109, or a 28.2 percent increase) and decreased in the field of public utility services (from 80 to 60, or a 25-percent decrease).

Table 3.7.3: Comparison between the number of cases handled before the Human Rights Ombudsman of the Republic of Slovenia in the period from 2008 to 2011

AREA OF WORK	CONSIDERED CASES								Index (11/10)
	2008		2009		2010		2011		
	No.	Share	No.	Share	No.	Share	No.	Share	
1. Constitutional rights	183	5.4 %	155	4.9 %	173	5.6 %	183	5.9 %	105.8
2. Restrictions of personal liberty	175	5.2 %	187	5.9 %	163	5.3 %	187	6.1 %	114.7
3. Social security	523	15.4 %	443	14.1 %	449	14.6 %	418	13.6 %	93.1
4. Labour Law	292	8.6 %	253	8.0 %	225	7.3 %	238	7.7 %	105.8
5. Administrative matters	388	11.5 %	387	12.3 %	385	12.5 %	379	12.3 %	98.4
6. Judicial proceed. and police proc.	810	23.9 %	751	23.8 %	758	24.6 %	701	22.8 %	92.5
7. Environment and spatial planning	132	3.9 %	133	4.2 %	146	4.7 %	132	4.3 %	90.4
8. Public utility services	100	3.0 %	100	3.2 %	80	2.6 %	60	1.9 %	75.0
9. Housing matters	125	3.7 %	106	3.4 %	85	2.8 %	109	3.5 %	128.2
10. Discrimination	104	3.1 %	69	2.2 %	67	2.2 %	61	2.0 %	91.0
11. Children's rights	279	8,2 %	288	9,1 %	337	10,9 %	314	10,2 %	93.2
12. Other	275	8,1 %	279	8,9 %	214	6,9 %	295	9,6 %	137.9
TOTAL	**3,386**	**100 %**	**3,151**	**100 %**	**3,082**	**100 %**	**3,077**	**100 %**	**99.8**

Cases according to the state of their handling

1. **Closed cases:** the handling of these cases was concluded by 31 December 2011.
2. **Cases under consideration:** these are cases which were under consideration as of 31 December 2011.

In 2011, there were 3.077 cases dealt with, of this number, **2.592 or 84.2 percent** of all cases handled in 2011 were **closed**. 485 cases remained under consideration (15.8 percent).

Table 3.7.4: Comparison with regard to the number of cases handled before the Human Rights Ombudsman of the Republic of Slovenia in the period from 2008 to 2011 (at the end of the calendar year)

STATUS OF CONSIDERATION OF CASES	2008 (situation as of 31. 12. 2008)		2009 (situation as of 31. 12. 2009)		2010 (situation as of 31. 12. 2010)		2011 (situation as of 31. 12. 2011)		Index (11/10)
	No.	Share	No.	Share	No.	Share	No.	Share	
Concluded	2,938	86.8 %	2,775	88.1 %	2,590	84.0 %	2,592	84.2 %	100.1
Being processed	448	13.3 %	376	11.9 %	492	16.0 %	485	15.8 %	98.6
TOTAL	**3,386**	**100 %**	**3,151**	**100 %**	**3,082**	**100 %**	**3,077**	**100 %**	**99.8**

Detailed review regarding the handling of cases by areas of work is demonstrated in Table 3.7.5.

In the field of **(1) Constitutional rights**, there were 183 cases handled in 2011 (5.8 percent more than in 2010 and 5.6 percent of all cases handled). According to the number of cases handled, the topics that stood out also in 2011 are: the ethics of public statements with 112 cases (and as much as a 96.5% increase) and the protection of personal data with 39 cases considered (and 18.9% increase as compared to the previous year).

In 2011, the number of cases handled in the area of work: **(2) Restrictions of personal liberty**, increased by 14,7 percent as compared to 2010 (from 163 to 187 cases considered). While the number of cases handled relating to detainees (from 42 to 26) decreased, the number of cases handled relating to prisoners increased (from 92 to 123), together with cases relating to psychiatric patients (from 18 to 23).

The area of work **(3) Social security** saw a decrease in the number of cases handled in 2011 and compared to 2010, specifically, by 6.9 percent (to 418 cases) The largest proportion of these cases (with 82 cases handled) is held by cases in relation to health insurance (19.6 percent) and health care (59 cases, or 14.1 percent). In the sub-area of work relating to health insurance, an increase of caseload by 24.2 percent was noticed. The decrease in the number of considered cases in comparison to the previous period was noticed in the sub-area of work relating to poverty (from 28 to 13 cases) and pension insurance (from 59 to 40 cases).

In the area of work: **(4) Labour law**, the number of cases handled in 2011 increased by 5.8 percent (238 cases) as compared to 2010 (255 cases). The increase is noticed in the sub-area of work covering unemployment where 47.6 percent more initiatives were received (31 in 2011 and 21 in 2010). Likewise, the number of cases in comparison to the previous period increased in the following topics: scholarships (from 14 to 18) and workers in state authorities (from 70 to 85).

The area of work: **(5) Administrative matters**, almost did not change as regards the number of cases considered in 2011 (379 cases) and compared to 2010 (385 cases). However, this area of work is the third largest group of cases in terms of content which were handled by the Ombudsman in 2011. An increased number of handled cases is noticed in cases referring to citizenship (from 11 to 19) and social activities (from 68 to 80), whereas a decrease has been recorded in cases referring to customs duties and taxes.

Also in 2011, the Ombudsman handled the most cases from the area of work: **(6) Judicial proceedings** and police procedures (701 cases, or 22.8 percent). These cases include issues in relation to police procedures, pre-trial, criminal and civil proceedings, proceedings in labour and social disputes, procedures on misdemeanours, administrative judicial proceedings, cases relating to attorneyship and notaries and some others. The index of the trend in the number of cases dealt with in this field in 2011 as compared to 2010 (92.5) shows a slight decrease of handled cases. While a decrease of handled cases is noticed in the majority of sub-areas of work, an increase is noticed with procedures on misdemeanours (from 79 to 96) and attorneyship and notaries (from 22 to 26).

The area of work **(7) Environment and Spatial Planning** saw a decrease by 9.6 percent of the number of cases handled in 2011 as compared to 2010 (from 146 to 132). While the number of initiatives in the sub-area of work relating to spatial management increased (from 30 to 41), the number of initiatives referring to developments in actual space decreased from 58 to 47 (by 19 percent).

The number of cases handled in 2011 as compared to 2010 relating to the area of work **(8) Public utility services** decreased by 25 percent (from 80 to 60). An increase can be noticed in the field of municipal utility services but, on the other hand, a slightly greater fall of initiatives relating to communications (from 13 to 4) and the energy sector (from 16 to 8).

The area of work **(9) Housing matters** saw an increase in the number of cases handled in 2011 and compared to 2010, specifically, by 28.2 percent (from 85 to 109 cases) The decrease in the number of cases is noticed in regard to housing relationships (from70 to 50), but the number of cases significantly increased in cases relating to housing business (from 6 to 47).

In 2011, the number of cases handled in the area of work: **(10) Discrimination**, increased by 9 percent as compared to 2010 (from 67 to 61 cases considered). A small increase of caseload has been noticed in the sub-area relating to national and ethnic minorities (24 in 2010 as compared to 28 in 2011), while a decrease is recorded in the area relating to other issues, specifically, from 32 in 2010 to 21 in 2011.

In the area of work: **(11) Children's rights**, the number of handled cases decreased from 337 in 2010 to 314 in 2011. This area of work also includes the sub-area of the Advocacy of Children where a 27.1 increase has been recorded (from 59 to 75). The number of handled cases in the sub-area of work relating to the violence against children outside the family decreased from 15 to 7, and in relation to family violence from 24 to 10. The number of cases referring to contacts with parents decreased (from 59 to 32), as well as in cases relating to child support, child benefits and management of child's assets (from 29 to 21).

Under the heading: **(12) Other** are grouped those cases which cannot be classified under any of the defined areas of work. In 2011, we dealt with 295 such cases, which is as much as 37.9 percent more than in the previous year.

Table 3.7.5: Review of handled cases before the Human Rights Ombudsman of the Republic of Slovenia in 2011, by areas of work of the Ombudsman's Office

AREA/SUB-AREA OF THE OMBUDSMAN'S WORK	Cases considered in 2010	Cases considered in 2011	Index (11/10)
1 Constitutional rights	**173**	**183**	**105,8**
1.1 Freedom of conscience	14	3	21,4
1.2 Public speech ethics	57	112	196,5
1.3 Assembly and association	21	6	28,6
1.4 Security services	0	0	-
1.5 Voting rights	13	13	100,0
1.6 Protection of personal data	48	39	81,3
1.7 Access to public information	3	7	233,3
1.8 Other	17	3	17,6
2 Restrictions of personal liberty	**163**	**187**	**114,7**
2.1 Detainees	42	26	61,9
2.2 Prisoners	92	123	133,7
2.3 Psychiatric patients	18	23	127,8
2.4 Persons in social care institutions	5	8	160,0
2.5 Juvenile homes	2	4	200,0
2.6 Illegal aliens and asylum seekers	0	2	-
2.7 Persons in police detention	0	0	-
2.8 Other	4	1	25,0
3 Social security	**449**	**418**	**93,1**
3.1 Pension insurance	59	40	67,8
3.2 Disability insurance	53	48	90,6
3.3 Health insurance.	66	82	124,2
3.4 Health care	64	59	92,2
3.5 Social benefits and reliefs	58	54	93,1
3.6 Social services	16	20	125,0
3.7 Institutional care	30	26	86,7
3.8 Poverty – general	28	13	46,6
3.9 Violence – anywhere	16	17	106,3
3.10 Other	59	59	100,0
4 Labour law	**225**	**238**	**105,8**
4.1 Employment relationship	99	93	93,9
4.2 Unemployment	21	31	147,6
4.3 Workers in state authorities	70	85	121,4
4.4 Scholarships	14	18	128,6
4.5 Other	21	11	52,4
5 Administrative matters	**385**	**379**	**98,4**
5.1 Citizenship	11	19	172,7
5.2 Aliens	46	42	91,3
5.3 Denationalisation	13	11	84,6
5.4 Property law	28	32	114,3
5.5 Taxes	51	40	78,4
5.6 Customs	3	1	33,3
5.7 Administrative procedures	139	130	93,5
5.8 Social activities	68	80	117,6
5.9 Other	26	24	92,3
6 Judicial and police procedures	**758**	**701**	**92,5**
6.1 Police procedures	117	100	85,5
6.2 Pre-litigation procedures	29	25	86,2
6.3 Criminal procedures	76	71	93,4

AREA OF WORK	Cases considered in 2010	Cases considered in 2011	Index (11/10)
6.4 Civil procedures and relations	758	701	92,5
6.5 Proc. before labour and social courts	117	100	85,5
6.6 Misdemeanour procedures	29	25	86,2
6.7 Administrative judicial procedures	76	71	93,4
6.8 Attorneyship and notariat	306	275	89,9
6.9 Other	26	22	84,6
7 Environment and spatial planning	**79**	**96**	**121,5**
7.1 Interventions in the environment	17	9	52,9
7.2 Spatial planning	22	26	118,2
7.3 Other	86	77	89,5
8 Commercial public services	**146**	**132**	**90,4**
8.1 Public utility sector	58	47	81,0
8.2 Communication	30	41	136,7
8.3 Energy	58	44	75,9
8.4 Traffic	80	60	75,0
8.5 Concessions	14	23	164,3
8.6 Other	13	4	30,8
9 Housing matters	**16**	**8**	**50,0**
9.1 Housing relations	31	19	61,3
9.2 Housing services	3	4	133,3
9.3 Other	3	2	66,7
10 Discrimination	**85**	**109**	**128,2**
10.1 National and ethnic minorities	70	50	71,4
10.2 Equal opportunities by gender	6	47	783,3
10.3 Equal opportunities in employment	9	12	133,3
10.4 Other	67	61	91,0
11 Children's rights	**24**	**28**	**116,7**
11.1 Contacts with parents	5	3	60,0
11.2 Child support, child allowances, child's property management	6	9	150,0
11.3 Foster care, guardianship, institutional care	337	314	93,2
11.4 Children with special needs	28	21	75,0
11.5 Children of minorities and threatened groups	21	22	104,8
11.6 Family violence against children	1	1	100,0
11.7 Violence against children outside the family	24	10	41,7
	15	7	46,7
11.8 Child advocacy	59	75	127,1
11.9 Other	**112**	**125**	**111,6**
12 Other	214	295	137,9
12.1 Legislative initiatives	28	22	78,6
12.2 Remedy of injustice	7	2	28,6
12.3 Personal problems	16	28	175,0
12.4 Explanations	124	198	159,7
12.5 For information	21	21	100,0
12.6 Anonymous applications	17	23	135,3
12.7 Ombudsman	1	1	100,0
TOTAL	**3.082**	**3.077**	**99,8**

Closed cases

In 2011, there were **2,591 closed cases** which is **almost an identical number of closed cases** by comparison to 2010 (2,590 cases closed). **According to the comparison of the number of these cases (2,592) as compared to the number of open cases in 2010 (2,512), it has been established** that there were 3.2 percent more cases closed than opened in 2011.

Table 3.7.6: Comparison of closed cases handled categorised by areas of work of the Ombudsman in the period for 2008 to 2011

AREA OF WORK OF THE OMBUDSMAN	2008	2009	2010	2011	Index (11/10)
1. Constitutional rights	151	136	156	164	105.1
2. Restrictions of personal liberty	150	166	128	144	112.5
3. Social security	468	415	388	372	95.9
4. Labour Law	259	230	179	212	118.4
5. Administrative matters	319	321	308	291	94.5
6. Judicial proceed. and police procedures	714	657	623	570	91.5
7. Environment and spatial planning	105	101	116	95	81.9
8. Public utility services	88	91	76	55	72.4
9. Housing matters	114	100	71	97	136.6
10. Discrimination	89	56	56	54	96.4
11. Children's rights	234	249	295	278	94.2
12. Other	247	253	194	260	134.0
TOTAL	**2,938**	**2,775**	**2,590**	**2,592**	**100.1**

Closed cases by substantiation

Justified case: there is a violation of rights or other irregularities in all statements of the initiative.

Partially justified case: some elements of the procedure, whether stated or not stated or non-stated in the initiative, point to violations and irregularities, and not so other allegations.

Non-justified case: no violation or irregularity has been determined in regard to all allegations from the initiative.

No conditions for handling the case: there is a legal proceeding taking place in relation to the case where no delay or greater irregularities have been noticed. Pobudniku posredujemo informacije, pojasnila in napotke za uveljavljanje pravic v odprtem postopku. V to skupino spadajo tudi nesprejete pobude (prepozne, anonimne, žaljive) in ustavitve postopka zaradi nesodelovanja pobudnika ali umika pobude.

Non-competence of the Ombudsman: The subject of the initiative does not fall within the scope of the institution. The initiator is advised on other options to exercise the rights.

Table 3.7.7: Classification of closed cases according to justification

SUBSTANTIATION OF CASES	CLOSED CASES				Index (11/10)
	2010		2011		
	Number	Share	Number	Share	
1. Justified cases	440	17,0	438	16,9	99,5
2. Partially justified cases	221	8,5	233	9,0	105,4
3. Non-justified cases	382	14,7	380	14,7	99,5
4. No conditions for handling the case	1.219	47,1	1.223	47,2	100,3
5. Lack of authority of the Ombudsman	328	12,7	318	12,3	97,0
TOTAL	**2.590**	**100,0**	**2.592**	**100,0**	**100,1**

The proportion of justified and partially justified cases in 2011 (25.9 percent) did not significantly change as compared to 2010 (25.5 percent) as well as to the previous years. **The proportion of justified cases is relatively high in comparison to similar institutions abroad, but, the proportion of cases not under the responsibility of the Ombudsman is also decreasing.** As has been established over the course of years, it seems that initiators are better informed about the authority of the Ombudsman which is surely linked to our strengthened preventive activities.

Closed cases by sectors

The table 3.7.8 includes a presentation of classification of cases concluded in 2011 by areas as dealt with by national authorities and which are not equal to areas of work within the Ombudsman's operation. An individual case is classified in a relevant area of work with regard to the issue as a result of which an initiator has turned to the Ombudsman and for which enquiries have been made. Since some of the initiatives required our activities in several areas of work, the number of closed cases according to the classification of the Ombudsman is different to the number of cases concluded by areas.

It is evident from the table that the highest number of concluded cases in 2011 referred to:

- labour, family and social affairs (607 cases, or 26.89 percent);
- judiciary (650 cases, or 25.08 percent);
- environmental and spatial planning (295 cases, or 11.38 percent), and
- internal affairs (196 cases, or 7.56 percent).

The number of open cases in 2011, as compared to 2010 and in relation to the proportion in percentages, has increased the most in the field of defence (by 110 percent) and education and sport (by 18 percent), while it decreased in the area of agriculture, forestry and food as well as foreign affairs (by 57.14 percent).

Table 3.7.8: Closed cases handled before the Human Rights Ombudsman of the Republic of Slovenia in the period form 2008 to 2011 by areas of work of state authorities

AREA OF WORK OF STATE AUTHORITIES	CLOSED CASES								Index (11/10)
	2008		2009		2010		2011		
	Number	Share	Number	Share	Number	Share	Number	Share	
1. Labour, family and social affairs	755	25.7	690	24.86	692	26.72	697	26.89	100.72
2. Finance	59	2.01	60	2.16	50	1.93	25	0.96	50.00
3. Economy	72	2.45	48	1.73	31	1.20	28	1.08	90.32
4. Public administration	44	1.5	68	2.45	41	1.58	45	1.74	109.76
5. Agriculture, forestry and food	23	0.78	16	0.58	21	0.81	9	0.35	42.86
6. Culture	76	2.59	37	1.33	28	1.08	26	1.00	92.86
7. Internal Affairs	251	8.54	224	8.07	211	8.15	196	7.56	92.89
8. Defence	9	0.31	9	0.32	5	0.19	11	0.42	220.00
9. Environment and spatial planning	290	9.87	315	11.35	272	10.50	295	11.38	108.46
10. Justice	733	24.95	764	27.53	673	25.98	650	25.08	96.58
11. Transport	24	0.82	19	0.68	27	1.04	22	0.85	81.48
12. Education and Sport	147	5	112	4.04	100	3.86	118	4.55	118.00
13. Higher education, science and technology	27	0.92	18	0.65	23	0.89	27	1.04	117.39
14. Health	177	6.02	161	5.8	146	5.64	165	6.37	113.01
15. Foreign affairs	16	0.54	12	0.43	4	0.15	3	0.12	75.00
16. Government services	9	0.31	11	0.4	11	0.42	10	0.39	90.91
17. Local self-government	26	0.88	23	0.83	13	0.50	10	0.39	76.92
18. Other	200	6.81	188	6.77	242	9.34	255	9.84	105.37
TOTAL	**2,938**	**100**	**2.775**	**100**	**2,590**	**100**	**2,592**	**100**	**100.08**

The table 3.7.9 has also been developed this year which includes a review of justified and partially justified cases by individual areas of work of state authorities. By developing this table, we wished to additionally emphasise the areas in which the most violations in 2011 were noticed.

If we focus firstly on areas in which 100 or more initiatives have been classified, it can be established that the proportion of justified cases is the largest in the field of education (47.5 percent), which is followed by health (42.4 percent), environment and spatial planning (37.6 percent) and labour, family and social affairs (31 percent). More on violations in individual fields is discussed in the body of the Report.

Table 3.7.9: The analysis of closed cases according to their justification, for 2011

AREA OF WORK OF STATE AUTHORITIES	CLOSED CASES	NUMBER OF JUSTIFIED CASES	PROPORTION OF JUSTIFIED/NUMBER OF CLOSES CASES (in %)
1. Labour, family and social affairs	697	216	31.0
2. Finance	25	4	16.0
3. Economy	28	2	7.1
4. Public administration	45	11	24.4
5. Agriculture, forestry and food	9	2	22.2
6. Culture	26	3	11.5
7. Internal affairs	196	51	26.0
8. Defence	11	4	36.4
9. Environment and spatial planning	295	111	37.6
10. Justice	650	85	13.1
11. Transport	22	4	18.2
12. Education and sport	118	56	47.5
13. Higher education, science and technology	27	11	40.7
14. Health	165	70	42.4
15. Foreign affairs	3	2	66.7
16. Government services	10	3	30.0
17. Local self-government	10	3	30.0
18. Other	255	33	12.9
TOTAL	**2,592**	**671**	

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