REPUBLIC OF SLOVENIA

HUMAN RIGHTS OMBUDSMAN

Eighteenth Regular Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for the Year 2012

Abbreviated Version

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Ljubljana, September 2013

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NATIONAL ASSEMBLY OF THE REPUBLIC OF SLOVENIA
Mr Janko Veber, President

Šubičeva 4
1102 Ljubljana

Mr President,

In accordance with Article 43 of the Human Rights Ombudsman Act I am sending you the Eighteenth Regular Report referring to the work of the Human Rights Ombudsman of the Republic of Slovenia in 2012.

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,

Vlasta Nussdorfer
Human Rights Ombudsman

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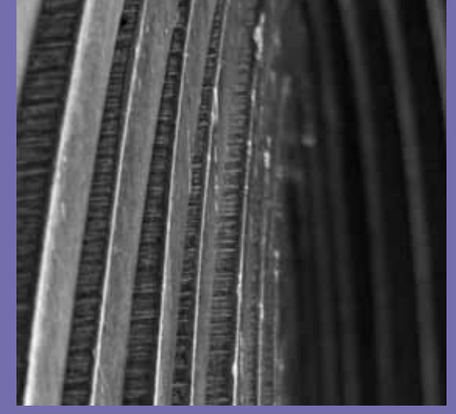
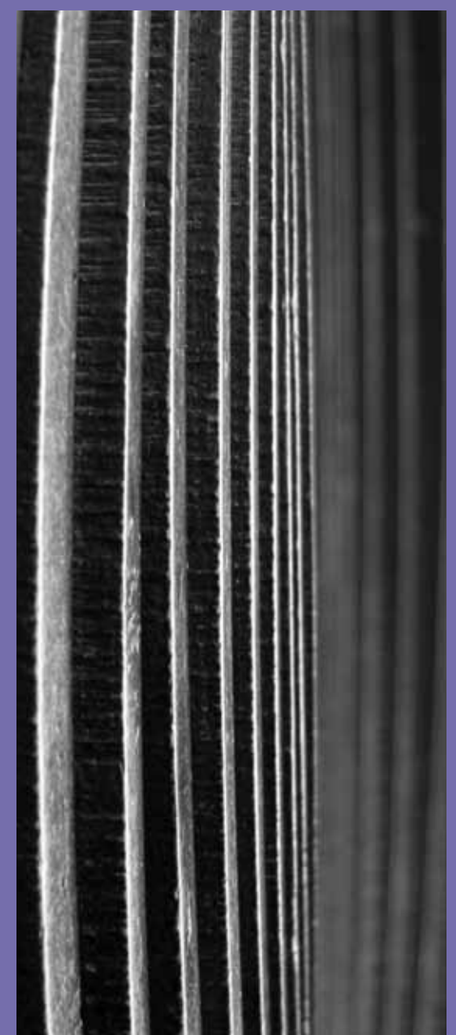


The Ombudsman’s findings, opinions and proposals



1. THE OMBUDSMAN'S FINDINGS, OPINIONS AND PROPOSALS

Vlasta Nussdorfer, Human Rights Ombudsman

The taking up of the office of the Human Rights Ombudsman of the Republic of Slovenia from Zdenka Čebašek - Travnik, PhD, at the beginning of 2012, demanded a fast and intensive briefing on the past and recent work and annual reports of the Ombudsmen, particularly with this present report for 2012 which extends into the mandate of the Human Rights Ombudsman. In a figurative sense, this also means taking up the baton and setting off on a walking marathon, accompanied by four Deputies, the Secretary-General and numerous employees, experts in individual areas of work, and carrying on with her work. As a result, the presentation of the work of the previous Ombudsman may be a difficult task while at the same time also presenting a challenge in adopting further Ombudsman's guidelines and efforts.

When reporting to the National Assembly and the Slovenian public on the Ombudsman's work and findings regarding the level of observance of human rights and fundamental freedoms and the legal certainty of citizens, I can only express my concern about the realisation that the achievements of the present Slovenian state in the field of the protection of human rights are threatened.

The rule of law is being put to great test since some rights have been violated several times right up to the point of obtaining efficient legal remedies. The rights of people are not always being judged by Slovenian courts within a reasonable time. The welfare state has been eroded, social security is being reduced, also due to past mistakes in the running of the state and the exuberant growth in greed, corruption and the impermissible and frequently unpunished thefts of social assets. The mechanisms of control of the state and local communities are not efficient enough, as already emphasized in past reports.

Justification for the above mentioned statements is presented in that part of the report which brings an overview of work in2012 with some amendments regarding measures taken by the state and local authorities by May 2013 when the preparation of the report came to an end.

I have asked myself numerous questions related to the proposals and recommendations published in all of the past Ombudsman's reports, particularly questions in regard to their implementation in practice. It is planned that an overview of the effectiveness of the work of the institution be prepared upon the 20th anniversary of the Ombudsman's operation (the institution started operating on 1 January 1995), together with a verification and evaluation of the level of the observance of our proposals, opinions, criticism and recommendations to state and local authorities and the holders of public authority.

The content of this, the 18th regular Ombudsman's report comprises the overview of the areas of the Ombudsman's work, spanning constitutional rights on discrimination, restriction of personal liberty, administration of justice, police procedures, legal matters, environment and spatial planning, public utility services, housing matters, employment relations, pension and disability insurance, health care and health insurance, social matters, unemployment, protection of children's rights and the performance of duties and execution of powers under the National Preventive Mechanism (as a special report attached to this report). At the end of the report, information on the Ombudsman's work is provided, both in regard to the work with initiators at the head office as well as during the operation outside the head office, the cooperation with civil society and non-governmental organisations, state authorities, bodies of local authorities, holders of public authority and the media. An explanation on publication activity and international cooperation is given, together with a financial analysis in regard to the use of funds and statistical data, adding a detailed overview of handling of cases by areas of work, in regard to the received initiatives, closed cases and cases currently being handled.

The overview of cases which particularly stood out in individual areas of work bringing about a thorough insight into initiatives and their handling as well as the Ombudsman's conclusions, proposals and recommendations is important. I have found out that frequently, in as many as 25 per cent of cases, initiatives have been evaluated as justified, which is a large proportion considering the fact that the Ombudsman is an additional means for the protection of human rights and fundamental freedoms.

Every day, the important role of the media, presenting the stories of our daily lives, is encountered; this is important since the media open up numerous entirely actual and systemic questions regarding respect for fundamental rights. Sometimes they are in fact the only ones that bring the dark sides of contemporary life to the fore and seek answers. When doing that, the rights of children must be carefully guarded since by their exposure to the public, children may be additionally burdened and stigmatised. The media must take into consideration that the procedure relating to the handling of cases by the Ombudsman is confidential. Specifically, it is necessary to be careful about the possibility of committing criminal offences as a result of a violation of the confidential nature of the procedure and, particularly, providing protection for the personal data of all individuals involved in cases.

The report is dedicated to everybody interested in the Ombudsman's work, in particular to the National Assembly since the Human Rights Ombudsman Act in its Article 43 stipulated that, by means of regular or special reports, the Ombudsman shall report to the National Assembly on the Ombudsman's work, his findings about the level of the observance of human rights and fundamental freedoms and the legal certainty of the citizens of the Republic of Slovenia. I will present the report in person to the President of the National Assembly and the Deputies at the session of the National Assembly of the Republic of Slovenia.

The report will surely attract the attention of the President of the Republic of Slovenia who nominates the candidate for the Human Rights Ombudsman to be elected by the National Assembly.

The eighteenth year of reporting on the Ombudsman's work signifies the attainment of the coming of age of the Ombudsman's institution, on the one hand, but unfortunately, on the other, in regard to the protection of human rights, the troubles of those fighting for their survival are becoming greater and greater. There are people on the edge of social developments, helpless, hurt, humiliated, tired of travelling from institution to institution where, just like Jernej, the

farmhand from literature, they, were supposed to be able to seek their rights. Thus, the claim that our employees hear all too often is: "You are the only hope left to me." This claim should be taken seriously.

How should we justify the trust in the protection of human rights in these moments which are so difficult for the country, for Europe and for the world? There is a great threat to many countries in Europe that the European financial Troika will be deployed against them, when at home and abroad the number of the unemployed is increasing, when at home and abroad leaders are being thrown out, when everybody expects assistance from outside, when capitalism ruthlessly erases the connections between people who only yesterday led a normal life and people who today are full of fear because of an uncertain tomorrow?

The question of the ethics of a public language statement is encountered every day, and together with it now the already familiar thought that the spoken word is your master while the unspoken one your slave. Having said that, it would surely be appropriate to have many people restrained, especially in the house of democracy, at public events, in the media, on the world wide web and in many other places. The injured feelings of individuals and even groups have reached the stage of dividing our people into "us and them", into believers and atheists, into partisans and members of domobranci (collaborating militia). The reason for numerous hasty and emotionally flavoured public appearances is also hostility, and through it the path to hate speech is short and for many, unfortunately, too easy. To turn back is almost impossible since it frequently leads through the world wide web where everything stays forever published.

The Ombudsman disapproves of all forms of publicly stated hatred and intolerance directed against individuals or individual groups, being of course aware of the protection of the freedom of speech and the freedom of media but also of the thin thread leading to public incitement to hatred, national, racial, religious or any other hatred defined as non-constitutional by the Constitution. The use of legal methods may bring about legal practice but what if starting pursuing legal methods is, for many, too difficult, not to mention the lengthy proceedings. The Ombudsman is aware that this phenomenon needs to be talked about and to have educational activities dedicated to it since remedial activity including criminal prosecutions and consequently even greater and more long-lasting responses in public is "ultima ratio", the extreme means.

Numerous initiatives made by citizens and their associations were queuing up in the field of discrimination which led the Ombudsman to lodge a challenge to the constitutionality in regard to Article 143 of the Fiscal Balance Act (ZUJF) with a proposal to temporarily withhold this Act and deal with the request regarding the challenge as a priority. Specifically, the Act brought about an unequal treatment of pensioners when reducing some pensions. At the beginning of 2013, the Constitutional Court ruled in favour of the Ombudsman's request, repealed three paragraphs of the disputed Article and made pensions return to their previous level.

Obviously, an open question has remained as regards the payments of arrears to pensioners which supposedly differed between those who had already used legal remedies and those who had not. The challenge to the constitutionally of Article 246 of ZUJF regarding "obligatory" retirement when fulfilling statutory conditions have remained to be yet decided by the Constitutional Court.

In regard to discrimination, the winding up of the Government Office of Equal Opportunities drew a lot of attention; the Advocate of the Principle of Equality ("the Advocate") which used to operate within the said Office's framework suddenly found itself a part of the Ministry of Labour, Family and Social Affairs, and now also of "Equal opportunities". Slovenia was warned by the EU of the entirely irregular statutory and institutional arrangement of a mechanism for the elimination of discrimination and the placement of the Advocate of the Principal of Equal Opportunities which raises doubts about the Advocate's independence. The Ombudsman also received a letter from the EQUINET's Chairman-in-Office (European Network of Equality Bodies). Linking the Advocate to the Ombudsman was proposed as one of the potential solutions. In accordance with the Constitution, the Ombudsman supervises the public sector in relation to individuals, while the Advocate takes care of non-discriminatory handling of cases in the public and private sectors. Since the Ombudsman is the supreme body for the informal protection of human rights in the country, whereas the Advocate is a specialised state body which should operate by following the model of the Information Commissioner, and their work is being supervised by the Ombudsman, autonomy and independence is thus surely needed for the Advocate.

The question regarding an independent national institution ("NI") for the protection and promotion of human rights operating under the Paris principles relating to the status of national institutions adopted by the United Nations Organisation has remained unsolved. It is also important that recently the Government had not supported the proposal to establish the Human Rights Centre operating at the Ombudsman's Office which could continue the successful and attention-attracting operation of the Information and Documentation Centre of the Council of Europe dissolved by the Council of Europe. The Centre could carry out educational, promotional and research duties, also in the field of discrimination and cooperate with non-governmental organisations. It needs to be added that in 2012 the Government dissolved the Inter-Ministerial Working Group for Human Rights which had functioned for several years within the framework of the Ministry of Foreign Affairs, and the Ombudsman was its active member, for more than fifteen years. The question arises: how, considering all this and the fact that the Committee for the Prevention of Torture had not received the requested reply on a report from Slovenia in 2012, can Slovenia successfully run for membership of the UN Council for Human Rights in the period from 2016 to 2018.

In 2012, unfortunately, numerous problems were noticed regarding the poor living conditions of the Roma in South-East Slovenia which was reported to the National Assembly by means of a special report discussed at the Committee for Petitions, Human Rights and Equal Opportunities and at the session of the National Assembly. The Ombudsman was determined in this matter: the state should not evade its responsibility to eliminate the violation of human rights if local communities fail. Specifically, the Government has a legal basis in Article 5 of the Roma Community Act (ZRomS-1) to organise the living conditions in the Roma settlements and it is also committed to international legal obligations. Modifications of the composition of the Roma Community Council are urgent since, on the basis of ZRomS-1, the Union of Roma of Slovenia has a privileged position in the Council, while there are no Roma from the Dolenjska region, nor are there any Sinti or other groups.

The state cannot evade its responsibility due to the failure of some municipalities to perform. Tensions between the Roma population and the majority of the population in some areas, especially in the one mentioned above, are exceptional. Serious criminal offences are committed; because of this, the Strategy of the Development of the Roma Community in Pomurje region, adopted at the beginning of 2013, may serve as a very positive example. More concrete actions and consistent attainment of the National Programme of Measures for Roma for 2012 – 2015 are also expected.

How do the bodies for detection, prosecution and trial, not only in criminal but also in civil matters, in execution proceedings and in corporate matters, operate? The protection of human rights requires an efficient Police but only if effective control is ensured. Suitable and sufficient guarantee is needed to efficiently prevent abuses. A fight against criminal wrongdoings may otherwise turn into a rough and systematic violation of human rights and fundamental freedoms.

In this regard, the question most frequently asked by the public was whether Slovenia is still a state ruled by the law. Why? This question arises from the very lengthy proceedings which may be successfully delayed even by clients themselves as they have a legitimate right to use regular

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and extraordinary legal remedies, while the time delay always suits at least one of the parties participating in the proceedings. The remoteness of an event most certainly does not bring about more severe punishment but rather a moderation when ordering criminal sanctions. One obviously needs to be aware of the double-edged nature of statements about the fact of who is the one who, in front of the media, claims that he believes or does not believe in the functioning of the rule of law and its bodies. If it happens that an exonerated accused appears on the TV screen we know that the proper functioning of the legal system would be recognised since such system had cleared him of charges, whereas if the accused was found guilty, he usually claims that the proceedings were constructed by means of spurious proof. One must be aware that no customer complaints can be recorded or expected if a customer complaints book doesn't even exist and moreover, communication with all the media and web chat rooms is being made by those who were dissatisfied with the unravelling of proceedings in one way or another.

On the other hand, the data stating that Slovenian prisons are overcrowded both with detainees and convicted persons certainly raises concerns. This warning was given by detainees and prisoners as well as prison administrators and yet the management cannot provide for current investment into the maintenance of facilities owing to the lack of financial funds, when a saving policy is also shown in other areas. The issues have escalated to such an extent that in the largest prison, Dob Prison, a strike was announced by prisoners and by prison guards who had not received their salaries for the work done in the beginning of 2013. The number of prison officers has dropped greatly; they are over-burdened and as a result the question of their safety is raised. The amount of salary paid to convicted persons for work done by them was also influenced by ZUJF. The problematic accommodation of under-aged and full-aged detainees in the same room is still highlighted. Patient rooms for the treatment of prisoners are a problem, in addition to the proper accommodation of movement-impaired prisoners. An undoubtedly important achievement happened in June 2012 when Slovenia gained a Unit for Forensic Psychiatry working within the structure of the Psychiatric Ward of University Medical Centre Maribor.

The entire report on the implementation of duties and powers under the National Preventive Mechanism (NPM) carried out by the Ombudsman in accordance with the ratification of the Optional Protocol to the Convention against Torture and Other Cruel Inhuman of Degrading Treatment or Punishment (Official Gazette RS, No. 114/06, International Treaties, No. 20/06 – Optional Protocol) is not published within this Ombudsman's report. Specifically, the report on the work in the capacity of the NPM is a special attachment to this Ombudsman's Annual Report for 2012, published independently (in Slovenian and English). See www.varuh-rs.si.

The selected non-governmental organisations registered in the Republic of Slovenia cooperate under the framework of NPM, together with organisations having obtained the status of humanitarian organisations and dealing with the protection of human rights or fundamental freedoms. When carrying out its duties, the NPM makes visits to all places where persons deprived of their liberty are located and verifies the treatment of these persons, makes recommendations in order to improve conditions and the treatment of persons deprived of their liberty and to prevent torture and other forms of cruel inhuman or degrading treatment or punishment. The locations in the Republic of Slovenia visited for that purpose by the Ombudsman are especially the prisons including all their units, as well as Radeče Correctional Home, juvenile institutions, social care institutions and special social care institutions, psychiatric hospitals, detention rooms, the Aliens Centre and the Asylum Centre, detention rooms operated by the Slovenian Armed Forces and all other places within the meaning of Article 4 of the Optional Protocol – including police intervention vehicles.

The Ombudsman actively cooperates with international supervisory mechanisms established under the UN and Council of Europe conventions. In 2012, a fourth visit was paid to Slovenia by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT) within the framework of its regular visits. As a part of its visit, the delegation met with government representatives, the representatives of the Ombudsman's Office and selected non-governmental organisations who informed the delegation of the findings made by the National Preventive Mechanisms when visiting locations for persons deprived of their liberty. I am satisfied that the cooperation with non-governmental organisations when implementing the duties under the NPM powers is becoming an exemplary example of good practice which is positively assessed also by international organisations for the protection of human rights. Representatives of the NPM are thus frequently invited to visit individual European countries to present their activities, achievements and good methods of work.

In 2012, the Ombudsman also cooperated with the Office of the United Nations High Commissioner for Refugees (UNCHR). The then Ombudsman in office, Zdenka Čebašek - Travnik, PhD and her colleagues met with the Council of Europe Commissioner for Human Rights, Thomas Hammerberg, and his successor Nils Muižnieks and representatives of the Group of Experts on Action against Trafficking in Human Beings (GRETA). The cooperation with the European Union Agency for Fundamental Rights (FRA) and the European Commission against Racism and Intolerance (ECRI) and the European Human Rights Ombudsman was also good. Every year, the representatives of the Ombudsman's Office take part in many meetings and conferences organised by individual Ombudsman (bilateral co-operation) and international associations of Ombudsmen: the International Ombudsman Institute (I.O.I), the Association of Mediterranean Ombudsmen (AOM), Children's' Rights Ombudspersons' Network in South and Eastern Europe (CRONSEE) and the network of Defence Force Ombudsmen.

I particularly wish to highlight a new mechanism of the United Nations Human Rights Council that is a universal periodical review within the framework of which Slovenia was dealt with in February 2010. Slovenia received approximately one hundred recommendations of which a report was made in March 2012. The Ombudsman also submitted its opinion on the attainment of the above mentioned recommendations and provided its view that there were no significant modifications in some areas, particularly in Slovenia's accession to some international treaties, in the arrangement of various issues which should have been introduced by the Family code which was rejected at the referendum (including the prohibition of physical punishment of children), better implementation of actions aiming at the arrangement of numerous issues regarding the Roma situation in Slovenia, the provision of efficient mechanisms and legal opportunities to sanction the cases of discrimination in all areas and the establishment of an independent Advocate of the Principle of Equal Opportunities, the adoption of efficient measures for the enhancement of the children's rights protection system and more frequent use of alternative sanctions to eliminate the problem of prison overcrowding and the implementation of prison sentences which would fully ensure the respect for the dignity of persons in prison. The Ombudsman will continue to closely monitor the implementation of recommendations and particularly insist on the adoption of measures for their implementation.

Slovenia has not yet acceded to some international conventions; I particularly wish to point out the urgency of ratifying the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the Convention on Contact concerning Children, and the Optional Protocol to the Convention on the Rights of the Child on Communications Procedure.

The routes to numerous legal proceedings are long, as ascertained by the Ombudsmen, often too long, it is very difficult to start along these pathways and the result of the proceedings is entirely unpredictable for many a person. That is why the Ombudsman strives for the state to provide a good quality and more widely accessible free legal aid which must be immediately available to clients. At the Office we met with initiators who are not eligible for free legal aid because they own a few square metres of inherited land for which they have no use and neither can they sell it or lease it. Some initiators exceed the set limit up to which free legal aid is

available but they are greatly in debt and simply cannot afford legal assistance. People warn that they feel second rate if they have no money to pay for attorneys-at-law while the opposite party may choose the best lawyers. That is why it is urgent that all attorneys-at-law offering free legal aid try their best to ensure legal assistance to people both to those who pay for it by themselves and to those whose bill is paid by the state. The state must pay lawyers for the provided legal assistance in good time. The question has also been asked how an injured party can, after a negative decision ruled by the prosecutor, continue the prosecution by themselves within eight days. The time period is surely too short.

The crisis which is becoming deeper and deeper every day, both the financial crisis as well as the crisis of value, has resulted in numerous issues in the social area. ZUJF brought about injustices in the field of housing policy, particularly for the young and single, and the housing policy of municipalities is also very weak. It has been noticed that many who have obtained an apartment cannot raise the money for its maintenance, despite the subsided rent, and as a result, disconnection of service supplies follow, especially the electricity supply. The costs of connection to the network, if people manage to raise the money for it, are so high that that amount could cover bills for electricity for several months and thus they find themselves in a vicious circle of the lack of payments and new disconnections.

Unemployment has knocked on the doors of many homes. Many jobs have been terminated due to victimisation in the workplace, bullying and harassment, lack of payment of social contributions, forcing people to start working as sole entrepreneurs and performing the same work as they used to do when employed by the same employer. There are numerous problems of agency workers who blindly believe in future payments to the employed and the problems of those exposed to victimisation owing to their membership in trade unions. This is followed by a hard path to the justice they seek, then the unpaid salaries for the work performed must be mentioned, the problem of voluntary internship, forced retirement as a result of ZUJF in 2012, problems with scholarships and payments of the costs for transport to work. The condition of foreign workers is particularly highlighted; it has been determined that they are definitely not equally treated as compared to the domestic work force. We at the Office hope that the new Employment Relationships Act (ZDR-1) adopted in April 2013 will at least remedy some of the above mentioned problems if not eliminate them.

Attention must be undoubtedly drawn to the Ombudsman's efforts to help people succeed in attaining faster settlement of their complaints in all ministries, particularly at the Ministry of Labour, Family, Social Affairs and Equal Opportunities. In the first months of my work as the Ombudsman I met with the Minister of the above mentioned ministry and some other ministers and I am satisfied that agreements have been reached, some small but significant changes in the solving of the accumulated problems. Thus, according to the assurances given by the Minister, some unworkable solutions in the field of child benefits and the payment of the kindergarten services should start to be remedied. According to the new arrangement, the personal income tax of the past year or even the year before will no longer be taken into account but the family's ability to pay and the possibility to obtain child benefit considering the new financial situation of the family. Salary compensation for sick leave has been provided for by the new Article 137(a) of the Employment Relationships Act as numerous initiators turned to the Ombudsman claiming that employers did not pay compensation for sick leave although this is a right provided for from public funds. Initially the obligation for the payment of salary compensation for sick leave was under the responsibility of an employer and an employee could not enforce this right directly from the Health Insurance Institute of Slovenia ("ZZZS"). In case of liquidity issues experienced by an employer, employees have obviously been left with no funds and instructed to take legal action. Neither of these two situations have fulfilled the basic intention for which the health insurance was concluded and contributions have been paid. Injustices were eliminated and the Ombudsman's efforts in this subject were successful. The time period for the application of the above mentioned Article is 12 July 2013 and we hope that such violations will not happen again in the future.

In my introduction I wish to particularly highlight the constitutional definition that Slovenia is a state governed by the rule of law and a social state. But the Ombudsman constantly notices that increasingly more violations of fundamental human rights occur, including the rights to human dignity. Laws adopted by means of fast-track procedures, also due to the eagerness to save funds, which even violate international obligations of the state, are frequently incomplete. The remedy of injustices by using the complaints channel or even the Constitutional Court is a costly experience for the state. This is confirmed by the consequences of the annulment of Article 143 of ZUJF by the Constitutional Court and some other previously incomplete measures of the policies aiming at seeking savings for the state in all areas. The new arrangement concerning enforcing rights to funds from public funds, in force since 1 January 2012, thus brought about a lot of sadness, trauma, reduction of the scope of their rights and the tightening of an already tightened belt particularly for the most vulnerable. The basic intention of the state and its institutions is to stop the flow of abuses of those who are not ashamed to do so and who will continue to look for holes and escape routes in the legislation and this could obviously not be ignored.

The situation regarding children raises concerns since the rejection of the Family Code at the referendum does not bring about the arrangement of foster care that is so urgent for the state and the regulation of which would be transferred to courts, and the all too necessary settlement of adoption issues, the inadmissibility of physical punishment of children, the arrangement of the Advocate of Children system and many more. Child maintenance also needs to be mentioned; the Public Guarantee, Maintenance and Disability Fund tries to help thousands of children for whom their parents cannot or do not want to pay their child maintenance. But a long-lasting route for seeking methods for the final settlement of payments and proving criminal offences is too burdensome for many a person and there is no perfect inspection supervision for beneficiaries which would consistently prevent undeclared work, payment in cash and is thus often related to lack of payment of child maintenance.

In numerous legal proceedings following the separation of their parents, children are treated as tradable goods with parents handing them from one to the other and even taking them away from one another. When pursuing legal methods, many barriers are encountered in the form of problems with experts and long waiting times for their opinions. Abuses and criminal and contentious proceedings are frequent which appear to be endless with very "devoted" parents. If and when these finish, usually even at the European Court of Human Rights, the compensation does not outweigh the missed hours, months and years that children have to experience facing constant battles and consequences which may be very severe. Legal methods – yes, the law enables them, but what if they can be unreasonably long and in the end the state pays heavy penalties and compensation due to the long duration of proceedings; often these should be imposed on those who in an intensive search for their rights have completely intentionally prolonged these proceedings.

Eight years ago the Ombudsman started The Advocate – Child's Voice project. The fundamental objective of the project was and has remained to provide a child with an advocate when this is necessary, when parents cannot or are not able to suitably represent a child in all proceedings before institutions when issues important for a child are decided. I am satisfied that there are as many as 88 trained advocates operating within the framework of the project who have been placed to represent as many as 250 children. It is these children that have positively evaluated the work of their advocates. I myself have participated in the project as one of the midwifes during the child's birth. I am convinced that the discussion of a Special Ombudsman's Report on the Advocate – Child's Voice Project, submitted to the National Assembly of the Republic of Slovenia by the then Ombudsman, Zdenka Čebašek - Travnik, PhD, would confirm the urgency of further development of the project and support its institutionalisation and independent functioning for the benefit of all children in Slovenia who are in urgent need of such support.

There is also a category of children and adults with special needs which call for amendments of the existing arrangement: early treatment for children with special needs, inclusive methods of education and upbringing, schooling, possibilities of carrying out programmes for those with a lower educational standard, more possibilities for supportive and integrative employment for adults with various disorders in physical and mental development and the implementation of programmes for older persons with special needs. In 2013, at the time of finishing the mentioned report, a signing of a special memorandum is being prepared, together with corrections of a translation of a ratified UN Convention on Rights of Children with Disabilities which in Article 24 improperly interprets the term "disabilities" as "invalidity" thus excluding many persons. The English term conceptually comprises a broader circle of persons with special needs, including those with Down syndrome, suffering from autism, etc. The authentic interpretation of the convention and the term "disability" will have to be taken care of, which will have to be done by the responsible ministry and the National Assembly and adjust the application accordingly.

The Ombudsman has also drawn attention to injustices in relation to institutional care since some initiators have lost their right to the minimum pension support for being in such full-day care. The Ombudsman was approached by parents of persons committed to the daily care provided by the Dornava Training, Work and Care Institution who, when attaining 26 years of age, would finish the training in a special educational programme and lose their possibility to be committed to daily care.

In regard to the area of work for children with special needs and deaf children, issues have arisen related to the right to an interpreter and the use of sign language at all levels of education, from kindergarten to University.

On my first operation outside the head office in Ptuj, together with my colleagues, I also visited the Ljudevit Pivko, MD, School for children with special needs. It is absolutely not suitable for the education and care of children. The issue regarding the construction of a new school for which the construction permit has already been issued also lies in the fact that it is a school of regional importance covering the needs of 17 municipalities of which some do not wish to participate in contributing the necessary funds for the school's construction.

I have decided that in the capacity of the Human Rights Ombudsman, and in this case also the Ombudsman of Children with disabilities and their parents, I seriously approach the project of providing assistance in the school's construction, by means of a very special project which, I hope, will already show some results by the time of my presentation of the mentioned report to the National Assembly. Children can no longer wait, conditions are unbearable and the smell in the school is such that you forget it only with difficulty. I hope that the media who presented the school and all its problems will take care to provide their assistance in a pan-Slovenian campaign which will begin in the first week of June. In this case, the Ombudsman, as an institution, will take the side of the weakest – the children who are additionally marked in terms of their health, and thus support the endeavours of the Parent's Council, the headmaster and the faculty. Let the first week of June thus become an annual week of solidarity for the help of at least one of the vulnerable groups of people.

It is also important to draw attention to health care and health insurance. There is still no new health care legislation. The extension of paediatric-psychiatric treatment of children is more than urgent since many are left without it or it is being given with long, or too long intervals. The Ombudsman has also submitted comments on the Patient Rights Act.

There is an area presented in the report without which everything else may even be meaningless. This is the area of environment. The Ombudsman continues with the regular monthly meetings with non-governmental organisations (NGOs) from all fields of environment protection, of an animate and inanimate nature. The principle of public participation when adopting important decisions surely has not come into effect, a warning which is made by the NGOs. In the report, the attention is dedicated to the pollution of waters, noise, noxious smells, pollution with dangerous PM10, illegal construction of buildings. Luckily, the media have recently started to report on these matters in an intensive manner, not only to report, but also seeking accountability. This year it has been concluded that the cooperation with the NGOs will continue in the field where some areas with critical human health concerns will be visited, particularly the Celje basin, the Mežica Valley, Zasavje and the problems of the outskirts of Ljubljana. The question regarding the payment of monitoring has been raised. These definitely should not be covered by polluters or else doubts about partiality may be raised. In addition to the very typical cases of illegal constructions which shoot up like mushrooms after sudden rain, cases are encountered of constructions which have been registered in the Land Register for which, based on these entries, people receive mortgage loans but later it is determined that the construction is illegal and its demolition must be paid for by the people themselves. Who is responsible, and why and how this could happen, is surely a difficult task for the numerous services whose operation in 2013 will definitely be under the close supervision of the Ombudsman.

As regards the Ombudsman's operation outside the main office, it is a matter of well-established practice that we encounter stories of violations of human rights suffered by citizens who for various reasons cannot come to Ljubljana or do not wish to write to the Ombudsman but wish to talk to the Ombudsman in person in the field. The Ombudsman's communication activities are thus being successfully continued. Similarly there is cooperation with numerous NGOs from various areas, not only from the field of environment protection but also from other areas.

In 2012, the Ombudsman published the regular Annual Report for 2011 and now the fourth report on the implementation of duties under the National Preventive Mechanism. The Ombudsman's Bulletin (No. 17) was also issued: Enforcing the rights in any work. Owing to the reduced financial means for the work of the Ombudsman, an electronic publication has been created, giving the option of browsing through the pages, which has been published on our web site: www.varuh-rs.si.

Numerous meetings with ministers took place: with the Minister of Foreign Affairs, the Minister of Labour, Family and Social Affairs, the Minister of Agriculture and Environment, the Minister of Defence, the Minister of Health, the Minister of Education, Science, Culture and Sport, the Minister of the Interior, and the Minister of Justice and Public Administration. The Ombudsman's efforts for good relations with the media were presented at press conferences on which answers to as many as 240 questions by the journalists were provided.

A table-form review of work by individual areas of the Ombudsman's work was also prepared this time. It is, however, not published within this report but it can be read on our web site, in the attachment to the E-Report.

When the review of introductory thinking needs to be summarised, I remember my first short address to the Deputies of the National Assembly upon the election of the Human Rights Ombudsman on 1 February 2013. I said that such strong support is an expectation of good work whereby I meant that the Deputies are well aware of their great responsibility imposed on them by the people who have elected them. That is why the Ombudsman's recommendations, opinions and proposals need to be taken seriously and they need to be taken into consideration since they definitely represent a reflection of actual problems encountered by the inhabitants of Slovenia. Observing recommendations and the care for their implementation may shorten many legal proceedings taken by citizens, if and when their rights in numerous fields are violated.

The new report for 2013 will be prepared during the celebration of the 20th anniversary of the Ombudsman of the Republic of Slovenia. The time will come when answers to numerous questions from the past will have to be given and the path into the future will have to be outlined. That is why this report is surely very important since the next one will be followed by the chronicle of 20 years, covering ups and downs in the field of the protection of human rights. In an area which is sensitive, full of traps but also of safeguards which are carefully, conscientiously and wisely sought and established by the Ombudsman.

I question myself whether the Ombudsman's report will ever become shorter as a result of a greater observance of human rights. This will only happen when the Ombudsman's recommendations are taken into account and there will be fewer violations than as presented in this report.

Vlasta Nussdorfer,
Human Rights Ombudsman of the Republic of Slovenia

Content of work and
review of cases handled

2. CONTENT OF WORK AND REVIEW OF CASES HANDLED

2.1 CONSTITUTIONAL RIGHTS

GENERAL

In 2012, in the field of constitutional rights, the Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") received almost three times more initiatives than in the previous year. In terms of quantity, the number of initiatives increased the most in the field of the ethics of public statement language since as many as 353 new initiatives were received in this field. More initiatives were also received in the following fields: freedom of conscience, freedom of assembly and association and protection of privacy and personal data, whereas there were fewer initiatives in the field of the enforcement of the right to vote. There were no particularly interesting initiatives submitted in relation to the field of assembly and association and operation of security services, while not a single new initiative was received in the field concerning access to information of a public character which is why these fields are not particularly highlighted in this report. A more detailed explanation of the Ombudsman's work is presented in the remainder of the text, described according to individual narrower fields of constitutional rights, together with the content of the most typical or frequent cases.

2.1.1 Freedom of conscience

According to the index, the number of initiatives in this field increased the most of all fields; in nominal terms this means that 64 initiatives were received as compared to 2 in 2011. Such an increase is mainly a result of a great number of (similar or very similar) initiatives in relation to a (repeated) arson attack on the cross in Strunjan in May 2012. In their initiatives, the initiators expressed their opinion that an arson attack on the cross is an act of public incitement to hatred, violence and intolerance and their expectation for the responsible national authorities to act in relation to this. It was replied to the initiators that it was fully understandable that an arson attack might deeply hurt the feelings of believers which is why the act was assessed as unacceptable. The Ombudsman's expectation was also expressed, that the Police and the Office of the Prosecutor, which were also approached by the initiators, would investigate the case and adopt a decision in regard to a potential criminal prosecution.

2.1.2 Ethics of public statement language

In 2012, the number of initiatives received in relation to this field significantly increased (353 initiatives), this time by more than three times as compared to the previous year (the index of new cases is 330). It needs to be taken into account that the number of new initiatives concerning the ethics of public statement language has been increasing in all previous years. Mass complaints in relation to some attention-attracting cases and statements which, in the initiators' opinion hurt their feelings and required a response by state authorities, including the Ombudsman, contributed the most to the increase of new cases. Many initiatives of this type were obviously submitted on the basis of activities by individual civil society organisations and their web portals which invited the visitors to lodge a complaint. This was evident in terms of the content and form of the complaints.

On the basis of initiatives and responses on these initiatives it may be determined that many have recognised the Ombudsman as an institution which should have a special role and responsibility in cases concerning "hate speech". Such "visibility", however, is not in accordance with the role and powers of the Ombudsman as determined by the Constitution and the Human Rights Ombudsman Act ("ZVarCP"). Pursuant to Article 9 of ZVarCp, the Ombudsman may deal with wider issues important for the protection of human rights and fundamental freedoms and for legal certainty for the citizens of the Republic of Slovenia, but this is not the Ombudsman's primary duty. In accordance with the Constitution and the law, the Ombudsman's main duty is the handling of initiatives about irregularities committed by bodies of national and local authority or holders of public powers in relation to individuals during their work. In regard to hate speech, as a rule, this is not the case since authors of disputable statements, writings or texts are private individuals over whom the Ombudsman holds no jurisdiction. Neither has the Ombudsman any responsibility in relation to the great majority of the media and the creators of media content.

Possibilities of prosecution and response to hate speech

The Ombudsman particularly wishes to point out that the Ombudsman is not required to provide an assessment of whether in an individual case elements of a criminal offence are present. Such an assessment falls under the responsibility of prosecutors and judges which is why individual initiators or journalists cannot expect the Ombudsman to take a stand concerning the criminal nature of individual statements or messages. At the same time, a criminal prosecution is also the ultimate means to respond to the occurrences of hatred and intolerance. Public response and public conviction of unacceptable practice is also very important. But such a response cannot be expected only from the Ombudsman who has no special responsibility in this regard. It is also important that the response is immediate and, if possible, in the forum where the unacceptable statements occur. If hate speech occur in politics, let politics make a response, if it occurs on web forums, let the participants respond, etc.

The Ombudsman's Office holds a conviction that a consistent response by the law enforcement authorities to occurrences of public incitement to hatred, violence and intolerance and potential subsequent punishment has an irreplaceable impact of a preventive nature. Only such responses, forming a "top of the pyramid" of responses to these occurrences, give meaning to other activities of prevention and of an educational nature. If perpetrators of the most extreme occurrences of public incitement to hatred and intolerance are not discovered and treated, simple convincing has no effect while the perpetrators of these acts increase in number and test the limits of the tolerance of state authorities.

The Ombudsman has already made a recommendation to the Government in regard to this topic: to examine the possibility of punishing public incitement to hatred, violence or intolerance as an offence. The Protection of Public Order Act ("ZJRM-1") defines violent or audacious behaviour causing the feeling of humiliation, endangerment, fear or hurting feelings (Article 6) as an offence, just like indecent behaviour in a public place (Article 7) and writing graffiti on buildings (Article 13). Article 20 of ZJRM-1 stipulates that a perpetrator is punished with a higher fine if this and some other acts are committed with the intention to provoke intolerance on the basis of national, racial, sexual, ethnic, religious or political origin or sexual orientation. Article 1 ZJRM-1 stipulates that the purpose of this act is the implementation of the right of people to safety and dignity by protecting them from acts interfering with the physical or mental integrity of an individual. According to ZJRM-1 there is no particular way to classify as an offence, statements of hatred and intolerance submitted through the world-wide-web and other new means of communication (social networks). However, by way of a suitable interpretation of the definition of a public space referred to in Article 2, item 1 of ZRJM-1, these forms of communication might also be defined as public space, that is; as the space that is "accessible to anybody under certain conditions". It is the Ombudsman's belief that it would be useful to test this possibility in practice.

Compensation owing to an unjustified interference with privacy by way of a public publication should have been higher

The Ombudsman has made recommendations several times that, in Slovenia, it would make sense to review the possibility of enacting a civil fine or paying compensation due to an unjustified interference with privacy by way of public publication. Specifically, according to the current system, an injured party must prove material and non-pecuniary damage incurred by way of a publication of unjustified reproaches which is why the judgments awarding compensation for the interference with personal rights are too low in order to have a dissuasive impact on the media oriented towards producing sensational news. Interferences with personal rights committed by way of a public publication have a particularly high impact on the integrity and life of individuals in the contemporary world intertwined with information which is why it is believed that a different evaluation of non-pecuniary damage is justified in this regard. This might also be an important contribution to the decrease of interferences with the reputation and honour of an individual by way of public promulgation. As a result, the Ombudsman reiterates its recommendation.

Radio-Television Slovenia needs a more transparent system of responses to initiatives, proposals and criticism by listeners and television viewers

Stating an opinion that one TV show on the Radio-Television Slovenia (RTV Slovenia) crossed all boundaries of good taste, an initiator complained to the Human Rights Ombudsman of the Republic of Slovenia. The initiator believed that the message of the show was biased setting boundaries between people of various views. The initiator was informed that an individual who forms the opinion that journalists or leaders of RTV Slovenia violated the Professional Criteria and Principles of Journalist Ethics in Programmes of RTV Slovenia, first has to turn to the Ombudsman of Rights of Viewers and Listeners of RTV Slovenia (Viewers' and Listeners' Ombudsman). The initiator followed this advice but did not receive any answer from RTV Slovenia within 21 days which is why it was assessed that the conditions for the Ombudsman's intervention in the matter were fulfilled.

In the Ombudsman's inquiry addressed to the director of RTV Slovenia, the Ombudsman was interested whether the initiator's complaint had been received and whether an answer might be submitted to him. Since unclear information concerning the complaint procedure for viewers and listeners appeared on the web site of RTV Slovenia, the question was also raised; in which cases are the complaints dealt with by the Public Relations Office of RTV Slovenia and in which cases are these handled by the Viewers' and Listeners' Ombudsman? Following the exchange of inquiring letters, the Ombudsman addressed an opinion to the management of RTV Slovenia that every viewer addressing a complaint regarding the content of the programmes broadcasted by the RTV Slovenia should receive an answer from the Viewers' and Listeners' Ombudsman. This position is based on the principle of good management and an explanatory note on the constitutional right to a petition. In the Ombudsman's opinion this holds true even more for a public institution operating in the interest of viewers and listeners and has established an office of the Viewers' and Listeners' Ombudsman for that purpose. The Ombudsman also proposed to the management of RTV Slovenia to remove unclear information from their legal documents and on their web site as to who the addressee of a viewer's or listener's complaint must be.

In his reply to our proposals, the Director General of RTV Slovenia communicated to the Ombudsman's Office that unclear information regarding the addressee of a viewer's or listener's complaints have been removed from the web site. It was also stated that RTV Slovenia would take care that a person lodging a complaint would receive a timely answer from the editors-in-chief of programmes which, in accordance with the legislation, are the first to deal with complaints, or by the Viewers' and Listeners' Ombudsman. The Director General also notified the Ombudsman's Office that the adoption of professional criteria and principles of journalist ethics within the programmes developed by RTV Slovenia was in the final phase whereby the office of the Viewers' and Listener's Ombudsman would be renamed "the Ombudsman of the Rights of Users of RTV Slovenia's Programmes" and its operation would be harmonised with the legislation and the Statute of RTV Slovenia. More detailed methods and procedures concerning the operation of this Ombudsman would be determined by new rules.

2.1.3 Voting rights

In 2012, in the field of the implementation of voting rights, the Ombudsman received slightly fewer initiatives (9) than in the previous year (13). In 2012, there were no parliamentary or local elections, but in spite of that, initiators addressed interesting initiatives and questions to the Ombudsman. As regards issues in terms of content, there were two questions that were at the forefront in 2012: (1) efficient legal remedies of a candidate for an alternate member of the Municipal Council in a case of a mayor's and other municipal bodies' inactivity; and (2) potential abuses in procedures concerning the elections of representatives of local interests into the National Council. In both cases, their handling had not been concluded in 2012, the preliminary findings by the Ombudsman show certain gaps in the legislation and in the practice of responsible authorities since potential abuses by them in election procedures are not being prevented in an efficient manner.

Other more interesting initiatives referred to: an issue concerning the allegedly unequal treatment of a candidate for the President of the Republic of Slovenia in the media, alleged problems in receiving and submitting the form expressing support by prisoners and alleged irregularities in the procedure concerning the discharge of a member of a municipal council. In these cases, no irregularities were determined by the Ombudsman, or the initiators failed to prove them.

For several years, the Ombudsman has been drawing attention to the problem of postal voting for those voters who, on the day of voting, are not in the place of their permanent residence and they are not accommodated in homes for the elderly or in hospitals. The Government has tried to solve this problem, of which the Ombudsman has also warned, by way of proposal of amendments to the National Assembly Election Act. However, this proposal, which has to be passed by a two-thirds majority vote of all deputies, was again rejected by the National Assembly.

2.1.4 Protection of privacy and personal data

Since 2010, the category 1.6 has been named the Protection of Privacy and Personal Data, before that it only covered issues concerning protection of personal data. The extension of this field has been demonstrated as justified and it is proved by the number and variety of initiatives which have opened questions in which regard the Ombudsman has previously not taken a stand. The number of initiatives received in this field in 2012 increased (from 29 to 48).

Just like in the previous year, the content of initiatives received in the period concerned was very varied. Initiatives, and particularly questions in relation to interference with privacy and personal data through new methods of data exchange (in particular the world-wide-web), and protection of privacy in multi-apartment buildings and at work posts were predominant. In most cases, initiators were given explanations on their rights or given instructions in regard to the use of legal methods for the protection of their rights and interests. In most cases they were directed to the Information Commissioner or the national supervisors for the protection of personal data.

Abuse of archived material is enabled by disrespect for the Protection of Documents and Archives and Archival Institutions Act

An initiator turned to the Human Rights Ombudsman of the Republic of Slovenia stating that some media, by way of publishing documents of the ex-State Security Service in relation to the "BBC London" case, had allegedly violated his personal rights in an unacceptable manner. The initiator stated that he was a victim of the State Security Service while, on the contrary, the media wished to present his alleged cooperation with the State Security Service by partial and incorrect publication of individual archived documents.

The Ombudsman informed the initiator that the violation of fundamental rights in relationships between individuals and private legal entities, such as the media, cannot be determined by the Ombudsman based on the powers granted. In spite of that, it was determined that the alleged violation might arise owing to irregularities in handling the archived material which is under the responsibility of the Archives of the Republic of Slovenia (Archives).

It was determined that that documents referring to the "BBC London" case were part of the archives of the former State Security Service. The access to these archival documents is regulated by Article 65, Paragraph 3 of the Protection of Documents and Archives and Archival Institutions Act ("ZVDAGA"). It stipulates that the archived material created before the constitution of the Assembly of the Republic of Slovenia on 17 May 1990 and relating to former social and political organisations, internal affairs bodies (for example, the Police), judiciary authorities and intelligence security services is accessible without any limitations.

But the access with no limitation is not granted for archived material with sensitive personal data obtained by way of violating human rights and fundamental freedoms and relating to persons who were not holders of public functions. The Ombudsman believed that the matter in the actual case was such an exemption from the principle of free access since the initiator was not a holder of a public function in the former Yugoslavia, and in addition, the published documents from the "BBC London" case included some sensitive data about the initiator (for example, on his political beliefs). It is also clear from records about the initiator kept by the State Security Service that data on the initiator was received by opening letters and other methods contrary to his fundamental human rights.

The Ombudsman sent an inquiry to the Archives and determined from its replies that until the summer of 2011, prior to the handing over of the material, the Archives **did not verify with the applicants whether the requested material included sensitive personal data and as a result represented an exemption from the principle of free access.**

After the publication of this case on the Ombudsman's web site, at the end of August 2012, the Inspector of the Inspectorate of the Republic of Slovenia for Culture and Media (IRSCM) from the Ministry of Education, Science, Culture and Media requested a copy of documentation from the case in order to deal with the matter. Pursuant to Article 8, Paragraph 3 of the Ombudsman's Rules of Procedure, authorising the Ombudsman or Deputy Ombudsman to allow an inspection in the case upon a justified application in writing, regardless of the privacy of the procedure held by the Ombudsman as stipulated by Article 8 of the Human Ombudsman Act, the responsible Deputy Ombudsman decided to submit a copy of all documents from the case file to the Inspectorate with the exception of those submitted by the initiator and created on the basis of interviews with him. The Inspectorate was asked to take into account the privacy of the procedure held by the Ombudsman when handling the above mentioned material and to submit to the Ombudsman's Office the (final) findings made in this inspection procedure.

When cases to be published in this Annual Report were being prepared, it was the Ombudsman's wish to determine what the findings of the inspection procedure were in this case which is why a request was addressed to the IRSCM asking for the information about the results of the inspection procedure in this case. After the exchange of letters, in its final reply the IRSC communicated to the Ombudsman's Office that the inspection procedure in the case, initiated on the basis of the case published by the Ombudsman, will be terminated since ZVDAGA was supposedly deficient in not determining the method of implementing Article 65, Paragraph 3 stipulating exceptions from general accessibility of archives of the former State Security Service and since no special inspection measures were envisaged for this case.

The finding that Article 65 of ZVDAGA is not being implemented was unacceptable to the Ombudsman, as well as the fact that this cannot be enforced by a responsible inspector nor imposed upon the relevant party, that is the Archives of the Republic of Slovenia, to do everything necessary to establish the legal state of affairs. Excuses about a deficient law were not substantiated and justified, in the Ombudsman's opinion. The law needs to be implemented in the text as it has been adopted regardless of the fact that it imposes more work and obligations on the one who has to take care of that, that is the Archives of the Republic of Slovenia, or if that means a temporary inaccessibility of part of the archives for the public. Human rights and their implementation must without question have priority over other interests, supposedly the information of the public with historical facts or even political interests in this regard. Scruples on the adequacy of the law are, surely, legitimate but by no means can these be a reason for not implementing the law. Those who believe that the law is deficient should start procedures for its amendment or lodge a challenge to constitutionality with reference to individual solutions.

Neither did the Ombudsman agree with the evaluation by the Inspectorate that inspection measures are not possible because any given law particularly envisages them. The Inspection Act ("ZIN"), as an umbrella inspection act, in Article 32, Paragraph 1, in its first indent, stipulates that an inspector has a right and duty **to impose measures for the elimination of irregularity and deficiency** in such period as determined by the said inspector himself/herself when, in carrying out duties relating to the inspection, an inspector determines that a law or any other regulation or another legal document the implementation of which is being inspected is violated.

The Ombudsman lodged a request with the Constitutional Court challenging the constitutionality of the Protection of Documents and Archives and Archival Institutions Act since the handling and accessibility of material of psychiatric institutions containing sensitive personal information on medical treatment are not regulated.

Several times the Ombudsman has been informed by the Ljubljana Psychiatric Clinic of a problem regarding the handling of material on the treatment of psychiatric patients requested by the Archives of the Republic of Slovenia pursuant to the Protection of Documents and Archives and Archival Institutions Act (hereinafter referred to as: ZVDAGA). In Article 40, Paragraph 1, ZVDAGA stipulates that all entities of the public law must deliver the archival material to the Archives not later than 30 years after the creation of the material. This obligation also applies to material containing sensitive personal data, including medical data on psychiatric treatment. The Ljubljana Psychiatric Hospital believes that this data should remain in the possession of a patient and be used only for professional and scientific medical purposes. The Ljubljana Psychiatric Hospital opposes the handing over of such information to the archives on the basis of ethical and professional reasons substantiated by the position of the Commission of the Republic of Slovenia for Medical Ethics. After an inspector responsible for the archives requested the handing over of all hospital archives to the Archives of the Republic of Slovenia, Ljubljana Psychiatric Hospital used all legal

remedies to prevent the submission of documents, including appeals to the Supreme and Constitutional Court. However, the said hospital was not successful in these proceedings since the legal basis for the inspector's request is given in Article 40 of ZVDAGA. When it was clear that the challenge to the constitutionality of ZVDAGA, lodged by the Ljubljana Psychiatric Hospital, would not be successful, the said hospital requested the Ombudsman to lodge a challenge to the constitutionality of ZVDAGA in the Constitutional Court of the Republic of Slovenia. As a matter of fact, the legal interest must be demonstrated to be challenging the constitutionality, which, however, was not demonstrated by the hospital in this case since it is only directly affected individual, who should have complain and exhausted all available legal remedies before resorting to the challenge of constitutionality before Constitutional Court.

The Ombudsman substantiated the challenge to the constitutionality by stating that the challenged Article of ZVDAGA is contrary to the provisions of the Constitution of the Republic of Slovenia since it does not specifically regulate the possibilities and conditions for the delivery of personal medical data containing information on psychiatric treatment to the Archives. In the Ombudsman's opinion, the current arrangement is contrary to Article 38 of the Constitution of the Republic of Slovenia since it enables a subsequent processing of this data contrary to the original purpose of their collection, and contrary to Articles 34 and 35 since it enables non-constitutional interferences with personal dignity and inviolability of human physical and mental integrity, a person's privacy and personal rights. In relation to the challenged provision of ZVDAGA, the Ombudsman has also determined a violation of Article 14 of the Constitution of the Republic of Slovenia providing for equality before the law and prohibition of discrimination since the obligation to hand over material containing sensitive medical data applies only for entities of public law and not also to private health care services operators. The Ombudsman believes that there are no justified reasons for such differentiation.

The Ombudsman also proposed to the Constitutional Court that it suspend the implementation of Article 40, Paragraph 1 of ZVDAGA in the part referring to the material of psychiatric institutions until the final decision be made since it has been assessed that consequences which are hard to remedy might be created when transferring this data to the Archives.

In regard to this request, on 30 May 2012, the Ombudsman received a decision by the Constitutional Court of the Republic of Slovenia by way of which **the Constitutional Court ruled in favour of the Ombudsman's proposal and temporarily suspended the implementation of the "Archives Act"** in the part referring to the sensitive personal data on psychiatric treatment until the final decision by the Court is made in this case. At the time of the production of this Report, the Constitutional Court had not yet decided on this request.

- The Ombudsman invites everybody participating at public debates, in particular politicians, not to incite hatred or intolerance based on any personal circumstance in their statements and texts and when such cases occur to immediately respond and express their disapproval.
- The Ombudsman again proposes to the Government to examine the possibility for the introduction of a civil fine owing to unjustified interference with integrity and reputation and privacy by way of public publications.
- The Radio-Television of Slovenia Act should define principles and rules concerning the implementation of pre-electoral and pre-referendum presentations and shows on public radio and television in such a manner that no unequal treatment and various interpretations of the law would occur.
- The Ombudsman proposes to Radio-Television Slovenia to introduce a more transparent system of responses to initiatives, proposals and criticisms by listeners and television viewers
- The Ombudsman proposes that the collection, protection, period of storage and further processing of material of psychiatric institutions be specifically regulated by the law.
- The Ombudsman recommends to the Government of the Republic of Slovenia that it examine the efficiency of procedures concerning the approval of alternate members of municipal councils, in particular the judicial protection of candidates for choosing an alternate member in cases of a Mayor's or other municipal bodies' inactivity or obstruction.
- The Ombudsman recommends to the Government that, after the examination of the current practice, such amendments to legislation be proposed which would prevent the irregularities and abuses of electoral procedures determined and inefficiency of legal remedies in procedures concerning the election of representatives of local interests into the National Assembly.
- The Ombudsman again recommends that, by way of the National Assembly Elections Act, the right to postal voting be provided to everybody who cannot exercise their right in the place of their permanent residence.
- The Ombudsman recommends to the Archives of the Republic of Slovenia, the responsible inspector of the Inspectorate of the Republic of Slovenia for Culture and Media and the Ministry of Culture to provide for a consistent implementation of Article 65, Paragraph 3 of the Protection of Documents and Archives and Archival Institutions Act.
- The Ombudsman recommends to the responsible ministry that within the framework of the amendments to the Protection of Documents and Archives and Archival Institutions Act the possibilities of statutory solutions be examined which will better take into account the interests of parties concerned and their relatives when shortening time periods concerning the inaccessibility of the public archival material containing sensitive personal information.
- The Ombudsman proposes that a solution in the Access to Public Information Act be adopted to enable the achievement of the principle of the privacy of the procedure held by the Ombudsman in relation to matters handled by the Ombudsman pursuant to the Human Rights Ombudsman Act.

1. Religious ceremony in the premises of a public school

A great number of initiators turned to the Human Rights Ombudsman of the Republic of Slovenia owing to an event taking place on the Diocesan Day of Youth in the premises of the Šolski center Postojna public school. A lecture by a "cured" homosexual Luca di Tolva supposedly took place within the programme of the Diocesan Day. Initiators were offended due to the content of the lecture as well as the venue of the event. The content of the envisaged lecture was, in the initiators' opinion, questionable particularly due to (an alleged) statement by the lecturer that homosexuality is a disease and disability. Some were also disturbed by the lecturer's assertion that he had cured himself of the HIV disease without any treatment. The initiators believed that such lectures, disputable from a professional point of view, mislead young people while in terms of society contribute to an additional spreading of ideas of hatred and inequality towards homosexuals.

The Ombudsman informed the initiators that, based on the powers granted, the Ombudsman determines the violations of human rights and fundamental freedoms only in relationships between individuals and authorities. The Ombudsman cannot make any assessment regarding a lecture organised by private individuals. In regard to the "recovery" from homosexuality, Zdenka Čebašek - Travnik, PhD, as the Ombudsman and a doctor, joined the opinion of Slovenian psychiatrists and clinical psychologists who made a public statement concerning the unacceptability of methods of "curing" homosexuality.

The Ombudsman also examined the initiative in regard to the venue of the event. According to the event announcement it was determined that a mass was also planned to take place within the programme, to be given by the Bishop of Koper. In this regard, nine days prior to the announced event, the Ombudsman intervened with the Ministry of Education, Science, Culture and Sport and the Inspectorate of the Republic of Slovenia for Education and Sport and later also with the director of the school centre. The Ombudsman drew attention to the provisions of the autonomy of the school premises referred to in Article 72 of the Organization and Financing of Education Act ("ZOFVI") in principle prohibiting confessional activity in public schools and allowing it only in extraordinary and strictly determined cases. In no case does ZOFVI allow for an organised religious ceremony which also includes giving of Mass, to be carried out in a public kindergarten or a school.

On the basis of the Ombudsman's inquiry, the Ministry of Education, Science, Culture and Sport which was not informed of the planned events, five days before the planned event, addressed a request to the director of the school centre to provide certain explanations. The Ministry was particularly interested in the Venue Lease Contract and the programme of the announced event. Only a few days prior to the event, the director of the school centre had not yet signed the lease agreement neither was she informed of the content of the announced event. In spite of that, after the intervention by the Ministry of Education, Science, Culture and Sport as a result of "heated responses from the public and different interpretations of Article 72 of ZOFVI", she withdrew her consent to the organisation of the event.

The Inspectorate for Education informed the Ombudsman's Office that the director of the school centre was warned of the obligation to protect the autonomy of the school space nine days before the event but the director (up to the intervention by the responsible Ministry) insisted that the situation was catered for in terms of the legal aspect, that the event was co-ordinated with the Ministry of Education, Science, Culture and Sport and that in regard to the event, the school had at its disposal a legal opinion of an expert who in his own opinion stated that in cases when a religious community does not have its own premises, the school must enable the use of its premises.

At the request of the Ministry, the director of the school centre had to revoke her statements on alleged co-ordination of the event with the Ministry of Education, Science, Culture and Sport since the Ministry did not take a stand in regard to the content of the event and even warned the director in a telephone conversation on the provisions concerning the autonomy of the school premises.

The initiative was justified; as a result of the Ombudsman's immediate intervention, the violation of provisions of the autonomy of school premises was prevented in due time. The case demonstrates an irresponsible action by the Director, too little attentiveness in the managing of a school centre, a disregard of warnings by the inspectorate and her dubious defence. In her communication with the Inspectorate, the director made excuses regarding her intention by (falsely) stating the fact of the co-ordination of the event with the responsible Ministry and (wrong) legal interpretations of provisions concerning the autonomy of school premises, and later, in the communication with the responsible Ministry and the Ombudsman she was claiming that she was not familiar with the content of the event for which the school premises were intended to be rented. **1.2-275/2012**

2. Architectural barrier at the polling station for persons with disabilities

Before the second round of the elections for the President of the Republic of Slovenia, an initiator turned to the Human Rights Ombudsman of the Republic of Slovenia with a complaint that stairs hindered access to the polling station classified on the list of polling stations as being adapted for persons with disabilities. The initiator also addressed his complaint to the National Electoral Commission (NEC).

The Ombudsman assessed that the initiation might be justified. Pursuant to Article 79(a) on the National Assembly Elections Act, the District Electoral Commission for the territory of the district, determines at least one polling station accessible to persons with disabilities. On its web site, the National Electoral Commission publishes the list of polling stations accessible to persons with disabilities. In the actual case, the polling station was classified on a list of those accessible to persons with disabilities but two stairs prevented the initiator from having access to the polling station in a primary school which is why an inquiry was addressed to the National Electoral Commission.

The said Commission submitted a reply to the Ombudsman's Office by the District Electoral Commission that the initiator was called immediately after receiving his justified complaint and the ability to vote at home was made available to him. The District Electoral Commission also made a promise to immediately seek agreements to have the polling station suitably organised. **1.5-9/2012**

2.2 DISCRIMINATION

GENERAL

The number of initiatives classified within the field of discrimination was higher in 2012 (65) than in the previous year (49). There were fewer initiatives claiming discrimination based on national or ethnic origins (17) and employment (3); in 2012 no initiative was received related to equal opportunities based on gender. The increase in the total number of initiatives related to discrimination is thus mostly the result of the increase of number of initiatives classified within the category "other", stating discrimination on other bases. Among these initiatives the biggest number claimed inequality and discrimination in regard to the decrease in the pension amount pursuant to the Fiscal Balance Act (ZUJF). Based on these initiatives, in July 2012, the Ombudsman lodged a challenge to the constitutionality of Article 143 of ZUJF before the Constitutional Court of the Republic of Slovenia, proposing a temporary suspension of its application and an absolute priority in the handling of the case. The application asserting as its main argument an unequal treatment in regard to the decrease of some pension amounts was classified by the Ombudsman within the field of discrimination but the majority of such initiatives was dealt with by the Ombudsman within the field of pension insurance which is why more is written on this request and such initiatives under the section presenting issues regarding pension insurance.

Owing to the great number of initiatives classified within the category "other", in the beginning of the year, two sub-categories were added to the field of discrimination. These are: equal opportunities in regard to physical or mental disability (invalidity) and equal opportunities in regard to sexual orientation. Initiatives concerning these two fields will thus be presented in terms of statistics in the report for 2013.

2.2.1 Mechanisms for protection against discrimination and the organisation of the state

For several years the Ombudsman has been drawing attention to the fact that the legal framework and the institutional mechanisms for the elimination of discrimination are not suitable and not in accordance with the requirements of the Community acquis. In the last report it was again recommended that statutory solutions be adopted which would, in accordance with the Community acquis, ensure impartial, independent and efficient handling of cases concerning violations of the prohibition of discrimination on all bases and in all fields. Under the Ombudsman's recommendation, an independent Advocate needs to be established for that purpose who would hold powers to investigate cases on violation of the prohibition of discrimination and to punish violations, both in the public and the private sector.

In regard to 2012 it has to be observed not only that neither the Government nor the National Assembly followed this recommendation, on the contrary, the situation in this regard even worsened. As regards Government Offices, the Office for Equal Opportunities was abolished; the Advocate of the Principle of Equality used to operate within the structure of this Office, which following the reorganisation, was "absorbed" into the offices of the Ministry of Labour, Family and Social Affairs. Therefore, this is a step away from and not closer to an independent Advocate as envisaged by the European regulatory system.

A few years ago the Government appointed a special inter-sectoral working group which prepared an analysis of the situation in this field and potential solutions for the organisation of the Advocate. According to our knowledge, the work of this group was left in drawers and none of its proposals was realised. According to one scenario, the Advocate of the Principle of Equality was to be taken over by the Ombudsman. According to some information, this proposal was supposedly also supported by the Ministry of Labour, Family and Social Affairs. Several times the Ombudsman has substantiated his systemic and practical concerns regarding the integration of duties carried out by the Advocate and the Ombudsman. Specifically, there are several significant differences between the Ombudsman who, in accordance with the Constitution, supervises the public sector in its relations between an individual, and the Advocate, who is supposed to take care of the implementation of the principles of equal treatment (non-discrimination), particularly in the private sector where most cases of discrimination also occur. In the Ombudsman's opinion, the Advocate should also adopt binding decisions in this field: order sanctions against violators, and provide legal and other assistance to the victims of discrimination. These duties are strongly linked to the promotional, educational and awareness-raising activities which, under the European regulatory system, should have been carried out by an anti-discriminatory body. The above mentioned activities, however, are not compatible with the constitutional and legal status of the Ombudsman. The Ombudsman is the highest authority for the informal protection of human rights in the country, whereas the Advocate is one of the specialized Government bodies working in this field but his work is also supervised by the Ombudsman. As a result, the transfer of the Advocate into the Ombudsman's system is not acceptable from a systemic point of view.

These issues are partially linked to the question of forming an independent national institution for the protection and promotion of human rights (NI) which would operate on the basis of Paris Principles (Principles relating to the Status of National Institutions) adopted by the United Nations The Ombudsman has written about the lack of such an institution several times and Slovenia has been warned about it by international organisations. Two years ago the Ombudsman proposed a short-term and transitional solution: the continuation of the work of the then abolished Council of Europe Information Office in Ljubljana within the Human Rights Centre to operate within the Ombudsman's structure. If this proposal were (financially) supported by the Government, the Centre could represent a start for the implementation of educational and promotional activities of a preventive nature, also in the field of the prevention of discrimination.

Making the situation in this field become worse, in 2012, as a part of its campaign of abolishing Governmental working bodies, the Government abolished the inter-sectoral working group for human rights which had operated within the Ministry of Foreign Affairs for many years. The Ombudsman had been an active member of this working group for more than fifteen years, since the beginning of its operation. In addition to the Ombudsman, the inter-sectoral group was composed of representatives of ministries and Government offices, non-governmental organisations and independent experts operating in the field of human rights. In this manner, particularly by means of some activities in the 2011/12 period, this group tried to fill the space being created as a result of the absence of NI in Slovenia. For the most part, the work of this group was good, and indispensable when monitoring the realisation of international obligations adopted by the state in the field of the protection of human rights and fundamental freedoms, that is why it is regrettable that the Government also abolished this group among other working bodies. During the discussion with the Ombudsman on 16 October 2012, the Minister of Foreign Affairs promised to reactivate this commission maintaining the same composition. When it was later investigated whether the commission was actually being reactivated, the information was given that the Minister had submitted such a proposal but it was rejected by the Government. The Ombudsman became involved with the monitoring of the implementation of the Universal Periodical Review (UPR) which is the most important mechanism of the United Nations in the field of monitoring the human rights situation and the observance of human rights in individual UN Member States. As a national institution for human rights, the Ombudsman's Office provided its contribution within the process of the report preparation while at the same time, by providing our assessments, became involved with the evaluation on the follow up of the implementation of recommendations which were adopted for Slovenia by the Human Rights

Council on the basis of an inter-active dialogue in 2010. Then, Slovenia adopted the majority of 97 recommendations and committed itself to implement them and report on them. The Inter-Sectoral Working Group for Human Rights of the Ministry of Foreign Affairs was appointed to carry out this task. As stated above, this commission was abolished, while the Ministry of Foreign Affairs still states on their web site that the Inter-sectoral Group for Human Rights of this Ministry is appointed to manage the coordination of the implementation of the UPR. All the above mentioned findings are surely not a very good advertisement for the Government's intention to run for membership of the UN Human Rights Council in the 2016-2018 period.

2.2.2 National and ethnic minorities

1. Special rights of national communities

Just like in 2012, no initiatives were received claiming a direct violation of any of special rights guaranteed to both self-governing national communities and their members in the Republic of Slovenia by the Constitution and law. Surely some individual violations do also take place in this field, although the situation concerning both indigenous national communities is well provided for at systemic and institutional levels, but such complaints do not reach the Ombudsman for various reasons.

It is, however, worth mentioning some initiatives and messages submitted to the Ombudsman's Office by a Deputy representing the Hungarian national community and the Hungarian Self-Governing National Community of Moravske Toplice Municipality whereby the Office was informed of the occurrence of letters addressed to the Hungarian Self-Governing National Community and some individuals sullying the Hungarian national community and even denying its existence. The Ombudsman agreed with initiators that such communications may hurt the feelings of the members of the Hungarian national community and expressed the expectation that the responsible national authorities would investigate the matter and take relevant actions. According to our information, this also took place. The Ombudsman made a public statement regarding this topic and took a stand concerning these writings in two press releases published on the web site in connection with the occurrences of hate speech.

2. The Roma community

Also in 2012, the majority of initiatives concerning discrimination based on national or ethnic origin referred to the Roma community living in the Republic of Slovenia. The initiatives referred to various issues of members of these communities in individual Roma settlements. Some initiatives of inhabitants living in the vicinity of such settlements were also received.

In terms of the system, the Ombudsman directed her activities pursued in this field, particularly in 2011, into the issues concerning the living conditions of the Roma, particularly in the area of South-East Slovenia where most problems are present. The Ombudsman's findings and recommendations were summarised in a Special Report on Living conditions of the Roma in the Area of South-East Slovenia ("Special Report") (in Slovenian) which in 2012 was discussed at the parliamentary Commission for Petitions and Human Rights and Equal Opportunities and at the plenary session of the National Assembly. More is written in the remainder of this text.

In general, it can be stated that in the period concerned, certain progress was made concerning the implementation of rights of the members of the Roma community in the Republic of Slovenia. The Roma Community Act ("ZRomS-1") and the strategic documents, in particular the National Programme of Measures for Roma of the Government of the Republic of Slovenia for 2010-2015 ("NPMR") had brought certain 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 poor solution of Article 10 of ZRomS-1 was the foundation of the opposition within the Council which continued and tightened in 2012 The Ombudsman has been warning of this since 2007, which is why it is high time for the Government to accelerate its activity relating to the modifications of ZRomS-1, even if only in regard to this provision.

2.1 Special Report on Living Conditions of the Roma in the Area of South-East Slovenia

A Special Report was developed mainly on the basis of the findings made in regard to this field in the Ombudsman's report for 2011, whereby these findings were formed on the basis of initiatives made by the members of the Roma community and inhabitants living in the vicinity of illegal Roma settlements. Completely new recommendations were added to these findings. The essential findings of the Ombudsman stated in this report are: firstly, the conditions in Roma settlements and their vicinity pose a threat to the implementation of human and special rights of the Roma community on one hand and the implementation of human rights of inhabitants living in the vicinity of Roma settlements, on the other hand. Secondly, reasons for the worrying conditions in Dolenjska region lie in the legal regulation of the Roma settlements and the provision of municipal utility services in them. Thirdly, the administration of Roma settlements, in accordance with the legislation, falls primarily under the responsibility of municipalities which, unfortunately, are not efficient in its performance. In the recommendations, the Ombudsman proposed that in justified and urgent cases, their action be substituted by the action of the Government of the Republic of Slovenia and the responsible ministries, pursuant to the authorisation referred to in the Roma Community Act.

A special report was dealt with by the parliamentary Commission for Petitions and Human Rights and Equal Opportunities ("the Commission") on 22 June 2012. All debaters, both the members of the Commission and the invited persons, agreed with the findings made by the Ombudsman and believed that the Ombudsman pointed out the right issues in this field. In spite of that, the majority of the Commission formed new recommendations on the basis of the Ombudsman's recommendations and proposed that the Special Report be discussed by the National Assembly. However, the new recommendations lost their initial acuteness and the basic message from the Special Report, that is, that owing to worrying conditions in illegal Roma settlements and their vicinity and due to inactivity of municipalities, it is urgent to pass over from programme norms to a more binding and efficient action by municipalities and the state in regard to the legal regulation of the Roma settlements and the provision of municipal utility services there.

The Ombudsman believes that the rejection of the recommendations in the text as proposed by the Ombudsman may create the wrong impression that the violation of fundamental rights in illegal Roma settlements and their vicinity are not serious enough and that the rejection of the Ombudsman's recommendations may signify a silent consent to municipalities to continue postponing the regularization of these settlements for a randomly long period of time. That is why, recommendations proposed in the Special Report are again proposed in this Report.

2.2 Determining the membership of the Roma community

The Ombudsman was addressed by an initiator who had to prove his membership of the Roma community at the Employment Service of Slovenia ("ESS") by way of a certificate issued by the Slovenia Roma Association (Zveza Romov Slovenije – "ZRS"). The initiator who wished to become included in the public works programme under the target group "Roma" believed that such practice by the ESS meant an unequal treatment of other Roma organisations which have the same relations with the state (for example, financing) as ZRS in

terms of their legal and organisational structure and other relations. The initiator also opened a question whether it is not enough for an individual to state what national community he/she belongs to in order to determine the membership of a certain (national) community.

The Ombudsman assessed that the initiation might be justified which is why an inquiry was addressed to the EES requesting an explanation on a procedure concerning the determining of membership of the Roma community. The EES explained that a statement made by an individual concerning his membership of the Roma community is not enough in certain cases since lately there had been cases of abuses on the part of some individuals who (falsely) stated their membership of the Roma community with the aim of becoming involved in the public works programme. Such abuses and the need to ensure an eligible use of budgetary funds (national as well as European) imposes on the EES a special attentiveness in identifying real and actual status. The EES confirmed that in the actual case the certificate by the ZRS had been requested but that later a consultation was made with some government authorities and the position was adopted that the certificate by the Roma Community Council ("the Council") would be requested for demonstrating membership of the Roma community. Based on these answers the Ombudsman addressed his opinion to the EES with a proposal. The Ombudsman agreed that identifying membership of the Roma community only by way of an individual's statement may lead to abuses which would nullify the special rights of the members of the community. The decision by the EES was accepted with approval, namely that membership of the Roma community would not be proved any longer by the certificate of the ZRS which is a legal entity in private law and as such an inappropriate entity to issue the documents of proof of the membership of the Roma community. But the Ombudsman's disapproval of the solution according to which the documents on the membership of the Roma community would be issued by the Council was also expressed. Specifically, in the Ombudsman's opinion, there are no suitable legal bases for the application of such a solution which is why the protection of clients in the procedure and the regularity of the handling of personal data by the Council are questionable.

In the Ombudsman's opinion, an individual who becomes involved with the public works programme should be first informed in advance in what manner his/her membership of the Roma community should be demonstrated. The law should stipulate (1) the authority to determine the membership, (2) the procedure for identifying the membership and (3) the criteria to identify the membership. An individual would also have to have an opportunity to apply for a relevant legal remedy against a decision by a relevant authority in case of a refusal of the confirmation concerning his/her membership.

In its response to the Ombudsman's opinion, the EES communicated to the Ombudsman's Office that the EES supports the proposal for the elimination of the gap in legislation and that the latter should be arranged for by the Roma Community Act. Until the adoption of the relevant modifications, the EES would continue to act as before, that is, in the case of doubt about membership of the Roma community (contrary to the Ombudsman's proposal) a certificate by the Roma Community Council of the Republic of Slovenia would be requested.

2.3 Access to drinking water and toilets and inefficiency on the part of a municipality in arranging this and other issues

The implementation of the right to drinking water in the illegal Roma settlement in Dobruška vas in the Škocjan municipality was presented in the Report for 2011 (section 2.3). In 2012, upon a request on the part of the inhabitants of the Roma settlement Dobruška vas, the Ombudsman and her colleagues paid a visit to this settlement in order to verify in situ the access to drinking water and toilets, together with other important issues regarding living conditions in this settlement.

The Ombudsman determined that access to drinking water and toilets had not yet been provided for all inhabitants in the Roma settlement Dobruška vas. A proposal to the Škocjan municipality was thus made that all inhabitants in the Roma settlement Dobruška vas be ensured access to drinking water at least in a manner as required by the minimum standards of the United Nations and that access to toilets be also guaranteed to the inhabitants.

It is evident from the municipality's reply that the municipality did not intend to regulate the Roma settlement Dobruška vas in legal terms neither to arrange for the provision of municipal utility services there although it should have done so in accordance with the NPMR. Therefore, the human rights of the inhabitants of the settlement continue to be violated since some of them still do not have access to drinking water and toilets. The Roma settlement Dobruška vas has been illegally there for several decades which is why the rights to dignity and proper accommodation of inhabitants are being violated. In spite of the fact that, in addition to the respect for the human rights and fundamental freedoms of the members of the Roma community by way of the Constitution and the Roma Community Act, the Republic of Slovenia also guarantees special rights in the management of space there is no evidence that the state intends to adopt efficient measures for legal regulation of the settlement and the provision of municipal utility services there and owing to the municipality's plans concerning the arrangement of a technological and economic centre there, the inhabitants of the settlement are threatened with forced displacement.

2.2.3 Rights of persons with disabilities

In regard to opportunities based on physical or mental incapability (disability) not many initiatives were received in 2012. It will be possible to state the exact number of such initiatives in the next report since a new classification category for such initiatives was opened in the beginning of 2013. Most of the initiatives in this field referred to issues concerning parking places for persons with disabilities and the question regarding parking permits not being obtainable for those without a permanent residence in cities.

At the end of 2010, the Equalisation of Opportunities for Persons with Disabilities Act was adopted but the implementing documents which would only enable the enforcement of certain rights of persons with disabilities have still not been adopted, in spite of this type of warning made by the Ombudsman.

The right to a Braille display and adopting implementing regulations pursuant to the Equalisation of Opportunities for Persons with Disabilities Act

In the beginning of 2011, the Human Rights Ombudsman of the Republic of Slovenia (hereinafter referred to as: "the Ombudsman") received an initiative in which an initiator stated that he would wish to have a Braille display (a new device enabling a blind person to use a computer) but he could not afford it. He had asked the Health Insurance Institute of the Republic of Slovenia ("the ZZZRS) for it but the institute refused his application since he had received a Braille typing machine a few years ago.

In 2012, after several inquiries and exchanges of opinions with ZZZRS (described in detail in the Ombudsman's Annual Report for 2011, p. 67), the Ombudsman focused on an issue concerning the adopting of implementing regulations envisaged by the Equalisation of Opportunities for Persons with Disabilities ACT ("ZIMI") which entered into force at the end of 2010. Among other matters, in transitional provisions, ZIMI imposes an obligation on the ministry responsible for the protection of persons with disabilities to issue the rules to regulate in detail the provision of technical devices for overcoming communication barriers on the part of persons with sensory impairments not later than within twelve months of the coming into force of this Act.

The Ombudsman thus addressed a question to the Ministry of Labour, Family and Social Affairs inquiring about the state of preparation of the envisaged Rules and in what manner the right to Braille writing and a Braille typing machine were going to be dealt with.

In its reply, the Ministry of Labour, Family and Social Affairs expressed its support for the Ombudsman's position, stating that the current arrangement was not acceptable and that it might imply discrimination but did not satisfactorily explain when and how the issue would be solved. In a letter of 22 March 2012, among reasons for not having yet adopted the Rules, the Ministry pointed out the demands of inter-sectoral co-ordination, financial consequences of the enforcement of the right to obtain technical devices and an improper method of selection of the technical device suppliers referred to in ZIMI. Specifically, in its Article 19, the law stipulates that suppliers of technical devices are selected by means of a public invitation to tender which, in the Ministry's opinion, is not in accordance with the principle of free choice (Article 3) and the accessibility in enabling an independent life (Article 9) defined by the Convention on Rights of Persons with Disabilities (Official Gazette of Republic of Slovenia, No. 37/2008). In this regard, the Ministry stated that although the most favourable supplier in terms of finance might be selected, the public call to tender should also follow both the principle of the financially most favourable supplier as well as providing the possibility for a user to select a supplier and better accessibility (in terms of location) of devices which is of particular importance to sensory and movement impaired persons with disabilities. Therefore, in the near future, the Ministry of Labour, Family and Social Affairs would examine the possibility of a modification and amendment to the provision of Article 19 of ZIMI. At the meeting held at the Ombudsman's Office on 13 June 2012, the Minister of Family, Labour and Social Affairs, Mr Vizjak, stated in this regard that the Rules on Co-financing the Provision of Devices for Persons with Disabilities was in the process of inter-sectoral harmonisation and stated his belief that all the necessary measures would be adopted and enforced by 2013. At the time of the preparation of this Report, the Rules had not yet been adopted neither were the modifications to ZIMI placed in the legislative procedure. The Ombudsman will follow the solving of the issue regarding the (un)availability of the above mentioned technical devices in 2013.

2.2.4 Discrimination – other

Disputable restrictions upon the introduction of the Environment Zone in Maribor

Owing to a modified traffic arrangement in Maribor City Municipality (MCM) prohibiting the entrance of vehicles of Euro 0 and Euro 1 category into the Pilot Environment Zone (PEZ), an initiator turned to the Human Rights Ombudsman of the Republic of Slovenia. The initiator mentioned that the introduction of PEZ would imply discrimination based on financial status in the use of public roads and consequently in access to health care institutions and some other services. The owners of the Euro 0 and Euro 1 category of vehicles, in the initiator's opinion, were supposedly members of the poorest class of people who could not afford to buy newer cars. Due to the introduction of PEZ, another initiator turned to the Ombudsman communicating a message that he could not understand why it was prohibited to drive on public roads with a vehicle which passes a technical examination and is officially registered.

The Ombudsman dealt with the two initiatives from two points of view: the first aspect referred to the legal basis on which the traffic restriction in PEZ is based and the second one referred to the question whether the traffic restriction in PEZ might imply discrimination on the basis of financial status. After the inquiry at MCM, the Ombudsman addressed his opinion to the municipality with a proposal.

The Ombudsman believed that the introduction of PEZ might imply an indirect discrimination pursuant to Article 4 of the Implementation of the Principle of Equal Treatment Act ("ZUNEO") which exists when a person with a certain personal circumstance was, is or might be, when in a similar situation, in a less favourable condition than other persons due to a seemingly neutral regulation, except if these provisions are impartially justified by a legitimate goal and if the means to achieve this goal are suitable and necessary. Maribor City Municipality provided its explanation that the intention of the introduction of PEZ was to decrease the PM particle concentration since the ambient air in Maribor had been over-polluted with these particles for more than two months in the year which has been proved to have a negative impact on the health of people. The Ombudsman determined that the introduction of PEZ did follow the legitimate goal that is to improve the health of people by reducing the excessive particle pollution in Maribor.

During the next phase, the Ombudsman tried to determine whether the means to achieve this goal were appropriate and necessary. It was determined that MCM had not performed sufficient research which would exclude or confirm the link between the financial status of individuals and the age of their cars. The Ombudsman, however, stated his position that such a connection exists.

On the basis of the reply from MCM, the Ombudsman determined that the municipality had failed to prove that the traffic arrangement modification would not violate the prohibition of (indirect) discrimination. The Ombudsman proposed to MCM that it examine the possibility of achieving the goal of reducing the level of solid particles in the air in a manner not to stigmatize the financially weaker population at a time when economic and social conditions in the state are not promising and poverty is increasing.

In its reply to the Ombudsman's proposal and opinion MCM communicated that the introduction of PEZ is a pilot project and that within its scope an expert basis for an ordinance on the introduction of the environment zone would be adopted. An assurance was given by MCM that the traffic and environment legislation, the Ombudsman's proposals and analyses regarding social and economic impacts of PEZ would be taken into account during the development of the ordinance.

SUMMARY OF PROPOSALS AND RECOMMENDATIONS

- The Ombudsman recommends that statutory solutions be adopted which will, in accordance with the Community acquis, ensure impartial, independent and efficient handling of cases concerning violations of the prohibition of discrimination on all bases and in all fields. For this purpose, an independent advocate needs to be established who will hold powers to investigate cases of violation of discrimination and an efficient mechanism of dissuasive measures to be established for the violators of the prohibition of discrimination both in the public and the private sector.

- The Ombudsman proposes to the Government and the Ministry of Foreign Affairs the re-establishment of the Inter-Sectoral Working Group for Human Rights being composed so as to operate as it did before successfully and to examine the possibility to extend the areas of its operation.

- The Ombudsman proposes to the Government that it develop modifications and amendments to the Roma Community Act which would abolish the weaknesses discovered in the law, particularly in relation to the improper composition of the Roma Community Council.

- Municipalities lacking construction master plans should adopt spatial planning documents and other measures concerning legal regulation and the provision of municipal utility services in the Roma settlements on its territories as soon as possible.

- By way of its proposals and initiatives, the Roma Community Council of the Republic of Slovenia should become more actively engaged in the procedures regarding the regulation and organisation of Roma settlements in municipalities; when the need arises, it should become involved as a mediator between the Roma community and local communities in the areas concerned.

- The Government should make the National Programme of Measures for Roma of the Government of the Republic of Slovenia for 2010-2015 more concrete and dedicate more attention to legal regulation and provision of municipal utility services in Roma settlements, particularly in the wider area of Dolenjska region. Within this scope, the following should occur: clearly define the procedure concerning legal regulation and provision of municipal utility services in settlements according to individual phases, envisage the time period for the implementation of a procedure for each individual phase of the procedure concerning the arrangement of settlements, appoint a supervisory body to monitor the implementation of individual phases of the procedure regarding the arrangement and organisation of settlements and to envisage penalties for municipalities which would fail to implement measures in prescribed time periods and to remedy their (in)actions.

- Pursuant to Article 5 of ZRomS-1, the Government itself should adopt the necessary measures to arrange conditions in those municipalities where, in the Roma settlements, a severe threat to the health of people is posed, where long term disturbances of public order and peace are present or the environment is permanently threatened.

- The municipalities must ensure access to drinking water for all its citizens without differentiation, particularly in Roma settlements regardless of the legal status of the pieces of land where they are located. In regard to the implementation of the right to drinking water as one of the internationally recognised human rights, the Government should propose while the National Assembly should adopt suitable statutory solutions.

- In regard to the implementation of the public works programme intended for the Roma target group, the Ombudsman recommends to the Government that it propose the regulation of the method of proving the membership of the Roma community by way of law. The law should particularly determine the criteria for establishing membership of the Roma community, the responsible authority, the procedure and the possibility to use a legal remedy in case of a refusal of a certificate of membership. Until the regularisation of these issues by way of the legislation, the Employment Service of Slovenia should only take into account a statement by an individual identifying himself/herself as a member of the Roma community under material and criminal responsibility.

- 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 measures for the true equalisation of opportunities for persons with disabilities.

3. Discrimination of sole traders when applying to public calls to tender

The Ombudsman dealt with an initiative of a sole trader who, owing to her legal status within which her activity is carried out, could not participate at the public call to tender concerning general informal adult education programmes from 2012 to 2014 (“public tender”). These were education programmes co-financed by the European Social Fund. Specifically, the text of the public tender did not state the cost of a sole trader as an eligible cost. The Ministry of Education and Sport which published that invitation to tender also explained to the sole trader that the public call to tender had not envisaged any longer the possibility for a sole trader to participate as a contractor in programmes co-financed by the public call to tender.

The Ombudsman was of the opinion that the initiation was justified. The Implementation of the Principle of Equal Treatment Act prohibits discrimination in relation to conditions to access employment, self-employment or a profession. The Ombudsman believed that the development of a public invitation to tender which does not envisage the costs of a sole trader as eligible costs might be discriminatory. It seems incomprehensible that a person who entirely provides for his/her subsistence by carrying out an activity as a sole trader and whose existence depends on concluding contracts cannot participate at a public call to tender, while a person who is, for example, employed by means of an employment relationship and therefore has ensured at least a basic subsistence, can participate at such a tender by way of a copyright contract or a work contract.

An inquiry was addressed to the Ministry of Education and Sport in order to obtain an explanation on conditions concerning the said public call to tender. In its reply, the Ministry stated that the text of the public call to tender was based on the Instructions of Managing Authority regarding Eligible Costs in Relation to Funds of European Cohesion Policy for the 2007 – 2013 Programme Period (“instructions of Managing Authority”) adopted by the Minister without portfolio responsible for local self-government and regional development. According to this explanation by the Ministry, the discriminatory treatment of sole traders was supposedly transferred from the superior legal document.

The Ombudsman verified the statements made by the Ministry of Education and Sport with the responsible ministry, that is the Ministry of Economic Development and Technology and received an assurance that the Instructions of Managing Authority did not limit sole traders in any way to participate in the implementation of activities as contractors and that the Instructions of Managing Authority respect the principle of non-discrimination in a consistent manner.

Considering the above mentioned, the Ombudsman determined that the initiation was justified and that the text of the public call to tender developed by the Ministry of Education and Sport, in its part referring to the eligibility of costs of sole traders, was discriminatory. As a result, the Ombudsman proposed to the Ministry of Education, Science, Culture and Sport that it wholly eliminate all discriminatory restrictions in the text of the public call to tender on the basis of which sole traders cannot participate in the public call to tender owing to their legal status. The said Ministry communicated that the Ombudsman’s proposal was taken into account and submitted to the Ombudsman’s Office the modified Instructions of the Ministry of Education, Science, Culture and Sport concerning the operation of ESF, ver. 2.6, from which it was evident that the restriction regarding the participation of a sole trader at public calls to tender was abolished. **10.3-1/2012**

4. Discriminatory advertisements of tourist services in Bovec region

The Human Rights Ombudsman of the Republic of Slovenia dealt with an initiative concerning a catalogue entitled “Summer 2012” issued by the Bovec Local Tourist Organisation in which there was a pictogram saying “Homosexuals Not Welcomed”. This pictogram was adopted by two accommodation providers. On the basis of statements by initiators and the review of the mentioned catalogue, the Ombudsman determined that it was a matter of improper content of the publication which represented a direct discrimination based on sexual orientation in accordance with Article 4 of the Implementation of Principle of Equal Treatment Act (“ZUNEO”).

The Ombudsman urged the Bovec Municipality to explain why a decision on such a pictogram had been made and what measures were intended to be adopted for the abolition of this illegality and in what time period this would be done. The Director of Bovec Local Tourist Organisation explained that no decision was adopted concerning the disputable pictogram but that the latter was a result of a set of unfortunate circumstances. A printing mistake was made in the print house, specifically, a crossed-out version of the sign saying “Homosexuals Not Welcomed”. It was explained that the mistake was made due to the lack of knowledge in regard to the sign “Homosexuals Welcomed” since this pictogram is not yet established in Slovenia. By introducing this novelty, the pictogram “Homosexuals Welcomed”, the wish was to be compatible with a Central Booking System. Since the catalogue was developed under extraordinary time pressure, this mistake in the final version of the catalogue was missed as they were focusing on the review of contents and translations of texts. It was explained that their intention was contrary, that is, to invite the homosexual target group to visit the area of Bovec. In regard to remedial measures it was explained that an apology was provided to everybody concerned. All printed catalogues were immediately taken out of circulation, all business partners were informed on the withdrawal of the publication and the agreement on its substitution after having the corrections entered was made. The web-catalogue in all language versions was corrected so that the negative message was replaced with a positive one and a public apology was added. The printed copies of the catalogue were corrected manually in such a manner that the pictograms with the negative message were blacked out and a sticker “Homosexuals Welcomed” was pasted over it. Since it was determined that some providers had selected the sign without any prior explanation about the message of the pictogram, their negative pictograms were not replaced but a decision was made to turn to the Legebitra Society. At the same time it was determined that the homosexual target group of tourists should be presented to the providers, together with their specific needs and wishes when on a visit to tourist destinations, that is why a round table panel was intended to be organized with providers on the topic of discrimination or forms of intolerant behaviour.

The Ombudsman considered the initiative as justified since, regardless of the fact that it was a matter of a printing error which was later corrected, such a mistake represents a case of direct discrimination which is prohibited in accordance with Article 3 of ZUNEO. **10.0-8/2012**

2.3 RESTRICTION OF PERSONAL LIBERTY

GENERAL

This Chapter presents findings from handled initiatives 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 and juvenile facilities and training centres, persons serving imprisonment for the enforcement of fines, some persons with mental disorders or illnesses in social and health institutions, aliens in the Centre for Aliens and some applicants for international protection.

2.3.1 Detainees and convicted persons

In 2012, 25 initiatives by detainees (26 in 2011) and 134 initiatives submitted by convicted persons (123 in 2011) were handled. Of these, some initiatives referred to minors in a correctional facility. The Ombudsman continued to visit prisons and Radeče Correctional Home which is reported on in the chapter relating to the implementation of duties and powers under the National Preventive Mechanism.

In the introduction of this Chapter, the repeated (the fourth) visit of European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT) in Slovenia at the beginning of 2012 has to be mentioned. The delegation also visited three prisons and, based on that visit, provided numerous proposals and recommendations which Slovenia is bound to observe and is bound to eliminate any discovered irregularities. The Ombudsman will definitely monitor progress in this regard.

It may again be established that the Ombudsman’s recommendations from 2011 (and some from previous years) are still valid in this area of work since they had not yet been (fully) implemented. The lack of space in prisons was dealt with in some prisons but is not eliminated on the whole. The overcrowding of facilities, particularly in some detention wings, still remains one of the main problems. Thus, the Ombudsman’s efforts for the elimination of this problem will have to continue, including a better use of the regulations which have already been enacted in this field. The data that the number of prisoners has increased significantly in the past years demands the establishing of reasons for the criminality itself, but, particularly, the elimination of such reasons. It is important to press all the time for as many confined persons as possible to have the chance to fill their time in prison with beneficial activities, including work, education and various training activities which are all necessary for their re-integration into society after serving their prison sentence and returning to their free lives.

The report of the Prison Administration of Slovenia raises concerns: one of the greatest problems is the lack of funds for the provision of current investment activities and the maintenance of prison facilities. Thus, prisons have developed a list of urgent maintenance works which cannot be realised owing to the lack of allocated funds which are additionally being reduced. In the largest prison, that is, the Dob pri Mirni Prison, for example, the convicted persons were informed that the prison has no funds for the procurement of letters and stamps and that benefits in the form of letters and stamps will be temporarily withdrawn. Saving measures have also been reflected in other areas. By way of a general agreement for 2012, adopted in December 2011, the standard of health care for convicted persons and detainees was reduced by half; however, the standard regarding psychiatric treatment and drug dependency treatment remained the same.

Information in regard to the lack of personnel (particularly prison officers) in prisons and their being overloaded with work is likewise of great concern since it may also be reflected in the relationship to confined persons and the provision of the necessary safety and the prevention of conflicts. In this regard, in the Ombudsman's assessment, the complaints by the personnel that not all the necessary equipment is available for their work call for immediate action, together with their complaint that personnel is faced with a lack of clothing and that urgently needed (supplementary) training has not been organised.

In December 2012, the Amending Act of the Enforcement of Criminal Sanctions Act ("ZIKS-1E") was adopted, entering into force in January 2013. The Ombudsman submitted a few comments and proposals in regard to the content of this amending Act. With the adoption of the Amending Act, some modifications have finally been made to the missing or otherwise inappropriate regulatory framework, which had been pointed out by the Ombudsman in the past. Modifications and amendments of the Act thus bring about a new arrangement in regard to visits and other contacts by any authorised person, who is not an attorney-at-law, with a convicted person. However, the Ombudsman is not convinced that such arrangements will eliminate all issues which have been determined in this regard. The obligation concerning the issue of a special decision for the placement of a convicted person in a stricter prison regime has finally been regulated in terms of the law, together with the regular verification of reasons for such a placement and a guaranteed legal remedy against such a decision (Article 98(a) of ZIKS-1). The Act also regulates the implementation of two new security measures: a mandatory psychiatric treatment and care provided in a health care institution and a mandatory psychiatric treatment after release. It has also determined security and other conditions which must be met by a health care institution (or health care institutions) for the implementation of such measures (more is stated about this in the section on the Forensic Psychiatry Unit).

In some cases, initiatives submitted by prisoners were linked to their announcement of a hunger strike. It has also been determined that various forms of deliberate self-harm and suicide attempts and actual suicides take place in prisons. These are obviously not the right methods for solving individual problems although most of them obviously point to the distress faced by some prisoners who cannot express their protest in another, more suitable manner and find an escape from the situation in which they are found. Therefore, such cases require special handling, but mostly an expert-based and compassionate attitude by all personnel in the prison. Obviously, personnel should have been properly trained in order to be able to recognize all such serious mental distress and provide suitable assistance. In fact this is also the message of the European Court of Human Rights in the case Ketreb vs. France, under case No. 38447/09, of 19 June 2012.

Detainees

The initiatives submitted by detainees mainly related to problems in connection with the imposed detention and the mere implementation of the detention. Clearly, the disagreement with individual court decisions (thus, also with the imposition of detention) may be enforced (only) in judicial proceedings by way of regular and extraordinary legal remedies. This is in fact the only legal path to contest court decisions which are considered to be incorrect or unlawful. The Ombudsman warned detainees submitting such initiatives of this fact since the Ombudsman may, as a general rule, intervene only in a case when it is a matter of an obvious abuse of power or an unjustified delay in the proceedings.

Initiators questioning their accommodation during the time of detention, for example, complained about poor conditions in the detention wing, unbearable heat and lack of ventilation, poor and worn-out mattresses and other furniture, poor and unvaried food, limited possibilities for having a shower and maintenance of personal hygiene, delivery of parcels, lack of cleaning agents, permission for personal items and poor provision of services by doctors and the health care service and similar. Complaints stating that adequate security of individual detainees has not always been provided by the prison (for example, by way of transfers to other units) pose great concern since, in some cases, these detainees had been attacked and hurt by other detainees.

When necessary, their claims were verified by the Ombudsman at the appropriate courts holding jurisdiction, and in the prison in which their detention was carried out and other measures were taken by the Ombudsman in handling of their initiatives. In individual cases, the Ombudsman encouraged detainees to take advantage of the internal complaints procedures provided for by the Rules on the Implementation of Detention in Article 70. Under these Rules, a detainee who believes that prison personnel are treating him or acting against him in an improper manner may lodge a complaint with the President of the appropriate District Court and the Director General of the Prison Administration of the Republic of Slovenia. The Director General is obliged to submit a written answer to a detainee to his complaint within a period of 30 days.

Complaint concerning conditions in the detention wing

Initiatives handled included a group complaint made by detainees from Koper Prison, Nova Gorica Unit. The initiators complained about poor living conditions and the method of implementing visits. They claimed that, in spite of the fact, that they were permitted visits without supervision, a prison officer is always present at the time of the visit and, as a result, all visits are in fact supervised.

In relation to these complaining statements, it was established by the Prison Administration of the Republic of Slovenia, that visits of detainees in the Unit take place in two very small rooms, of which one is divided with a glass partition. Since the rooms are very small, a prison officer is in the direct vicinity of any visitor and a detainee at the time of the visit, and it is unavoidable that any conversation between a person being visited and a visitor is overheard. It was confirmed that this is contrary to Article 48 of the Rules on Implementation of Detention according to which, at the time of visits, prison officers must only provide for order and safety during any visit whilst surveillance may only be imposed by an investigating judge, in criminal proceedings which have been concluded and which impose this requirement. Considering this finding, the Ombudsman welcomed the decision made by the Prison Administration of the Republic of Slovenia, to order, within the framework of its own powers, for a prison officer to supervise a visit from a distance such that conversation cannot be overheard or via video-surveillance system which is otherwise installed in the aforementioned rooms. The Ombudsman will pay attention to this and other circumstances highlighted by detainees in their joint initiative, which was justified. The Ombudsman will prudently verify these conditions during the next visits to the Unit and, when necessary, (again) submit proposals and recommendations for the improvement of the situation.

Convicted persons

Initiatives submitted by convicted persons (in some cases these were collective), similarly to those in previous years, related to the mere commencement of a prison sentence, and especially to issues faced by convicted persons during their prison sentence. These include: poor living conditions, transfer from a more liberal regime for serving their prison sentence to a more rigid regime, transfer into another prison or units (or rooms), interruptions and suspensions in serving the prison sentence, occupational injuries, threats and violence on the part of inmates, bonuses for work performed, granting or withdrawing of various privileges, health care, urine testing, inspection of files, money management, permission to have and to use personal items, release on parole, visits and other issues. Some initiators complained about the attitude of the prison personnel and complained about various irregularities committed by them, including inappropriate communication. In these cases, the Ombudsman pointed out the need for personnel to be regularly warned of their commitment to considerate treatment (also in terms of verbal communication) and that every such irregularity must be properly and decisively punished. It cannot be ignored that the youth and other personal circumstances of individual prisoners may be reflected in their inappropriate reactions towards the personnel taking care of them. Personnel must thus be prudently selected and trained to be able to reduce these pressures by means of appropriate

communication and a benevolent attitude and consequently contribute to the well-being and security of everybody accommodated in the prison or working there. It is encouraging that only some of the initiatives were handled with reproaches regarding bad treatment of prisoners by prison officers or other irregularities in relation to their work.

Similarly as in cases of initiatives submitted by detainees, their statements were verified by the Ombudsman (in some cases also by visiting prisons), particularly with the Prison Administration of the Republic of Slovenia and prisons in which initiators served their prison sentence. In some cases, the Ombudsman also turned directly to the Ministry of Justice and Public Administration by way of enquiries and proposals. However, it is claimed that responses from the Ministry were not always satisfactory. Convicted person serving prison sentences were also warned by the Ombudsman that, in accordance with Article 85 (a) of ZIKS-1, a prisoner may object to violations of rights and other irregularities for which judicial protection is not provided, in a complaint to the Director General of the Prison Administration of the Republic of Slovenia. If a prisoner fails to receive an answer to the complaint within a period of 30 days, or if a prisoner finds the answer to be unsatisfactory, he/she has the right to lodge an application before the Ministry of Justice and Public Administration. Convicted persons were otherwise informed by the Ombudsman of answers received and the Ombudsman's findings and other potential measures. When necessary, prisoners were invited to inform the Ombudsman whether the explanations which they had received were perhaps inaccurate or insufficient in regard to their initiative in order to receive their arguments in regard to those parts of the explanations where, in their view, the reply provided by the Prison Administration of the Republic of Slovenia was inaccurate. The Ombudsman's aim was to assess the situation and find the basis for taking further actions. In several cases, the Ombudsman did not receive any reply from prisoners so further handling was not possible.

The Re-socialization of Prisoners Project: Post-penal Treatment in the Labour Market was supported by the Ombudsman. The Ombudsman has also discovered issues in the preparation of convicted persons serving a prison sentence for their integration into normal life at liberty after their sentence has been served. This issue has been highlighted by the Ombudsman in previous annual reports. Similarly, issues in the allocation of a counsellor to the convicted person in accordance with Article 101 of ZIKS-1 were determined in practice. Therefore, it is believed that the implementation of this project is beneficial and that it has contributed to the improvement of the quality of life and greater social integration of persons after a prison sentence is served.

Slovenia still has no special patient rooms for the treatment of prisoners

There are no special hospitals for prisoners in Slovenia (yet), the only exception being the Unit for Forensic Psychiatry within the structure of the University Medical Centre Maribor. As a result, in cases of such needs, these persons are admitted to general hospitals. In this regard, the Enforcement of Criminal Sanctions Act ("ZIKS-1") in Article 60, Paragraph 2 stipulates that convicted persons who cannot be treated in general health care institutions or patient rooms of an individual prison, due to the risk of flight or any other justified reasons, are treated in special hospital rooms of one of the institutions or in a suitably secured ward of a health care institution. Outside prisons, therefore also during the time of potential hospitalisation, prisoners are accompanied and protected by prison officers. These have the right to use coercive measures against prisoners if their escape, control, self-harm or material damage cannot be prevented by other means. However, only such coercive measures may be applied, within which their official duty may be performed considering the security circumstances, with the least harmful consequences for a person against whom such measure is used.

One of the cases handled (it refers to a prisoner who was hospitalised) opened the issue regarding the (in)admissibility of the use of restraint devices for handcuffing prisoners hospitalised in health care institutions. The initiator stated that he had been hurt as a result of an attack by an inmate prisoner. After the attack he was taken to the hospital where he was treated. The initiator highlighted that he could not talk due to his injuries but nevertheless, the prison officers, protecting him, handcuffed him in the Intensive Care Unit (and later in the hospital's wing) due to his supposed risk of escaping. He had a bedpan next to the bed but he could not use it because of leg-cuffs and he could barely position himself in a semi-horizontal position. He was given the opportunity to receive visitors during hospitalisation and it was humiliating for him that visitors could see him restrained. Being restrained did not seem decent to him, because he was in the room with other patients.

The security circumstances of an individual case can certainly call for the use of measures to prevent the escape of a prisoner who has been placed in hospital. The Standards of the Council of Europe's Committee for the Prevention of Torture prohibit the restraining of prisoners to their beds or other hospital equipment for security reasons. The Ombudsman has assessed that any use of restraint measures (handcuffs and legcuffs) during a time of hospitalisation with the purpose of preventing escape is questionable. In the Ombudsman's view, it needs to be taken into account that a prisoner is a patient at the time of his/her hospitalisation and, as a result, has to be treated like any other patient. Escape may be prevented by applying other methods (additional security), special rooms in the hospital and furniture which will prevent escaping and similar). Consequently, on the basis of the handled case, the Ombudsman encouraged the Prison Administration of the Republic of Slovenia that in cooperation with the Ministry of Health, all the necessary measures for the provision of special hospital rooms for prisoners – patients who need custody – must be adopted as fast as possible, so that restraint measures will no longer be used for prisoners during their stay in hospital. The Prison Administration of the Republic of Slovenia assured the Ombudsman that, in cooperation with the Ministry of Health, possibilities would be examined for arranging for special rooms for prisoners – patients in need of custody –, following the models of good practices in some other European countries (for example, Switzerland).

An initiative by another convicted person pointed out the same need; his experience was that when the hospital found out that he would be in the custody of prison officers during the time of his stay in the hospital, the hospital postponed his pre-arranged operation procedure until a time after the end of his prison sentence. The hospital substantiated the postponement of the operation procedure by referring to the fact that it was a small hospital with difficulties in enabling the admittance of a person serving a prison sentence due to the small number of rooms and hospital beds and other problems of a logistical nature.

Prisons in Slovenia lack suitable rooms for prisoners with movement disabilities

Slovenia is obliged to provide for the observance of certain rules and standards referring to the deprivation of liberty which have been taken on by reason of its accession to international conventions of this type. In addition, the Constitution of the Republic of Slovenia highlights the respect for human personality and dignity during the deprivation of liberty. As a matter of fact, when serving a prison sentence, a convicted person is to be provided with all fundamental human rights except for those that have been explicitly taken away or limited by the law. The state must thus provide that everybody serves his/her prison sentence in conditions that suit his/her subsisting medical condition. If an individual is deprived of his/her liberty by the state, the state must also ensure that the deprivation of liberty takes place in such a manner that the respect for human personality and dignity is guaranteed. This is even more important if the condition of persons who may be affected as a result of their medical problems and/or disability need to be taken into consideration. When these persons find themselves having to serve a prison sentence, accommodation which is suitable for them must be provided, together with such living

conditions as will enable such a person to serve their prison sentence with decency and dignity otherwise a case may occur of inhuman or humiliating treatment and as a result a violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The majority of prisons in Slovenia still do not have suitable toilets that could be used by prisoners (detainees) who have movement disabilities. If convicted persons cannot use the ordinary toilets owing to their disability, they are prevented from keeping a suitable level of personal hygiene. In addition to the fact that prisons do not have suitable rooms for the maintenance of personal hygiene and care of these persons, they have no suitably trained personnel to assist these persons in maintaining their personal hygiene. The Ombudsman especially warned the Prison Administration of the Republic of Slovenia of this issue in some of the cases which were handled. In one of these cases, an initiator claimed that he suffered additional physical injuries as a result of unsuitable conditions during the time of serving his prison sentence, although one of the doctors had even assessed that constant, 24-hour assistance was needed for the initiator. Similarly, the Ombudsman assessed the offer by a prison given to one of its convicted persons who was prevented from maintaining personal hygiene due to inappropriate living conditions, as unacceptable, namely, "that his partner should visit him during his time in prison and help him in preserving his personal hygiene"; the initiator falls under the power of the state and therefore the state must provide all the care (urgently) needed by the initiator as well as follow the resulting instructions of the medical personnel. When, under the capacity of the National Preventive Mechanism, the Ombudsman visited Maribor Prison – Rogoza Open Unit where the two initiators served their prison sentence, the unsuitability of accommodation of convicted persons with movement disabilities was confirmed by the Ombudsman's team as well. The Ombudsman made a note of the established irregularities (for example, that there are no bathroom and toilets adapted for people with disabilities) in the report on the visit. The same assessment, that is, that this prison is not adapted for the care of persons with physical disabilities, was also submitted by the prison's doctor. In the Ombudsman's opinion, such findings demand an urgent and swift adoption of measures for the improvement of the situation in this area.

It was assessed by the Prison Administration of Slovenia, that these were current and individual problems in the light of the provision of suitable living conditions and the accommodation of movement impaired persons. However, the Administration also stated that the Ombudsman's standpoint that the need for patient rooms for movement-impaired prisoners was well-grounded, which is why, the Prison Administration would seek to realise that proposal so far as it could afford to. Considering the financial situation in the country, however, it has been assessed that the scope of improvements in regard to the living conditions and accommodation of persons with movement disabilities cannot be planned since it was not known what funds for maintenance would be at their disposal. That is why the Prison Administration would seek to provide better accommodation and living conditions for prisoners with movement disabilities by transferring them to prisons with better conditions for their accommodation, maintenance of personal hygiene and care of this category of prisoners.

The Ombudsman expects that, in spite of limited funds, prisons and the Prison Administration will provide for the suitable accommodation of prisoners with medical problems and movement impairments during the time of their deprivation of liberty and serving their prison sentence since it is an obligation which could not be avoided by the State.

Unit for Forensic Psychiatry

The Ombudsman welcomed the opening of the Unit for Forensic Psychiatry ("the Unit") within the framework of the Psychiatric Department of the University Medical Centre Maribor in August 2011. This is viewed as an important advance in the field of the mental health of convicted persons and detainees from the whole of Slovenia. The Unit (finally) started to operate at the beginning of June 2012. It deals with patients for whom mandatory psychiatric treatment and care has been ordered, and persons serving a prison sentence or being in detention who need psychiatric treatment in a hospital. The Unit may also provide the observation service for the purpose of producing a psychiatric expert opinion in regard to their sanity and capacity to participate in proceedings. As a matter of fact, when working on initiatives, the Ombudsman constantly met with the need for a forensic hospital and warned about it on each occasion (in the regular annual reports and at other times). Since the time of the official opening of the Unit onwards, the Ombudsman has also been informed of problems encountered by the Ministry of Justice and Public Administration and the Ministry of Health, and consequently, mainly the University Medical Centre Maribor, the Psychiatry Department where the Unit operates.

It has been established that the commencement of the operation of the Unit is linked with several problems. The Unit has been given the (partial) legal bases for its operation by way of the amending Rules on the implementation of security measures for compulsory psychiatric treatment and care in a health establishment, of compulsory psychiatric treatment for patients at liberty, and compulsory treatment of alcoholics and drug addicts (Official Gazette of the Republic of Slovenia, No. 6/2012) and finally only with the amending Act ZIKS-1E. The above mentioned problems were obviously also a result of the fact that the provision of Article 126 of the Amending Act KZ-1B was not taken into account. In particular, until the publication in the Official Gazette of the Republic of Slovenia of the order of the minister responsible for health, with the consent granted by the minister responsible for justice, that conditions have been fulfilled for treatment and care in the forensic psychiatric department of a health establishment which satisfies special security conditions, the measure of compulsory psychiatric treatment and care in a health establishment (continues) is implemented in health establishments in which it has been implemented prior to the entry into force of this Act. The Ombudsman was informed about problems in this Unit both from patients and from health care personnel. That is why the Ombudsman was particularly concerned with the explanation provided by the Prison Administration of the Republic of Slovenia that protection was provided by (only) five prison officers and with great difficulty although, according to project documentation developed for the opening of the Unit, it was planned that 13 prison officers would take care of the security in the Unit. Since no new staff was employed, prison officers could not cope with all tasks envisaged for this job (provision of safety, accompanying patients to consular examinations and tests and accompanying patients on their walks in the courtyard).

HR-related issues, in addition to some reasons of a technical nature (for example, a defective protecting fence), were the reason that the statutory right of confined persons to spend time outdoors was not implemented in the Unit. According to the Ombudsman's standpoint, this is unacceptable since spending of time outdoors must be provided for every person who is confined, including any one that is being treated in a health institution, and any exception from this rule may only lie in medical reasons.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT) emphasized that all persons having psychiatric treatment must have the possibility to spend time outdoors every day. It cannot be ignored that during its last visit to Slovenia at the beginning of 2012, especially during the visit to the Department for Psychiatry of the University Medical Centre Maribor, CPT gave a warning of the alarming fact that "patients who were under a stricter supervision by prison officers, generally did not have access to exercise outdoors for a lot of the time (even for several months)".

Considering the above mentioned, the Ombudsman additionally encouraged everybody with relevant responsibility to quickly adopt all the necessary measures for all patients in the Unit to be provided with some time outdoors (for a few hours). Later, the Ombudsman received a communication from the Ministry of Justice and Public Administration that two-hour walks were carried out in the Unit with the assistance of an extra prison officer and that the Ministry was

examining the proposal to modify the work schedule and job classification in the light of the Fiscal Balance Act. The University Medical Centre Maribor communicated that a public call to tender has been planned to commence at the beginning of 2013, with the aim of obtaining offers to increase the height of the perimeter fence.

The Ombudsman obviously expects that the smooth treatment and care of all forensic patients will be provided for in the shortest possible time and in accordance with the law and implementing regulations. All conditions stipulated by the law in regard to special security conditions for the departments of forensic psychiatry of health establishments must be specifically met, together with the suitable personnel service and sufficient capacity in terms of space and organised expert training.

2.3.2 Aliens and applicants for international protection

Similarly to the previous year, only two initiatives were received in this subject area in 2012. They referred to the residence of two aliens with restriction of movement in the Centre for Aliens (other findings relating to the consideration of initiatives of aliens are described in the Chapter on Administrative Affairs – Aliens).

The initiators stated that they had started a hunger strike since they believed they had illegally been placed in the Centre for Aliens, in addition, one of the initiators was exhausted due to the prevention of suicide attempts by an alien who shared a room with him. The Ombudsman immediately approached the Centre for Aliens asking for its standpoint in regard to the complaints expressed and proposed that all necessary measures be taken, particularly for the prevention of the risk of suicide. The Head of the Centre for Aliens provided an explanation in regard to the basis for the residence of foreign nationals in the Centre and measures adopted in this case. He assured the Ombudsman that, during the initiators' residence in the Centre, the personnel held interviews with them in regard to their situation, possibilities and interests. They were received by a psychiatrist in his consultation room. The explanations received showed no sign of any irregularities concerning their residence in the Centre for Aliens which is why the Ombudsman did not continue with the handling of the case.

The handling of an anonymous initiative referred to the treatment of one of the foreigners in the Centre for Aliens. In order to prevent similar situations in the future, the system of registering all the implemented measures was modified in the Centre for Aliens, and the prompt and accurate writing of reports on expert services was provided for. In addition to the existing service contract for the provision of medical (psychiatric) service and assistance, another service contract was entered into by the Centre and thus additional medical (psychiatric) assistance which foreigners need when accommodated in the Centre was provided for. Therefore, two doctors who are psychiatrists are now available in the Centre for Aliens for the abovementioned needs of foreigners. The adopted measures were verified by the Ombudsman's team during the visit to the Centre under the capacity of the National Preventive Mechanism (this is presented in a special report) and progress in the field of keeping documentation was determined, as well as the fact that two psychiatrists visit the Centre for Aliens quite regularly.

It is obvious that the announcements of hunger strikes and various forms of self-harm and suicidal attempts are quite frequent in the Centre for Aliens. These are clearly not the right ways to solve individual problems but they surely show the distress of some foreigners. Such cases thus require special handling, but mostly an expert-based and compassionate attitude from all personnel in the Centre for Aliens.

Implementation on the Directive on Return of Illegal Immigrants

In the Human Rights Ombudsman's Annual Report for 2011, the Ombudsman pointed out the need to ensure an efficient system of monitoring "forced returns" under the 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-county nationals ("the Directive on return").

The Ombudsman's inquiry to the Ministry of the Interior related to the progress in the implementation of the abovementioned provision and, precisely, which body in the Republic of Slovenia is to implement the monitoring tasks. The Ministry of the Interior communicated that all cases of "forced return" involve procedures when a foreigner's movement is limited. Taking into consideration that fact and referring to the opinion of the Government Office for Legislation, the Ministry believed that the transposition of Article 8, Paragraph 6 of the Directive had already been provided for, since it was actually a supervision over the treatment of persons who have been "deprived of their liberty" in relevant proceedings.

The Ombudsman was surprised at such an opinion by the Ministry of the Interior. Without making any special stand on the opinion of the Government Office for Legislation, a comment was made that the Ombudsman has never been included in the transposition of the abovementioned Directive into the national legislation in whatever manner. In fact, the body that was drafting the amended Aliens Act (Official Gazette of the Republic of Slovenia, No. 50/2011) had not even made a stand in regard to Article 8, Paragraph 6 of the Directive during the transposition process. The Ombudsman warned that the obligation to provide for an efficient system of monitoring the return is an obligation which must be fulfilled by the State. It was again emphasized that 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 in relation to state authorities, bodies of local communities and holders of public power. Within the authority granted, the Ombudsman mainly deals with potential irregularities when warned about them (when an initiative to commence the procedure is received) or such irregularities may be noticed by the Ombudsman himself (this is the case of a procedure on the Ombudsman's own initiative), which is why, within the authorities conferred, the Ombudsman cannot ensure the efficient system for monitoring a forced return as imposed by the abovementioned Directive.

Within the authorities granted, particularly in the capacity of the National Preventive Mechanism, the Ombudsman is already involved in monitoring procedures conducted by police officers (this may also include procedures referring to the removal of foreign nationals). The Ombudsman thus regularly checks the treatment of persons deprived of their liberty in locations where these persons are accommodated in order to strengthen their protection from torture and other forms of cruel, inhuman or degrading treatment or punishment. This involves the implementation of powers that have been imposed on the Ombudsman by the Act Ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (Official Gazette of the Republic of Slovenia, No. 114/06, International Treaties, No. 20/06, MOPPM) and therefore not by way of the abovementioned Directive (as a matter of fact, this Directive is a subsequent legal document in terms of its creation). The mere fact that when implementing the duties and powers under the National Preventive Mechanism, the Ombudsman may also monitor potential forced returns of foreign nationals, however, in the Ombudsman's opinion, in itself does not mean that tasks from the Directive which clearly impose on the Member State the provisions of an efficient monitoring system on forced return of foreign nationals have been met.

The system for the monitoring of the forced return of foreign nationals by itself must not signify simply an opportunity to supervise the legality and regularity of an individual procedure but it comprises several other tasks which must be constantly performed and for which a relevant legal basis is also needed. Periodical supervision as currently implemented by the Ombudsman does not meet these requirements, which is why potential cases of forced returns will be monitored by the Ombudsman only by taking into account the Ombudsman's duties and powers under the National Preventive Mechanism and the Ombudsman.

Since the Republic of Slovenia has clearly not yet fulfilled its obligation imposed by the Directive in Article 8, Paragraph 6, the Ombudsman proposed that the Ministry of the Interior, which is otherwise responsible for the legislation concerning foreigners, adopts all the necessary measures for the fulfilment of this obligation as soon as possible. In the Ombudsman's opinion, one of the non-governmental organisations which already deals with the legal protection of foreign nationals (for example, the Legal-Information Centre of NGOs – PIC) may be viewed as a potential solution concerning the transposition of the mentioned Directive into Slovenian legislation. This is clearly the practice of some EU countries (according to the Ombudsman's data, in Estonia, such monitoring is carried out by their national Red Cross).

The Ministry of the Interior communicated that they agreed with the proposal and that it had already been proposed to the Internal Administrative Affairs, Migration and Naturalization Directorate, which is responsible for legislation concerning foreign nationals, and to look after the relevant regulatory framework in regard to the aforementioned instrument. The Ministry of the Interior also explained that the proposal for the amendments to the Aliens Act had already been drafted and the Act was expected to enter into force by the end of 2012. Unfortunately, this expectation was not fulfilled by the end of 2012. On the basis of information provided by the Ministry of the Interior, the Ombudsman expects that the implementation of Article 8, Paragraph 6 of the Directive on returns will nevertheless take place soon.

2.3.3 Persons with mental disorders and persons in social care institutions

Approximately the same number of initiatives was handled in regard to the area of work that refers to the deprivation of liberty of movement as a result of mental disorder or illness. Hence, 20 cases referred to the restriction of movement in psychiatric hospitals (23 in the previous year), while 8 cases were handled in regard to persons in social care institutions (the same number as in 2011). The Ombudsman continued to carry out visits to these institutions under the capacity of the NPM (more is presented on this subject in a special report).

Also this time, the majority of cases were related to the Mental Health Act ("ZDZdr") and referred to admission to treatment without a consent and admission and dismissal of a person into/from the secure ward of a social care institution. In addition to the initiatives of the persons concerned and their relatives, initiatives of providers of psychiatric treatment and social care services and programmes were also considered. In particular these ones have opened systemic questions regarding the existing regulation of this subject area which are highlighted in the remainder of this text.

Initiators' claims were verified by submitting inquires. Initiators were then informed about the Ombudsman's findings, and explanations regarding the procedures for admission to treatment were given, and their questions were answered. In terms of the content, the Ombudsman cannot judge decisions made by doctors or courts about whether or not, in a given case, conditions have been fulfilled to detain a person within a unit under special supervision. But the Ombudsman may consider the case when, for example, a person claims that she/he has been detained in a psychiatric hospital on no legal grounds or that his/her rights have been violated and that all (legal) possibilities for the elimination of irregularities have already been exhausted. In addition to the form of custody, stipulated by the ZDZdr in these cases, a person admitted to the unit under special supervision has the right to an advocate of persons' rights in the field of mental health.

The advocate protects the rights and best interests of persons suffering fro mental disorders, for example by informing them on other rights under the ZDZdr granted to a person admitted to the unit under special supervision and advises them in regard to the enforcement of these rights.

No significant irregularities were established in this field. The only exception is a case which refers to the use of a special protection measure in one of the psychiatric hospitals but the handling of this case was not concluded in 2012. Similarly, the consideration of another case which refers to the death of a person during hospitalisation in one of the psychiatric hospitals has not yet been concluded.

Special protection measures are defined by the ZDZdr as bodily restraint by belts or restriction of movement within one room. Methods and conditions for such use are simultaneously determined, together with the time periods and other obligations when special protection measures are used. It cannot be ignored that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) warned about the irregularities and deficiencies in the application of special security measures during its fourth visit to Slovenia at the beginning of 2012. The state of Slovenia is obliged to eliminate all deficiencies which are detected and to observe the recommendations given. It has to be emphasized, however, that in this regard the consistent observance of the ZDZdr must be specifically ensured and expert guidelines for the protection of personality and dignity and integrity of all patients when applying special security measures must be taken into account.

In 2012, a step forward was finally made in the development of a proposal concerning amendments to the ZDZdr in the part where it has been shown that the current statutory regulation of this subject area is deficient. In June 2012, a session of the working group was convened where an agreement was adopted that the Ministry of Health would reappoint the working group for the preparation of amendments to proposals of the above mentioned Act, and that everybody participating in the group would re-examine the existing comments and submit them to the Ministry of Health by the end of September 2012. The Ombudsman also submitted comments referring to the ZDZdr and findings in regard to the existing comments to this Ministry. For this reason it is expected that during the preparation of the necessary statutory amendments the work would run smoothly.

Guidelines for work with people suffering from dementia in the field of institutional care of the elderly

Throughout the Ombudsman's operation, special care is dedicated by the Ombudsman to individuals who are especially at risk due to various personal circumstances since these circumstances limit or prevent them from exercising all their rights and freedoms. This is why, in the past, the Ombudsman has warned of the need for better protection for the rights of persons whose medical condition, in addition to medical treatment, requires some measures to be taken which interfere with an individual's freedom of movement. Several times in the past (also within the scope of duties carried out under the NPM), the Ombudsman has pointed out the need for the development of suitable guidelines that would assist providers of institutional care for the elderly in the application of procedures and implementation of requirements under the ZDZdr. As a matter of fact, during the visits to individual institutions, it was established that some institutions interpret provisions of the ZDZdr in different manners, sometimes also incorrectly (in the Ombudsman's assessment). Consequently, in some cases, violations of an individual's rights have occurred or might have occurred. That is why the development of the Guidelines for work with people suffering from dementia in the field of institutional care of the elderly was welcomed by the Ombudsman. Guidelines developed by the Ministry of Labour, Family and Social Affairs were submitted to the providers of institutional care for the elderly at the beginning of June 2011. However, after examining the guidelines it was determined that some solutions are not the most suitable, and moreover in the Ombudsman's opinion, some solutions are contrary to the ZDZdr, which is unacceptable.

Thus, the Guidelines have introduced a completely new form of protection for persons suffering from dementia; specifically, high level supervision wards, in addition to providing a more precise definition of secure wards. Residents in high level supervision wards should undergo a process of segregation for treatment of persons with dementia without any physical restrictions in the liberty of movement. It is therefore a case of accommodating residents who are dementia patients into a special unit separated from other residents; the unit differs from the secure wards in regard to the method of security. In the light of the guidelines, physical security is therefore not provided within the high level secure wards, or it is significantly distant from the residential unit (for example, a fence around the institution). In this case, security is provided by personnel with their attitude founded on trust, providing directions, guidance and other techniques of expert treatment for dementia. Although requirements in terms of staff, technical conditions and spatial capacities should be equal for both types of units, the verification of the unit would not be necessary in a case of high level supervision wards, and the procedure regarding the admission of a resident into such a unit would not fulfil the provisions of the ZDZdr.

A secure ward is defined by the ZDZdr in Article 2, item 17. This is a unit within a social care institution where persons are constantly given special protection and care as a result of their special needs, and they cannot leave the institution of their free will. The definition of the law is clear: in a secure ward, persons are constantly given special protection and care as a result of their special needs, and they cannot leave the institution of their free will.

Hence, the law does not differentiate between physical and other forms of protection and security (although it is only a case of protection and security provided by “resident-friendly” personnel). Likewise, it does not define any limitation of security linked to the ward (but to the institution as such) and specifies the limitation of the freedom of movement (regardless of various possibilities for this) as the essential characteristic of the definition of a secure ward.

It is believed that the name chosen for a secure ward by an institution is not relevant at all. Irrespective of the wing’s name, i.e. a “secure ward”, a “unit for dementia sufferers” or perhaps a “high level supervision ward”, prior to the admission of a person to a ward which, in terms of its characteristics, fulfils the criteria referred to in Article 2, item 17 of the ZDZdr, the institution must obtain a (written) consent by a resident or inform a court of a need for such admission, in accordance with Article 75 of ZDZdr. At the same time, it is obviously expected that personnel will treat all residents suffering from dementia and accommodated in social care institutions (regardless of their accommodation in ordinary wards, high level supervision wards and also (or, in fact, especially) in secure wards) on the basis of an “attitude” that is “founded on trust, providing directions, guidance and other techniques of expert treatment of dementia”.

In the Guidelines for work with people suffering from dementia in the field of institutional care of the elderly, special protection measures are also defined. In the Guidelines, special protection measures are defined as measures applied for the purpose of enabling the treatment (for example, restraining a resident’s hands in a case when an intravenous treatment is given) or to manage dangerous behaviour of persons (for example, when there is a threat of harm, self-harm, suicidal behaviour, aggressive behaviour), when the life of these persons or other persons is at risk, when the health of these persons or other persons is at risk, or when behaviour of these persons causes pecuniary loss to themselves and others and causing danger cannot be prevented by other gentler measures.

It is surprising that, although with a clear definition of the urgency of the action (that it is an urgent intervention which needs to be taken without any hesitation, subject to suitable indications), at the same time, the Guidelines require a consent from a resident or his/her authorised person as a condition to apply an action. It is hard to imagine how an institution will obtain a consent (actually in writing) from, for example, a violent resident who is found in a situation where urgent action must be taken. It is similarly unimaginable that, in such circumstances, it would be necessary to wait for an hour or more when, for example, in the middle of the night, a (written!) consent of a person’s authorised representative would have to be obtained.

As physical special protection measures, the Guidelines mention discreet supervision, constant supervision, a bed with covers and strapping to a wheel-chair. It should be emphasized in this regard, that in addition to the definition of a special protection measure, the ZDZdr clearly stipulates the method and conditions for the use of measures, the procedure, time limits, the obligation of notification and registration in the register which must be kept in a case when such a measure is applied. A special protection measure is defined only as bodily restraint by belts or restriction of movement within one room. Hence, a question is raised whether all measures mentioned in the Guidelines represent special protection measures. The use of a bed cover or a belt to prevent a fall from a wheel chair, for example, are in fact protection measures intended mainly to prevent a resident from falling and hurting himself/herself. As such, they frequently do not comply with the definition of a special protection measure included in the Guidelines as presented above.

The Ombudsman proposed that the Ministry deal with these findings and inform the Ombudsman of their views. The Ministry informed the Ombudsman that the Guidelines for work with persons suffering from dementia will be modified so as to leave out high level supervision wards. At the same time, the concept of work with dementia patients outside secure wards will be presented in the Guidelines in detail, prohibiting any measure that would limit their freedom either by technical restraints or any other form of restraint. As announced, the modified Guidelines was going to be submitted to the homes for the elderly in the beginning of September 2012, but this announcement had not yet taken place.

Admission to the secure ward of a social care institution with the consent of a statutory representative

So far the Ombudsman has dealt with some initiatives highlighting the disputability of provisions of the Mental Health Act (“ZDZdr”) on the basis of which a consent (as well as a revocation of a consent) for the admission of a person into a secure ward of a social care institution (“secure ward”), when a person suffers from mental disorders and has been declared as contractually incapable, may be given by a statutory representative of this person. In this regard, the initiatives have particularly highlighted that situations may occur when a statutory representative, when providing (and also when non-revoking) a consent for a detention at a such ward, is influenced by interests which are in conflict with the interests of the person being represented. In this case, a person concerned has no opportunity for the court to decide on his/her detention in the secure ward.

Article 74 of ZDZdr regulates the admission of a person into the secure ward of a social care institution by way of consent. Paragraph (2) of this Article lays down that in case of a person declared as contractually incapable, a person’s statutory representative shall provide such consent. According to Article 74, Paragraph 3 of the ZDZdr, a person must be immediately dismissed from the secure ward when the person’s statutory representative revokes such consent.

A person being declared as contractually incapable cannot even participate in the procedure for the admission into the secure ward. The admission of a person declared as contractually incapable is, under the ZDZdr, considered to be an admission with a consent (by a statutory representative) regardless of the fact of whether the person concerned agrees or not and without having envisaged any form of control of such a decision by a statutory representative. This also excludes the opportunity for the court to decide on the regularity of such an admission into the secure ward. In this part, the applicable statutory regulation as referred to in the ZDZdr is significantly different to the previous regulation under the Non-litigious Civil Procedure Act, where, specifically, in Article 71, the detention of a person declared contractually incapable was considered a detention without a consent and thus provided for the judicial control of such a detention. In the Ombudsman’s opinion, in this part, the ZDZdr significantly worsened the position of persons declared as without capacity to contract and exposed them to potential abuses.

In the Ombudsman's assessment, the admission to a secure ward should be considered as a de facto deprivation of liberty and an interference with the right to personal liberty (Article 19, Paragraph 1 of the Constitution of the Republic of Slovenia). Deprivation of liberty, representing a limitation of personal liberty, is in fact always the case when an individual cannot freely leave or abandon a certain place or room. Everybody who has been deprived of liberty, in accordance with Article 5, Paragraph 3 of the ECHR, must be immediately brought to the court or before any other official executing judicial power. In addition, such a person is also granted the right to a trial in due time or the right to be released. According to Article 5, Paragraph 4 of the ECHR, such a person also has the right to initiate proceedings in which the court will swiftly decide on the legality of the deprivation of liberty and order a release of the person concerned if the deprivation of liberty was illegal. It has been established, however, that the ZDZdr does not provide this right to a person declared as without capacity to contract and who, on the basis of Article 74 of the ZDZdr, has been accommodated in a secure ward only with the consent of a statutory representative. This provision of the ZDZdr is thus considered by the Ombudsman as a serous deficiency and it is believed that it is also contrary to Article 5 of the ECHR and as a result also to Article 8 of the Constitution of the Republic of Slovenia which stipulates that laws and regulations must comply with generally acceptable principles of international law and with treaties which are binding on Slovenia.

In the light of the above mentioned, the Ombudsman also believes that the abovementioned provisions of the ZDZdr are also contrary to Article 19 of the Constitution of the Republic of Slovenia (protection of personal liberty), Article 23 of the Constitution of the Republic of Slovenia (right to judicial protection) and Article 14 of the Constitution of the Republic of Slovenia (equality before the law) which is why the Ombudsman addressed a challenge to the constitutionality of Article 74, Paragraphs 2 and 3 of the Mental Health Act to the Constitutional Court of the Republic of Slovenia.

Minors in juvenile facilities and special education institutes

Minors are admitted to juvenile facilities under the aegis of the Ministry of Education, Science, Culture and Sport on the basis of decisions by Centres for Social Work, court decisions (as educational measure) or by decisions on placement in an educational programme. In 2012, there were no initiatives received from any such minors But the Ombudsman continued to visit juvenile facilities within the scope of implementing duties and powers of the National Preventive Mechanism (more is provided on this subject in a special report). A visit was carried out to the Črna na Koroškem Training, Work and Care Centre which is a social care institution that falls under the responsibility of the Ministry of Labour, Family and Social Affairs. It is an occupational activity centre with institutional care provided for minors and adults. A speciality of this institution is that as a result of a 2010 decision by the Ministry of Labour, Family and Social Affairs, Decision No. 149-118/2010-6 of 29 September 2010, it was assigned the role of an institution responsible for admitting adolescents who have been committed to a special education institute as an educational measure ordered by the court.

The implementation of an educational measure regarding a placement in a special education institute

Under the provisions of the ZIKS-1, an educational measure concerning admittance to a special education institute is implemented in special education institute for children and adolescents with physical and mental disorders. The implementation of the educational measure concerning the admittance into the special education institute must be undertaken so as to enable a minor to receive education, learning and training for work as well as activities in sports, creative and cultural activities. Hence it is assumed that (only) institutions which are capable in terms of their staff and expert competence can be selected for the implementation of educational measures.

A decision about which institution a minor should be committed to, is decided upon by the court on the basis of an opinion of an consultative commission functioning within the Ministry of Justice and Public Administration (this committee was abolished with the amending Act ZIKS-1E). In the light of the provision of Article 200 of the ZIKS-1, it was binding on the Ministry, responsible for social affairs, to determine in which institutions dedicated for the training of children and adolescents with physical and mental developmental disorders may the educational measure concerning the placement into a special education institute be implemented (more is given on this topic in the Annual Report for 2010, pp. 90-91).

By way of the abovementioned decision by the Ministry of labour, Family and Social Affairs, only the Črna na Koroškem Training, Work and Care Centre was selected as the special education institute to carry out the educational measure concerning the commitment to a special education institution, but obviously only for some adolescents, that is for those with a moderate, serious and severe mental disorder who have been committed to a special programme of education and care by way of a decision on placement. Other institutions, according to the explanation from this Ministry, "*exceed the capacities which are enabled with its goals by the Special Programme of care and education, staffing and technical conditions of the institution*."

During the visit to the abovementioned Centre in Črna na Koroškem, the Ombudsman's team was persuaded that this causes many complications in practice. For example: the Centre refused to accept one of the adolescents with such an educational measure in spite of the final nature of the court decision. The Acting Director explained that the institute does not have suitable accommodation rooms for these minors, and additional staff would be needed to implement activities suitable for them. A minor who was not yet been admitted into the institution, in fact received a decision on the placement as a "child with behavioural and emotional disorders" and not as a "child with moderate, serious and severe disorder in mental health".

The above stated raises concerns since it shows the lack of respect for decisions passed by the court which has ordered an educational measure for the minor concerning placement into a special education institute. It also leads to the conclusion that, in Slovenia, there is still no suitable institution in which all educational measures regarding the placement into a special education institute can be carried out for all adolescents (including for those without a decision on placement), even in spite of the statutory commitment by the ministry responsible for social affairs, to decide which institute will implement this measure. According to the Ombudsman's findings this is a matter of concern and it urgently requires that all the necessary measures be adopted as soon as possible so that each educational measure involving a referral to a special education institution may be carried out, or else, the soundness of imposing such measures must be questioned. In fact, an educational measure involving a referral of a person to a special education institute, which is ordered but not also implemented, has no effect since there is no facility (authorised and suitable) to actually implement such a measure. The Ministry of Labour, Family and Social Affairs, the Ministry of Justice and Public Administration and the Ministry of Education, Science and Sports were therefore urged to adopt all the necessary measures as soon as possible (including potential and necessary statutory amendments and modifications) in order to provide for a smooth implementation of educational measures of this type. Following the Ombudsman's initiative, the Ministry of Justice and Public Administration informed the Register Department of the Supreme Court of the Republic of Slovenia on this issue; the Department will submit the notification about this issue to all judges in the newsletter: "Judge's Guide".

Persons with mental disorders and persons in social care institutions

- The Ombudsman expects that during the preparation of the necessary statutory amendments of the ZDZdr the work will run smoothly.
- The Ombudsman urges all persons responsible to provide for a consistent observance of the ZDZdr and that expert guidelines concerning the protection of personality and dignity and integrity of all patients be taken into account when special protection measures be applied.
- The Ombudsman encourages the Ministry of Labour, Family and Social Affairs to shortly issue amendments and modifications to the Guidelines for Work with Persons Suffering From Dementia, by taking into account the Ombudsman's comments.
- The Ombudsman recommends to the Ministry of labour, Family and Social Affairs that all the necessary measures be adopted so that admissions into secure wards of special social care institutions on the basis of court decisions will be implemented without any complication.
- The Ministry of labour, Family and Social Affairs should adopt all the necessary measures so that advocates of rights of persons in the field of mental health would also be available to persons in secure wards of social care institutions (homes for the elderly).
- The Ombudsman warns about the unsuitable legal basis for the application of special protection measures outside the units special supervision of psychiatric hospitals and security wards of social care institutions.

Minors in juvenile facilities and special education institutes

- All responsible state authorities are encouraged to adopt the necessary measures for the implementation of all educational measures concerning referral to a special education institute for all adolescents, including those without a decision on placement.
- The Ombudsman warns of the need for any measure concerning a referral to a juvenile facility be carried out in a suitable and previously selected institute.

5. Degrading treatment of a convicted person or an implementation of a safety measure

An initiator complained because the employees of the Dob pri Mirni Prison took away the handle of a broom without any explanation. He could not clean his room properly and only by kneeling on the floor in order to clean it.

Considering the seriousness of the initiator's complaint and other complaints, the Ombudsman visited him and verified his assertions. It was established that the handle of the broom was actually taken away. On this basis, during the visit to the initiator, the Ombudsman's team proposed to the head of the Unit I of the Dob pri Mirni Prison that he provide him a suitable broom for cleaning the room as soon as possible. An inquiry at the Prison Administration of the Republic of Slovenia was also made and an explanation for the handle withdrawal was requested. The Ombudsman was also interested in whether other suitable broom was provided to the initiator.

The Prison Administration explained that Dob pri Mirni Prison took away handles of the brooms from all prisoners in single rooms for security reasons since it had been determined that these were used for trafficking illegal objects. The Prison Administration confirmed that the Dob pri Mirni Prison handed a shortened broom handle to the initiator immediately after the Ombudsman's visit. The Prison Administration insisted on the standpoint that by taking away the handle of the broom the rights of the initiator were not violated by the Dob pri Mirni Prison since the applicable regulations concerning the implementation of criminal sanctions do not stipulate what devices the prisoners are entitled to for the purposes of cleaning and maintaining the hygiene in the prisons room. At the same time, the House Rules of the Dob pri Mirni Prison stipulate that objects which prisoners have with them may be permanently or temporarily taken away in case of misuse.

The initiative was assessed as justified. The Ombudsman disagrees with the standpoint by the Prison Administration that the Dob pri Mirni Prison did not violate the initiators' rights by taking away the broom's handle. After all, prisoners are required to keep their rooms clean which is why they must be given this facility by providing suitable devices. It is particularly pointed out that after the confiscation of the broom handle, the prisoner had to clean his room on his knees, which he thought was humiliating and he also warned the Ombudsman about that. **2.2-8/2011**

6. Deficiencies in procedures handled by the Centre for Aliens with a foreign national who needs medical assistance

In 2012, the consideration of an anonymous initiative was concluded which referred to the treatment ofone of the foreign nationals accommodated in the Centre for Aliens in Postojna. Among other matters, according to the statements in the initiation, a foreign national tried to commit suicide out of despair and he did not receive any suitable medical assistance but instead of that he was handcuffed. When the Ombudsman visited the Centre for Aliens in the capacity of the National Preventive Mechanism ("NPM"), the Ombudsman's expert in the field of health care examined in detail the circumstances in which this foreign national was found when residing in this Centre. Other information and circumstances in regard to his accommodation were previously obtained by the Ombudsman's representative, specifically, on the basis of an interview with the head of the Centre for Aliens and a video recording from a surveillance centre in the reception room where the foreigner concerned was accommodated during that time.

The expert determined that the foreign national was brought to the Centre on Friday, 13 May 2011 at 15:40 when the doctor had already left. Since he refused to hand over his mobile phone, he was not accommodated in the department but remained in the reception room. On the next day, at 19:50, he violated the House Rules when he threw his tray with food at the wall. He calmed down when a police officer entered the room. The police officer then noticed traces of old cuts on his wrists which he had scratched until they had bled. A nurse was immediately informed of this. The expert established that according to the notes in the record it is not absolutely clear, but that it is obvious that the doctor was then first informed of the medical condition of the foreigner (the nurse called the doctor by telephone). It is not recorded what instructions would have been given to the nurse who did not remember the case concerned at the time of the visit of the NPM. Further, in the documentation it is registered that the mentioned foreigner "tried to commit suicide by suffocation" at 21:05. The Centre's staff immediately noticed this (also confirmed by a video recording on camera) and called the nurse who then informed the doctor via the telephone. The expert further established that it is written down that the foreigner was not (physically) hurt but she considered the lack of any notation of the state of his consciousness as a deficiency as well as the fact of whether this was actually determined. It was also clear from the documentation that the foreign national was tightly handcuffed and supervised in terms of video-surveillance and physically. After the instruction of the doctor given via the telephone the foreigner also received a sedative (Apaurin ampoule). On the following day (on Sunday, 15 March 2011) his handcuffs were released at 09.00. There was no record in the remainder of the document whether anybody examined the foreigner or called a doctor or a psychiatrist until the evening when at 19:45 a police officer noticed on the video-surveillance system that he was hitting his head on the wall. That is why he was again handcuffed and leg-cuffed and after consulting the police officer, the nurse gave him a sleeping and tranquilizing drug. This is recorded in a document on the use of body cuffs while no sedative medicine injection is recorded in the medical documentation nor any potential consultation with the doctor. On Monday, 16 May 2011, at 10:15, the foreigner was handed over to the Croatian security authority. It is not clear from the documentation when the cuffs were removed.

The expert has thus concluded that the medical documentation is deficient in this case – specifically, the following is not clear: the medical condition of the foreign national, the events activating the behaviour of the foreigner, the language of communication, the contacts with the doctor and medical treatment ordered via the telephone. The expert was also surprised with the finding that a person whose act had been characterised as an attempt at suicide by way of suffocation in the Centre's documentation and who shows clear signs of earlier similar attempts is not examined by a doctor or a psychiatrist (at least this is not evident from the documentation) for the whole of the next day. On the basis of the existing documentation, the expert could make a conclusion that, in the given case, the foreign national was not at risk of committing suicide if left alone but, in the Ombudsman's assessment, he was not given expert and compassionate treatment.

When examining the available documentation, the opinion of the expert, and video-recordings of the camera at the Ombudsman's Office, it could not be concluded whether the foreigner concerned was actually examined by a doctor. On the basis of the above mentioned findings of the NPM and conclusions of the expert, a review of the case was proposed to the Ministry of the Interior and explanations were requested in regard to the (in)appropriateness of the treatment of the foreigner concerned.

The Ministry of the Interior agreed with the expert's opinion on the deficient medical documentation in regard to this case. The Centre for Aliens checked the existing system of recording measures from the field of health care. It was determined that subject to regular and consistent work, notes of preventive and remedial measures in the Form 8.51 "Patient's Protocol" satisfy the needs of recording. Nurses were therefore warned about the consistent recording of all measures in regard to health care provided to foreign nationals. The rules of Residence in the Centre for Aliens were presented to the foreigner in English (understood by the foreigner) by a social worker upon his first accommodation in the Centre (26 September 2010) and upon his repeated admission he was informed by police officers on repeated procedures regarding the accommodation.

According to explanations provided by the Ministry of the Interior, foreign nationals most often hurt themselves in order to evade repatriation. The authorities granted give a police officer an opportunity to prevent foreigners from inflicting self-harm by means of handcuffing them for prevention reasons. Since, in this case, the restraint measures were applied after the attempt to commit self-harm happened, the Ministry assessed that the restraint measures were justifiably used. Such was also their opinion in regard to the second use of the restraint measures, which was performed by a senior police officer in charge of the shift on 18 May 2011. After subsequently obtaining documentation from the Asylum Centre, the Ministry of the Interior established that the foreigner concerned had been treated at the Psychiatric Clinic Ljubljana several times owing to self-harm and suicidal threats. Doctors on duty established that these were cases of behaviour by which this foreigner expressed his protest against the measures and conditions of accommodation in the Asylum Centre while no signs of psychosis were found.

In the Ministry's Opinion, these documents supposedly confirmed the correct and expert nature of the judgment made by the nurse and were also conveyed to the contractual doctor of the Centre in regard to the behaviour of the foreign national during his accommodation in the Centre. That is why the Ministry of the Interior believes that the foreigner was provided with suitable medical care when in the Centre. The foreigner was last examined on 1 April 2011 in the University Medical Centre Ljubljana and at the Psychiatric Clinic Ljubljana, and in cases of injuries and signs of an illness posing risk to his life, the Centre for Aliens would have called the E&A service in the Health Care Centre in Postojna. In 2011, the Centre organised training entitled Psychic Disturbances, Suicide and Night Shift given by a psychiatrist. In addition, all employees in the Centre took part in the training session: Communication and Conflict Management carried out in the previous period.

Following the communication by the Ministry, the analysis of this case did point out deficiencies in the procedure concerning the recording of the measures implemented. That, however, has already been improved by the Centre. The above mentioned case was also analysed on several working consultations. Everybody involved was warned about the importance of an accurate recording of events and of all measures implemented. In addition, the Centre for Aliens, in agreement with the Asylum Centre ensured that the medical documentation of foreigners who are accommodated at the Centre for Aliens after the conclusion of the international protection procedure will be delivered to the Centre. In addition to the existing undertaking agreement for the provision of medical (psychiatric) assistance, on 1 March 2012, the Centre for Aliens concluded another undertaking agreement and has thus provided for additional medical (psychiatric) assistance for any foreigner who needs this when accommodated in the Centre. Two doctors who are psychiatrists are now available for foreigners.

Considering everything mentioned above, the initiation was classified as justified. It is expected that the response to findings and measures in this regard will contribute to the fact that such a case will never happen again. **2.6-1/2011**

2.4 ADMINISTRATION OF JUSTICE

GENERAL

In 2012, 460 cases were dealt with in the field of judicial proceedings (473 in the previous year). Of this number, there were 73 initiatives relating to criminal proceedings (71 in 2011), 267 relating to civil proceedings and relationships (275 in the previous year), 17 relating to proceedings before labour and social courts (22 in 2011), 94 to minor offences (96 in the previous year) and 9 relating to administrative judicial proceedings (the same number as in 2011). It is obviously not possible for the Ombudsman to provide a trustworthy assessment on the backlog of cases in Slovenian courts but this data shows that the trend of a decrease in the number of cases handled by the Ombudsman in this field is downward (comparing between 2010 and 2011, it amounted to 31 cases, whereas comparing 2011 and 2012, it only amounted to 13 cases). In addition, the backlog of cases and the lengthy judicial proceedings remain one of the main reasons for lodging initiatives before the Ombudsman. The data that in 2012 the judiciary fully managed the uptake of new cases which was even higher than in 2011 (this is worthy of concern) is encouraging, as well as the fact that a positive trend is also shown in the elimination of the backlog of cases. The Ombudsman is also pleased that the average anticipated time of solving all cases was reduced from 4.6 months in 2011 to 3.6 months in 2012, and in regard to more important cases from 8.7 months in 2011 to 7.7 months in 2012.

2.4.1 Findings from initiatives handled

Similar to As in previous years, initiatives may be divided into two groups. The first one refers to those initiatives pointing out lengthy judicial proceedings whereas the second one relates to the quality in judicial decision-making. When handling cases, the Ombudsman, as usual and as a rule, addresses the Presidents of courts by way of enquiries and other intervention measures, and when necessary also the Ministry of Justice and Public Administration in cases of an issue of a systemic nature or regarding the regulatory framework governing the operation of the judiciary. For the most part, the Ombudsman was satisfied with the responses from those persons responsible.

In regard to the first group, it is observed that the time scale of individual judicial proceedings is still very long, very much above the average. Trial within a reasonable time is one of the fundamental human rights and its violation represents a violation of judicial protection and thus also a violation of the right to a legal remedy. It is therefore unacceptable that, for example, the trial regarding an action concerning severance pay upon retirement, being one of the cases handled before the Ljubljana Labour and Social Court, has not been concluded in two years. The Supreme Court of the Republic of Slovenia still issues its decisions on extraordinary legal remedies with some delay. Thus, at the beginning of 2013, the Civil Department of the Supreme Court of the Republic of Slovenia was still settling cases not categorised as a priority and submitted for trial in the last quarter of 2009. Although it is the case of an extraordinary legal remedy (its purpose is also to provide the unity of the legal order and to apply law in a uniform manner), the primary purpose of this legal remedy, from the point of view of a client, is still the provision of a correct and lawful decision in an actual dispute. That is why it is surely also in the client's interest to have the case concerning an audit decided upon swiftly and without undue delay. This is also the reason why an initiative referred to under the case no. 6.8-1/2012 (see the case) was considered as justified.

The cases considered frequently included initiatives referring to delay in a repeated trial after the annulment of a decision of the first-instance court by the appellate court. It has to be repeated in this regard that regular and concentrated handling is also urgent in criminal proceedings and it must not be, and it cannot be, dependant on the termination of judicial office of a judge who has handled the case and on the reallocation of the case to another judge as a consequence.

Legal remedies (also known as expediting legal remedies) for the elimination of violation of the right to trial without undue delay are regulated by the Protection of Right to Trial without Undue Delay Act ("ZVPSBNO") applicable since 1 January 2007. This act was amended in 2012 ("ZVPSBNO-B"). The amending act, ZVPSBNO-B, was mainly proposed to fulfil the obligations referred to in the Decision by the Constitutional Court of the Republic of Slovenia, No. U-I-207/08, Up-2168/0 of 18 March 2010 (Official Gazette of the Republic of Slovenia, No. 30/10) and the Ombudsman welcomed the decision to fill the non-constitutional legal vacuum. The Ombudsman warned about this issue in the Human Rights Ombudsman's Annual Report for 2010, p. 104). The Ombudsman also welcomed the aim of the amending act to reinforce the enforcement and protection of the constitutional right to trial without undue delay referred to in Article 23, Paragraph 1 of the Constitution of the Republic of Slovenia. It has been assessed that the modifications and amendments of this Act bring about greater clarity in the regulation of the protection of the right to trial without undue delay. It has also been emphasized that it is correct that the use of the Act is made easier for the parties to the judicial proceedings as well as for the courts, in such a manner that better integration of the provisions of the Act takes place which leads to greater transparency of the Act's operation. Obviously, efforts need to be continuously made so that violations of the constitutional right to trial without undue delay do not to occur, including also violations of the right to trial in due time as referred to in the Convention. In this manner, the need to apply the ZVPSBNO would also disappear.

By using the expediting remedies under the ZVSBNO, a client in judicial proceedings has the right to achieve the goal that potential reasons causing the long duration of individual proceedings on the part of the court be removed from proceedings. By using them, a client may inform the President of the court, whose duty is to regularly monitor the operation of the court, about the long duration of proceedings. If the President of the court believes that the right to trial without undue delay has been or might be violated, or that the rules on case priority, statutory time periods for scheduling hearings, for the production of court decisions, have not been or might not be taken into account, they or any other rules regarding the procedural management, the President may order a judge who has been allocated a case for resolution to immediately create a report, but he may also request an inspection of the case file (on the basis of authorisations provided by the Courts Act), and take other measures available in case of established violations of the right to trial in reasonable time, pursuant to the ZVSBNO.

If any of the expediting legal remedies (a right for scrutiny or a motion for deadline) is granted, this may be the basis to enforce the right to fair redress in the form of (nominal) compensation for the damage incurred as a result of a violation of the right to trial without undue delay. It is obviously not possible to enforce the right to fair redress in a case in which the Ombudsman intervenes in the case. In the case of the Ombudsman's intervention, the President of the court is limited to using only those measures available to him within the scope of implementing tasks of judicial administration pursuant to the Courts Act. Therefore, prior to the Ombudsman's intervention, initiators are generally advised of the requirement that they themselves must use measures envisaged for the acceleration of proceedings under the ZVPSBNO.

The Ombudsman has warned for many years about unreasonably long judicial proceedings. Waiting for several years for the conclusion of the handling of an individual judicial case can not be defined as trial within a reasonable time provided for by the right to judicial protection under Article 23 of the Slovenian Constitution and the right to fair trial under Article 6 of the

European Convention for the protection of Human Rights and Fundamental Freedoms (the ECHR again pointed out this violation in 2012 in several judgments against Slovenia, for example in the case Kralj, Gobec). Problems at courts related to staff issues and other matters leading to decision-making which exceeds the reasonable time for trial, are of no interest to a client seeking the protection of his/her right before the court. A client in proceedings justifiably expects such treatment by the state and the court which will not lead to a violation of such an important human right, such as the right to judicial protection. Unfortunately, it is still a matter of a systemic issue and the responsibility cannot be transferred to a specific court and to a judge who has been allocated a case for trial. There are objective and subjective reasons for the situation regarding the backlog of court cases. That is why it is emphasized that further measures for the protection of the right to trial without undue delay urgently need to be taken since some judicial proceedings, in the Ombudsman's opinion, still take too long and do not provide for the right to trial in a reasonable time. The goal of these measures must be to shorten judicial proceedings and to eliminate any backlog of cases. The Lukenda project finished in 2012, unfortunately. One may only hope that this will not result in a (repeated) prolongation of the time for the solving of judicial cases.

In 2012, in addition to the extensive Act amending the Criminal Code (KZ-1B) bringing about the legal basis for safety measures (also measures for greater protection of children when they are victims of criminal offences, modifications and amendments in relation to criminal offences contravening safety in road traffic and in some other areas), the Ministry of Justice and Public Administration prepared numerous statutory modifications in the broader area of justice administration and new ones are already being planned (in addition of the legislation in the fields of enforcement of claims and bankruptcy, the enhancement of the court management has been announced), which all represents a further reform of the judiciary. All measures for the further improvement of the operation of the courts is obviously supported by the Ombudsman so the adoption of such legislation enabling the reduction of the backlog of cases and more efficient trials is encouraged. Thus, the Ombudsman supports all statutory modifications which will continue to lead to a more suitable and efficient organisation of the operation of the courts and thus the enhancement of the rule of law. Modifications to relieve judges from carrying out tasks which not need to be done by them must urgently be continued, and to introduce those which are needed for the enhancement of their independence and those which simplify judicial proceedings and enable better opportunities for alternative dispute resolution. One needs to be aware that it is the legislation itself that contributes to the backlog of cases, when its solutions are not well thought through, are too fast and too frequent. That is why it is urgent that everybody from the judiciary to whom these modifications relate participates in the preparation of these modifications (particularly, judges, prosecutors, attorneys-at-law and others) and that the main solutions are harmonised.

By providing the right to trial without undue delay and no errors in proceedings, courts themselves will contribute the most to restoring their reputation; that must remain their main priority. Obviously, courts must have adequate funds and sources in terms of staffing. Thus, for example, measures resulting from their saving policy should not additionally endanger the right to judicial protection. Every judge contributes to the reputation and independence of the judicial branch of power. According to the Judicial Service Act, a judge must act in such a manner so as to protect the impartiality and independence of trial, the judicial reputation and autonomy of the judicial branch of power. A judge must never accept gifts or any other gains in relation to his/her job. These commitments are also highlighted by the Code of Judicial Ethics in the principles on independence, impartiality and incompatibility. In relation to these issues, the socializing of some judges with receivers attracted a lot of media attention in 2012. It must therefore not be forgotten that a judge must always be impartial and independent in relation to parties in proceedings. It is not enough just to be impartial in decision-making, but a judge must give an image of impartiality also when handling the case and in contacts with clients. A judge must not do anything that might cause any client to mistrust him/her or to raise suspicions about a judge's impartiality or indicate a disrespectful attitude towards a client. This has been highlighted in the judgement by the ECHR in the case Peruš vs. Slovenia in which the violation of Article 6, Paragraph 1 of the ECHR has been established owing to the lack of impartiality of one of the judges making decisions in this case. Hence, it is correct that the judiciary should make a statement in such cases and present the public its findings in individual proceedings as well as other general opinions.

The second group of initiatives related to the quality of the judicial decision-making which, in the Ombudsman's assessment, significantly contributes to the swift and efficient nature of the judicial decision-making. The Ombudsman obviously has no authority to evaluate the regularity of the judicial decisions adopted or their content. Legal remedies (regular and extraordinary) are available to a client for that purpose; on their basis, the regularity of decisions of a lower-instance court may be tested by the second-instance court. Thus, prior to issuing the final court decision, a repeated test of any previously adopted decision at higher instance is possible in order to eliminate potential judicial errors before a lower-instance court and a correct final decision be adopted. Some incorrect decisions can be corrected after the final court decision is issued by way of extraordinary legal remedies.

For example, the fact that a case in a lawsuit in one of the cases which was handled has been dealt with by the first-instance court four times and reasons for which the decisions made at the first instance have been annulled three times, show, in the Ombudsman's assessment, that in this case the trial was not of such quality as it could have been if the first-instance court, when making the decision, had taken into account all aspects presented by the appellate and revising court before these two courts decided on the legal remedies against the first-instance decision. In this relation it is highlighted that, in addition to the speed in making a decision in a civil claim, it is even more important for a client that a decision made by the court is regular and lawful. That is why the annulment of a first-instance decision in proceedings involving legal remedies (by way of an appeal or extraordinary legal remedies) which results in having the case returned for a new trial at the first-instance court, does not contribute to the reputation of the court from the point of view of a client, particularly, if the annulment is perhaps the result of non- conscientious and imprudent work of the judge at first instance. Reproaches that appellate courts make final decisions only too rarely cannot be ignored.

The initiatives handled thus show that proceedings at first instance are not always implemented in a qualitative manner in order to sustain their judgement at higher instance courts. Cases are therefore sent back for a repeated trial too often. It is not surprising that such "circulation" of cases on which serious debates should have taken place within the judiciary (for example, regarding sufficient training, knowledge and experience of judges making judgements in an individual field) are very often the subject matter of initiatives addressed by individuals to the Ombudsman. Thus, in another of the cases handled, the first-instance court made a decision on the case four times and in none of the trials was the case solved in accordance with deadlines stipulated by the Judicial Regulations.

Detention of a foreign national with the status of a refugee

In Article 24, the Human Rights Ombudsman Act stipulates that the Human Rights Ombudsman of the Republic of Slovenia does not handle cases over which court proceedings or other legal procedures are being conducted, except if there is a case of unjustified delay of proceedings or an obvious abuse of power. Outside the stated provisions of the law, the Ombudsman's intervention is possible in the role of amicus curiae referred to in Article 25 of the same Act. Hence, in the case of a foreign national who was detained in Koper Prison (pursuant to the Decision by the Koper District Court of 14 July 2012, in case no. Kpd 255/2012) as a result of a warrant issued in Albania, the Ombudsman warned about the necessary care for refugees to which Slovenia has committed itself as a Contracting Party to the Convention relating to the Status of Refugees from 1951 (Official Gazette FLRJ-International Treaties, No. 7/¸1960, Act on Notification of Succession – Official Gazette of the Republic of Slovenia 35/1992, International Treaties 9/1992). In particular, protection is provided to a refugee who, if entitled to such care,

obtains protection and is not returned by force to a country in which his/her life might be at risk. In this particular case, in his initiative addressed to the Ombudsman, the foreigner highlighted that in this relation (in previous proceedings deciding on his extradition to Albania on the basis of a warrant by the Albanian court in the same criminal case), he had already been granted the status of a refugee under the above stated Convention in Italy.

Similarly to Article 3 of the Convention for Protection of Human Rights and Fundamental Freedoms which prohibits torture and inhuman and humiliating treatment or punishment, the Constitution of the Republic of Slovenia in its Article 18 emphasizes that nobody may be subjected to torture, inhuman or degrading treatment or punishment. This provision leads to the prohibition on the host country from expulsion of any person who is truly threatened with exposure to inhuman treatment if they were returned to the country from which they have fled. In addition, the obligation to observe the principle of non-refoulment derives from Article 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. This principle, being the most important principle of the Convention relating to the Status of Refugees is highlighted in Article 33. The United Nations High Commissioner for Refugees, in the capacity of a body supervising the Convention's implementation, warned the court of Slovenia's obligations as a Contracting Party to the Convention relating to the Status of Refugees.

Taking into account the above stated, and in particular Article 22 of the Constitution of the Republic of Slovenia demanding a detailed court decision, in the Ombudsman's assessment, the court was obliged to perform a swift and prudent assessment of whether surrendering this foreign national would pose a threat to his life or liberty and expose him to torture or inhuman or degrading treatment or punishment, and to make a stand in regard to his claims that he had already been granted the status of refugee in a similar prior procedure in Italy.

The court informed the Ombudsman that the extradition detention against the foreigner had been withdrawn. It is a matter of concern that it took the court almost two months from the time of imposing the detention to find that asylum had been granted to the foreigner as a result of threats posed to him in Albania, and as a result Slovenia, having signed the Convention relating to the Status of Refugees, cannot extradite that person, although when in contact with the Police and during the first hearing before the court, the foreigner presented his passport showing his status as a refugee to which he constantly referred. The court justified its refusal of a request for extradition by referring to Article 33, Paragraph 2 of this Convention with a finding that the foreigner had been granted asylum because of the implementation of a judgement and associated punishment and in regard to which Albania demanded his extradition in this case. The investigative judge stated that it was not possible to circumvent the fact that it was a case of an extraordinarily long extradition procedure considering the method of communication and the time for obtaining data and its verification. In spite of that, the Ombudsman encouraged the courts to perform a swift and especially prudent judgement of the circumstances of the matter without undue delay in all cases which include the claimed status of a refugee which obviously cannot be ignored when making a decision. When imposing detention and its duration as one of the most severe interventions in the personal freedom of an individual, it is possible to take into account the exceptional nature of this measure which, in regard to the cases of detention, demands the swift work of courts and other participating state authorities. Hence, the fundamental guideline in relation to detention is that such deprivation of liberty must last for the shortest time necessary. The standpoints of the out-of hearing senate justifying the refusal of one of complaints by the foreigner's advocate regarding the imposed detention by stating that only a minister responsible for justice (pursuant to Article 530, Paragraph 3 of ZKP) holds the power to decide on a previously granted status of a refugee, and finding that there is no data in the case file pointing to circumstances to show that, in the Republic of Albania, the initiator would have been tortured or treated or punished in an inhuman or degrading manner (decision by the Koper District Court of 1 September 2012, Case ref. no. I Ks 35525/12 (Ks 441/12) – II Pom35525/12), demand the appropriateness of the regulation concerning the extradition procedure for accused and convicted persons in the ZKP to be examined, particularly, since according to the information available, this was not the only case.

Detention and other decisions by courts

In cases concerning detention, the court does not only decide on its imposition, prolongation or withdrawal but also on other matters. Thus, in cases of minors, by way of exception, the judge can rule that the minor be detained and housed with adults when this is found to be in the minor's best interest considering his/her personality and other circumstances in an actual case. In this relation, case no. 2.1-16/20111 is described among the cases presented. It should be added that the Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) believes that minors, accommodated in an institution for adults, should always be separated from adults in a separate department.

2.4.2 Free legal aid

The purpose of the Free Legal Aid Act is to provide for the implementation of the right to judicial protection to socially deprived individuals. Costs related to free legal aid are expected to be higher from year to year. Since the cause for this is supposedly the complicated procedure concerning the granting of free legal aid, its necessary simplification needs to be considered, while taking into account that its complex nature discourages some individuals unable to cope with it to submit applications for free legal aid. Findings of attorneys-at-law cannot be ignored, namely that free legal aid is sometimes granted in cases which are not reasonable in terms of their content and when claims are not justified. Free legal aid is rendered by solicitors. They have to make sure that legal aid of true quality is provided to clients in these cases. It is obviously unacceptable that solicitors are not paid for these services by the state within the prescribed time period.

When in contact with initiators (via telephone, during personal interviews, particularly when operating in the field), the Ombudsman first detects the distress of people seeking free legal aid but not being entitled to it because they fail to fulfil the statutory conditions (among other matters, very strict financial criteria) or are not granted free legal aid or do not claim it for various reasons. As already stressed, some non-governmental organisations, societies and individuals may greatly assist individuals in these cases who by rendering consultancy services provide various forms of legal aid and help people to enforce their rights, and particularly contribute to better awareness. Their activity is enforced by some local communities and this needs to be particularly complemented. To find methods of solving the above mentioned issue, a questionnaire was prepared by the Ombudsman's team on potential forms of free legal aid and legal consultancy which is offered as an assistance in enforcing rights to citizens by municipalities. The answers received from municipalities will serve as a basis for the Ombudsman's other measures in this field. Since the analysis regarding the answers had not been fully concluded by the time this report was prepared, this issue will be reported in detail in the next Annual Report.

2.4.3 Enforcement of claims

In 2012, the e-Judiciary portal was established with which the possibility of electronic filing of applications in the enforcement of claims proceedings was expanded.

In cases where there were no grounds for the Ombudsman's intervention (for example, in a case of lengthy court proceedings regarding child maintenance collection, case no. 6.4-45/2012), the Ombudsman explained to initiators the powers of the Ombudsman in proceedings concerning the enforcement of claims, and in particular, the use of legal remedies and agreement with creditors on the repayment of debts. It is still evident that individuals are not familiar enough with the proceedings concerning enforcement of claims on the basis of an authentic document. As regards the enforcement of a claim on the basis of an authentic document, prior to the lodging of the request for enforcement of the claim, a creditor's claim has not yet been decided

upon by way of a final court decision. By way of an authentic document (for example, an invoice), a creditor only shows a high probability of the existence of his/her claim. Thus, by virtue of a decision on the enforcement of a claim based on an authentic document, the court requires the debtor to pay the claim within eight days, and within three days from the date on which the decision is served in cases of disputes concerning bills of exchange and cheques, and at the same time allows the enforcement of the claim. If a debtor objects to the decision imposing the enforcement of a claim (either entirely or in a part in which the payment of the claim has been ordered) the existence of this claim becomes questionable.

More and more individuals who have been found in social distress for various reasons turn to the Ombudsman. There were some initiatives relating to forced eviction (announced or already performed). One of initiators, for example, asked for the Ombudsman's assistance since her house was to be publicly auctioned due to liquidity issues since she was not able to repay the mortgage on the house. Her husband, a sole trader himself, had no profit as a result of the crisis, and interest on the unsettled debt was mounting. The bank to which she had been paying monthly instalments for the loan, withdrew from the contract. Several individuals turned to the Ombudsman claiming inevitable financial hardship because the bank had confiscated the funds in their accounts – first within the scope of implementing the decision on enforcement of the claim (by taking into account restrictions under the ZIZ) and then the residual amount of monies on the account, for example arising from their liabilities under the previously concluded loan agreement. These individuals were thus (in spite of inflows of monies) left without any available funds. These cases obviously did not involve direct issues regarding enforcement of the claim and potential irregularities on the part of the court responsible for the enforcement of claims which is why the Ombudsman could not intervene.

Every year the Ombudsman receives some initiatives relating to judicial proceedings regarding enforcement of claims which show that individuals are frequently not resourceful when found in the role of a debtor. Since in most cases they do not know the rules of the procedure, they are not familiar with possibilities for securing the rights to which they are entitled as debtors in the execution proceedings. Owing to the pressure presented by the enforcement of the claim on them debtors omit certain procedural actions or do not even get involved with the procedure which only deteriorates their position. Cases of debtors who find execution proceedings initiated against them too easily are rather frequent. This was shown by a case of the enforcement of a claim calling for the sale of the house of a debtor owing a debt of 124 euros.

The case received a lot of media attention and some of the reporting was, in the Ombudsman's assessment, not always objective. But the legal profession and the Ombudsman (considering the fact that such a situation as originally presented in the actual case may actually occur) have been encouraged to consider whether everything is satisfactory with the legislation regulating execution proceedings or whether some modifications are needed.

In Slovenian execution proceedings the principle of free selection of means to enforce a claim is presently established, regardless of the amount of the creditor's claim. That is why the enforcement of a claim by using real estate is the first and only means of enforcement of the claim in the execution proceedings. A debtor has the possibility to propose that the court allow for another means of enforcement of the claim or to enforce the claim against another piece of real estate. A debtor may repay his/her claim at any time until the final decision is made and thus stop the execution of a claim by selling a piece of real estate. But in practice, there are cases when a debtor's only property is the house in which he/she lives. In such a case, the enforcement of a claim by way of a piece of real estate whose value is not proportional to the amount of the debt to be repaid by the selling of the real estate is not always in accordance with the principle of proportionality. To provide for the principle of equality before the law, a balanced protection of the creditor also has to be ensured in execution proceedings to achieve the repayment of his/her claims by way of enforcement and at the same time also the protection of a debtor so as not to put his/her existence at risk. Therefore, only observing the interests of a creditor should not lead to a situation where the fundamental rights of a debtor are put at risk (for example, his/her dignity, the foundations of his/her economic and social existence). The arrangement enabling the selling of a debtor's piece of real estate and only taking into account the goal to enable a creditor to have his/her claim settled in execution proceedings is justified and legitimate but it is assessed that such an arrangement is not entirely in accordance with one of the principles of the rule of the law – the principle of proportionality. That is why, in the Ombudsman's assessment, the existing statutory solutions in these cases need to be reconsidered and potential amendments and modifications at system level be made. The Ombudsman warned the Ministry of Justice and Public Administration about this. The Ombudsman's warnings were obviously well received since the Government of the Republic of Slovenia imposed a requirement on the Ministry to examine in an integrated manner the provisions of regulations concerning the absence of limitation on the part of a creditor when selecting means for the enforcement of a claim and a determination of the minimum limit of the monetary claim to be settled by selling a piece of property, particularly from the aspect of the proportionality of the intervention of the property right. After being informed of the analysis of all relevant regulations produced by the Ministry of Justice and Public Administration, in May 2012, the Government of the Republic of Slovenia imposed a requirement on the Ministry to prepare amendments of the Enforcement and Securing of Civil Claims Act with the aim of increasing the efficiency of execution proceedings and to reduce the lack of discipline in settling payment and at the same time to propose additional measures in cases of the enforcement of a claim by selling a piece of property which is a home of a debtor, for the protection of the debtor.

Every forced eviction presents distress for an individual and his/her family. It could not be ignored that such action is based on a prior final decision by the court having the execution power and which gives grounds to order the eviction and clearing of a house. The regularity of such a final court decision in execution proceedings (for now) cannot be tested any further. Individuals who have been adjudged to move out of an individual house or apartment and to empty it, had, as a rule, been previously informed about such obligation and as a result, they may start to solve their housing issue in due time. Unfortunately, some individuals do not take such court decisions seriously enough and start taking actions only just before the eviction takes place, when there are no options on the part of a debtor to prevent the eviction.

On the basis of the initiatives handled it has been established that there are many debtors who are not informed of how to act in case of a first default of the settlement of liabilities and they know even less about what to do if a creditor pursues his/her claim in execution proceedings and when and how perhaps to enforce the right to reside in a sold apartment or a house. That is why, in this field, the Ombudsman notes the lack of action on the part of the state and responsible institutions, maybe also non-governmental organisations (about which the Ombudsman warned in the past) which would be directed to raise the awareness of individuals of the potential consequences as a result of non-fulfilled liabilities and in actual assistance and guidance when they find themselves in debt but have no knowledge on how to start solving the situation.

2.4.4 Minor offences

The number of cases handled in relation to minor offences has remained more or less unchanged (94 cases were handled while 96 were handled last year). Similarly to last year, initiators expressed their disagreement with fines imposed on them, as well as with the procedure and decisions adopted. They often complained about inappropriate conduct and false establishment of the statement of affairs on the part of relevant bodies (particularly the Police and traffic wardens) in regard to the alleged misdemeanour). Initiatives relating to road transport and from the field of public order and peace are still predominant. Some initiatives again referred to the enforcement of fines by means of imprisonment. At the beginning of

2012, in regard to fine enforcement by means of imprisonment, the Ombudsman submitted a challenge to constitutionality on the assessment of Article 19, Paragraph 1 of the Minor Offences Act ("ZP-1") since it is assessed that this part of the Act interferes with human rights and fundamental freedoms in an unacceptable manner. The decision by the Court in regard to this request has not yet been made. However, the amendment of the ZIKS-1 is considered welcome, specifically the provision that when implementing an order of the court to bring an offender to prison by force, the offender is permitted to pay the fine to the police providing there are no security concerns. The offender must execute the payment immediately and present a receipt for payment while also paying for the cost of forced production. In this case, police officers must immediately inform the court which holds jurisdiction and which imposed the fine enforcement by way of imprisonment as well as informing the institution selected in the order for the implementation of the fine enforcement by such punishment.

As in all previous years, the Ombudsman provided explanations to initiators and warned them of the possibility of taking part in the proceedings (for example, by proposing evidence) and of legal remedies available to them. If an initiative indicated obvious irregularities or violations made within the procedure, initiators' statements were checked with the responsible offence bodies and the Ombudsman's findings and potential other measures were then presented to the initiators.

It may be pointed out that several initiators complained about the lack of due care in the treatment of their application for judicial protection. As it has been pointed out several times (for example, in the Annual Report for 2010) in making decisions on applications for judicial protection, an important role is particularly held by courts supervising the decisions made by offence bodies. In these cases, courts should treat with particular care all statements in the application for judicial protection which refer to the actual basis of the alleged offence and respect fundamental constitutional guarantees in regard to fair proceedings when making decisions, particularly when deciding on potential submitted motions for evidence. It is therefore not correct that courts are satisfied only with the established statement of affairs which is based on evidence implemented by offence bodies. It has been determined that a proposal to hear prosecution witnesses is quite often ignored by courts, which represents a violation of the right to legal guarantees.

Decision-making on application for judicial protection without hearing the accused

In proceedings regarding a minor offence, pursuant to Article 65, Paragraph 4 of the ZP-1, when deciding on a submitted application for judicial protection, the court repeats or complements the evidence-taking procedure only when it is determined that the statement of affairs is not complete or correctly determined. Thus, a judgement by way of which the court refuses an application for judicial protection may be issued without the accused having been heard and without (additional) implementation of the evidence-taking procedure.

In this regard, it is necessary to point to the decision by the European Court of Human Rights ("the ECHR") of 29 September 2011, case No. 3127/09 (Flisar vs. Republic of Slovenia). In this decision, the ECHR established that although the passing of the determination and punishment of minor offences to administrative authorities (therefore, offence bodies) is not contrary to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), an individual must have the opportunity to challenge such a decision before the court which provides guarantees referred to in Article 6 of the Convention. The right to oral and public hearings represents a fundamental principle, as stated in Article 6 of the Convention. In principle, an individual is therefore entitled to a hearing before the first and only court which has dealt with his/her case, except if special circumstances have existed which would justify not implementing that hearing (as for example in the Decision by the ECHR, case no. 57655/08 of 17 May 2011 (Suhadolc vs. Slovenia) when a traffic offence was detected by technical means.

Since the abovementioned case referred to an offence including audacious and violent behaviour which was personally witnessed by police officers, in the ECHR's opinion, the local court, from the aspect of fair trial without a direct assessment of evidence at oral hearing, could not suitably assess the statement of affairs or the responsibility of the applicant.

The Ombudsman warned the Ministry of Justice and Public Administration of this judgement by the ECHR and invited the Ministry to inform the Ombudsman's Office whether any measures have been (or will be) adopted at regulatory level in relation to findings by the ECHR in the case Flisar vs. Republic of Slovenia which would ensure that offenders who carry out misdemeanours which have not been detected by technical means will be treated equally and in accordance with the case law of the ECHR:

The Ministry communicated that, in accordance with the ZP-1, the content of the application for judicial protection and the claims made in regard to violations are of key importance when making decisions on an application for judicial protection. In the application for judicial protection, an offender may always state new facts and new evidence when it is demonstrated that it is probable that it could not have been presented without his/her guilt in the expedited procedure (Article 62 of the ZP-1). After testing the application for judicial protection, the offence body may complement the evidence-taking procedure, when necessary. When a violation of the right to make a statement is determined, an offender is given a chance to make a statement regarding the offence. Similarly, the court, to which the application for judicial protection has been referred, may repeat or complement the evidence-taking procedure according to the rules of the regular procedure. With the amending Act, ZP-1G, Paragraph 5 was added to Article 65 stipulating that if a statement of affairs has been determined based on data in the case file, about which an offender could not make a statement in a procedure before the offence body or in the application for judicial protection, the court must inform an offender about this; if facts derive from the description of the statement of facts, the court submits the description to an offender while also informing him/her where and when files of the case may be inspected, it must advise the offender of Article 114, paragraph 4 of this Act and determine a time period in which his/her statements, proposals and requests may be submitted. If the court decides to repeat or complement the evidence-taking procedure, it must inform the offender about that while also informing him/her of the right to be present when implementing evidence and that the court will invite him to individual procedural actions if the offender applies to the court for the same in writing within five days from the date of receipt of a notification. The Ministry of Justice and Public Administration thus assesses that the procedural position of an offender has already been improved with the amending Act, ZP-1G. At the same time the Ministry believes that ZP-1 has envisaged there will always be a hearing of an offender in cases when an application for judicial protection has been submitted. (This is even though it may only be for a misdemeanour established by way of the personal perception of an authorised official of the offence body). In this way the separation of the misdemeanour proceedings to expedite proceedings and regular proceedings would be eliminated.

The Ministry pointed out that the question whether the accused should be heard before making a decision about the application for judicial protection or not, is a question about the case law and not a question in regard to the appropriateness of provisions of ZP-1. Regardless of this fact, and from the point of view of improving the statutory text, the Ministry has made an assurance that this question will be examined when drafting the next Act amending the ZP-1

Slovenian citizens receive notifications on minor offences committed in Austria or in Hungary in a foreign language

Several initiators informed the Ombudsman that they had received notification of a minor offence committed in Austria (in one case in Hungary) in the German and Hungarian languages, as well as in the payment order that followed the notification. Some articles with similar issues were also noticed in the media.

In these cases, there are no grounds for the Ombudsman's potential intervention since it is not possible to intervene with the work of authorities of other countries. In spite of that, the Ombudsman verified with the Ministry of Justice and Public Administration and the Ministry of Foreign Affairs (as Ministries responsible for cooperation with foreign national authorities in this field) whether they had already dealt with the handling of similar issues and whether any measures had been taken in this regard.

The Ministry of Justice and Public Administration communicated that certain measures had already been implemented in regard to solving issues caused in some similar cases. The Ministry had already informed the Ministry of Justice of the Federal Republic of Austria on the alleged disregard of the provisions of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (in accordance with this Convention, if there are any grounds for suspicion that the addressee does not understand the language of a letter submitted, letters must be translated into a language understandable to the addressee). The Ministry of Foreign Affairs communicated that they had been informed of similar issues only in some cases in relation to Austria. In June 2011, they informed their Austrian counterpart with a diplomatic note of inappropriate practice (the Embassy in Ljubljana and the Ministry responsible for Justice in Vienna). When submitting a second diplomatic note in this regard in November 2011, Slovenia also expressed its expectation that such irregularities would be eliminated by Austria with relevant measures. At the same time, the Ministry of Foreign Affairs communicated that in some actual cases and regions Austria had already changed its practice in this field. The Ministry of Foreign Affairs advises every complainant that a person who has committed a minor offence is not free from the responsibility for the minor offence if a potential mistake in one of phases of the procedure (method of communication) is made.

The Ombudsman explained to an initiator that the Minor Offences Act ("ZP-1") applies for the procedure concerning a minor offence committed in the territory of the Republic of Slovenia which in Article 58, Paragraph 1 stipulates that in relation to the use of language, the provisions of General Administrative Procedure Act apply in the expedited procedure. Article 62 of this Act stipulates that the procedure is conducted in Slovenian and that in territories where the official language is Italian or Hungarian in these two language if so requested by a client. If an application addressed to an authority is not submitted in the official language, the body treats it as an incomplete application (its amendment is required or the application is rejected). However, it needs to be emphasised that the Cooperation in Criminal Matters with the Member States of the European Union Act ("ZSKZDČEU – Official Gazette of the Republic of Slovenia, No. 102/2007) – adopted by Slovenia on the basis of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, developed by the Council on the basis of Article 34 of the Treaty on European Union stipulates, among other matters that a person to whom a letter is addressed must be informed of its content in a language understandable to that person. Thus, (under this Act which is obviously binding only for Slovenian authorities), a person in regard to whom there is a ground for suspicion that he does not understand the language (especially, if a person so requires), a letter should be submitted translated into a language that such person understands.

Some EU Members even believe that the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union applies only in criminal matters and not for cases concerning minor offences (these countries also include Austria, as explained by the Ministry of Foreign Affairs). The Directive 2011/82/EU of the European Parliament and the Council of 25 October 2011 was adopted for that purpose and explicitly stipulating that it applies for traffic offences stated in the directive and that the written notification on misdemeanour is submitted in the language of the document of vehicle registration if the latter is available or in the official language of a Member State of the vehicle registration. It furthers stipulates that Member States must harmonise their regulations with this Directive by 7 November 2013. The Republic of Slovenia has already acceded to the implementation of the above mentioned Directive. Its provisions are in fact already included in the proposal of the Act Amending ZP-1 Act (ZP-1H), which is in the phase of being adopted. It can also be expected that Austria will harmonise its legislation (and practice as a consequence) in accordance with this Directive since Member States are obliged to respect directives of the European Parliament and the Council.

2.4.5 State Prosecution Office

In the field regarding pre-trial proceedings, 23 cases were handled by the Ombudsman in 2012 (only two fewer than in the previous year). These cases mostly related to the work of State Prosecutors. Some similar initiatives were also dealt with in other areas of the Ombudsman's work.

State Prosecution Offices, being a part of the judiciary, are an independent national authority but with the Act amending the Government Act they have been placed under the structure of the Ministry of the Interior. This Ministry also performed duties in the fields regarding the organisation and status of the State Prosecution Office, judicial supervision over the operation of the State Prosecution Office, judicial administration for the field of the State Prosecution Office and international cooperation and international legal assistance relating to the State Prosecution Office. The Ombudsman does not consider this decision (which is a political decision) is the best solution in regard to the separation of duties of authorities participating in criminal proceedings, and the decision was also subjected to assessment by the Constitutional Court of the Republic of Slovenia.

In 2012, the State Prosecution Office Act, which had only just started to apply, was amended but no significant modifications and amendments of the Act were included. These are only just being announced. The State Prosecutor General adopted the prosecution policy which is supposed to contribute to the more efficient work of the State Prosecution Offices.

Claims made by initiators were usually verified by inquiries addressed to the heads of State Prosecution Offices and generally their replies were satisfactory since it was not necessary to press for a requested answer or request additional explanations.

In regard to the initiatives handled, cases relating to dissatisfaction of clients with individual decisions made by State Prosecutors still dominated. In spite of an obvious lack of staff and the much too heavy workload on the part of State Prosecutors, cases handled by the Ombudsman do not point to any delays in their work. This is encouraging. It needs to be stressed that a State Prosecutor must solve all cases allocated without undue delay.

The main task of a State Prosecutor is the prosecution of perpetrators, and their work must be lawful, correct and professional (the opposite conduct was established in case number 8). The rights and interests of the injured party must not be ignored.

Every applicant should have received an answer to his application

Several initiations related to (lack of) response by the State Prosecution Office as regards applications and letters received as well as the closure of a cases and archiving (registering a case as closed) without informing the alleged injured party.

The practice with which a state authority does not even reply to the letter received (not even with their first answer), in the Ombudsman's opinion, may be contrary to the principles of good administration. Such practice cannot be excluded by providing explanatory notes that an additional and unnecessary work load would be created as a result. In the Ombudsman's opinion, a state body is obliged to explain to an applicant its decision on the application received, including the arguments for it. For the sake of politeness, in a reasonable time, an

applicant should receive a suitable answer from the state authority to which his/her application has been addressed, maybe even an understandable or incomplete one. If a state authority lacks jurisdiction for a case, this explanation should be given to an applicant and a referral to the responsible body should be made. If an application is not understandable or incomplete, an initiator must be advised to correct it or amend it. If there are many such cases, suitable forms can be prepared for this purpose.

The Ombudsman also supports such a standpoint in regard to the work of State Prosecution Offices. In an opinion which was addressed in the past to the then State Prosecutor General, the Ombudsman expressed the belief that a State Prosecutor should have replied to every reasonable application with which an applicant seeks to enforce his/her rights or legally protected interests regardless of the potentially incorrect assessment that the case falls under the responsibility of a State Prosecutor.

In one of the cases handled, the Office of the State Prosecutor General of the Republic of Slovenia received two applications by an initiator. The Supreme State Prosecutor who dealt with the applications assessed that neither of them gave any grounds for the handling of the case by the State Prosecution Office. In a reply to the Ombudsman's inquiry, the Office of the State Prosecutor General of the Republic of Slovenia explained that the applications were not clear, lacking content which in both cases led to conclusions that there was no suspicion of a criminal offence. That is why the Supreme State Prosecutor assessed that there was no need to reply (in writing) to the applicant and that the letters gave no grounds to refer them to the State Prosecutor or a district State Prosecution Office holding jurisdiction. The applicant receives an answer from a State Prosecutor (only) in a case when the latter assessed, based on the content in a letter, that feedback may be useful and beneficial to an applicant when potentially enforcing his/her rights or legally protected interests. When this is not clear from letters or the content is such that it does not substantiate any response or further action by the responsible state authority or it is even without any content or unclear, a State Prosecutor must close a case based on such letters without sending an answer to an applicant. If such letters get repeated, they represent additional and unnecessary work and written responses by the State Prosecution office would not have any effect, in their Opinion.

Irrespective of the stated considerations, it was believed that an initiator would at least be eligible to receive at least one answer with a note that their letters were dealt with but that no grounds were given for (further) handling. The initiator was not familiar with the practice that a case may be closed without sending an answer to an applicant. Since there was no answer to the first application, he urged for an answer by sending an additional application since he had expected a reply from the Office of the State Prosecutor General. In the above handled case it was therefore proposed that the Office of the State Prosecutor General should deal with the Ombudsman's opinion and assess the highlighted practice regarding the closing of the case without informing the applicant.

The Ombudsman have always encouraged the practice of authorities that they are obliged to answer every reasonable application by way of which an applicant enforces his/her rights and legally protected interests irrespective of an applicant's incorrect perception that the case falls under the responsibility of that authority (such conduct has thus been linked to any reasonable applications received). But in the cases handled, the Ombudsman's position made a step forward. If a national authority provides no answer to an applicant and does not explain its decision on each application received at least with one answer, this may be contrary to the principles of good administration. It leaves an applicant with uncertainty. An applicant does not know about the assessment of the authority (which may also be wrong), that the application does not fulfil some conditions for its handling. According to the practice conducted by the State Prosecution Office and following its assessment, this would signify that such an application is without any content and not understandable. An initiator may not be familiar with the practice of the State Prosecution Office (or any other national authority) that a case may be concluded without sending an answer about the application (unless this is explicitly regulated by legal documents). That is why the Ombudsman believes that their first answer must be sent to an applicant also due to the principle of good administration and politeness, if only to communicate that the content of the letter gives no grounds for any action to be taken by the State Prosecution Office or that the letter received has no actionable content and is not understandable.

It was assessed that the modification of the existing practice of the State Prosecution Office into a different, applicant-friendly practice – therefore that every applicant, considering the circumstances of every case in question, would receive at least their first answer to a letter, should not pose a special and additional workload for the Office of the State Prosecutor General. The Ombudsman refers to data that in 2010, there were only 38 such letters, similar to applications by initiators.

In a reply to the Ombudsman's intervention, the Office of the State Prosecutor General was of the opinion that the practice of the State Prosecuting Office does not differ from the Ombudsman's (complemented) opinion. Considering the content and clarity of letters, applicants in fact always receive a suitable answer when it is clear from the content that feedback from the State Prosecution Office might be useful or beneficial for an applicant when potentially enforcing his/her rights and legally protected interests. Only when the content of a letter does not give any clear grounds for a reply or further action by a responsible State Prosecutor, or a letter is without any proper content and not understandable, should the State Prosecutor close a case without sending any reply to an applicant.

The Office also added that State Prosecutors should observe the principle of good administration by answering applications of various applicants. This does not hold true only for State Prosecutors of the Office but for all State Prosecutors in the Republic of Slovenia. The Ombudsman was satisfied to receive a note that the Office of the State Prosecutor General encourages the conduct that an applicant should receive an answer to his letter, considering the circumstances of every case in question.

2.4.6 Attorneyship

Among the cases handled in this field, there were 17 initiatives referring to the work of solicitors (26 in the previous year). Complaints claiming uncoscentious representation by solicitors and requesting documentation as well as initiatives concerning the payment of costs of representation (such as, incorrect calculation of costs, calculations contrary to oral agreement and similar) dominated. The cases handled show that sometimes, attorneys-at-law still operate in an unprofessional manner and do not issue invoices and receipts for monies received by parties for their representation. Thus, an initiative was handled in which the initiator claimed that he paid his attorney-at-law money for the costs of representation but never received a receipt. After the trial was concluded, the attorney-at-law claimed the amount of money which the initiator said he had already paid. The cases handled also show that costs for solicitor's services represent a high proportion of the judged or agreed amount achieved in the settlement. In one of the cases handled, in the out-of-court settlement, it was agreed between the parties that 4,400 euros of compensation should be paid and 400 euros for the costs of procedure, and the costs for the solicitor's service amounted to almost one third of this amount, approximately 1,500 euros. On the other hand, one cannot ignore the benevolence of some solicitors who provide their socially deprived clients with their services pro bono or at a reduced fee. It is also worth highlighting as a case of good practice the repetition of a day of free legal aid, introduced last year, which should become a tradition.

The initiatives in this field were still verified by the Bar Association of Slovenia which regularly replied to the Ombudsman's letters. The Ombudsman acted in the same manner in cases of disciplinary violations of an individual attorney-at-law. Some initiatives show that disciplinary procedures are still unreasonably long or the procedure becomes complicated for no special reason. In one of the cases handled, the disciplinary procedure was concluded by way of a final decision more than three years after the lodging of a complaint against a solicitor. The fact that the solicitor was found guilty of committing a disciplinary violation shows that the Bar Association of Slovenia and its disciplinary bodies do deal with complaints concerning violations of duty when performing a solicitor's duties. But initiatives handled in this field show that the duration of the handling of an actual complaint up until the conclusion of a final decision concerning a disciplinary procedure initiated on the basis of the complaint, does not provide a good impression on the part of initiators – complainants that the procedure before the Bar Association of Slovenia is also efficient. Lengthy waiting times for the result of the handling of their complaint leaves them in an uncertain position and with the conviction that their complaint will not be handled with due care as a result of mutual cooperation. To convince them of the contrary, it would be necessary to extend the existing activities of the Bar Association of Slovenia and its disciplinary bodies, for the procedures for handling complaints and the disciplinary procedures against attorneys-at-law initiated as a result of them, to be completed as quickly as possible.

The Code of Professional Conduct stipulates, in Articles 54 and 55, that the attitude of a client towards the opposing client should not be a criterion for the solicitor's attitude towards the opposite party. Attorneys-at-law must manage their behaviour towards the other client in accordance with general ethical norms. By taking an impersonal and considerate posture towards the opposing client, an attorney-at-law should seek to prevent the intensification of conflicts and achieve a peaceful solution. Attorneys-at-law should not take advantage of lack of knowledge, or illusion of fear of the opposing client, particularly if that party does not have a legal representative to achieve an unbiased success for his client.

Since in one of the cases considered, the Ombudsman believed that a comparison highlighted by an attorney-at-law in the statement of the case presented to the court showed signs of violations of the requirement correctly to perform a solicitor's duties referred to in Article 77 (a), Items 7 (improper or humiliating behaviour or expression when carrying out the duties of a solicitor) and 14 (ridiculing, scorning, and insulting the opposite party and making threats, all contrary to the Rule 55 of the Code of Professional Conduct) of the Statute of the Bar Association of the Republic of Slovenia. In accordance with Article 64 of the Attorneyship Act, an initiative was submitted by the Ombudsman to the disciplinary prosecutor of the Bar Association of Slovenia to assess whether this was a case of a violation of due conduct, and if it was, to request the initiation of a disciplinary procedure against the attorney-at-law. At the beginning of 2013, the President of the Bar Association communicated that an oral hearing had already been carried out in this disciplinary procedure, specifically, on 22 October 2012. An appeal was lodged against the decision made by the disciplinary commission of the first instance in this disciplinary procedure on 21 December 2012, which is why the disciplinary commission of the second instance will decide on this case.

2.4.7 Notaries

In 2012, no cases were handled in the field of notaries. However, the announced amendments of the legal regulation of notaries which were undergoing inter-sectoral and expert harmonisation were monitored. It is expected that amendments and modifications of the Notaries Act will even be such as to increase the legal protection of the users of the notaries' services, being a public service. In the Ombudsman's opinion, the announced transfer regarding the arrangement of (some) cases concerning estates of deceased persons will contribute a decrease in the workload of the courts.

SUMMARY OF PROPOSALS AND RECOMMENDATIONS

Judicial proceedings

- The Ombudsman continues to encourage all responsible parties to adopt all necessary measures for the elimination of court backlogs and for the shortening of judicial proceedings to avoid violations of the constitutional right to trial without undue delay and to avoid violations of rights to trial within reasonable time.
- The Ombudsman emphasizes that further measures for the protection of the right to trial without undue delay should be urgently taken since some judicial proceedings still last too long and do not provide for the right to trial within reasonable time periods.
- The Ombudsman proposes that the judicial branch of power adopt all the necessary measures to raise the quality of judicial decision-making.
- The Ombudsman proposes that the Ministry of Justice examine the Ombudsman's criticism regarding the regulation of legal protection in criminal law when the case involves an injured party who is an official and is at risk as a result of duties performed for and on behalf of the state and to prepare the amendments which are potentially necessary.
- The Ombudsman proposes that the Ministry of Justice provides for a unified manner of enforcing the right to inspection and copying of court files, in cooperation with the courts.
- The Ombudsman encourages the courts to provide for the correct use of relevant statutory provisions when inviting persons who have had a safety measure concerning medical treatment imposed on them by way of judgment.
- The Ombudsman recommends a review of the necessary simplifications and modifications and amendment of the procedure to obtain free legal aid and its scope.
- The Ombudsman recommends an examination of the need to modify and amend the existing statutory solution regarding the unlimited choice on the part of a creditor in selecting the means for the enforcement of a claim.
- The Ombudsman recommends the Ministry of Justice should continue, by way of measures, to increase the efficiency of the procedure regarding the enforcement of claims in order to reduce the lack of discipline in payment settlements and simultaneously with the enforcement of a claim by selling a house which is a debtor's home, additional measures for the protection of a debtor be proposed.
- Responsible state authorities should increase activities aimed at raising the awareness of individuals concerning the potential consequences as a result of failing to fulfil liabilities and those aimed at actual assistance and counselling when a person finds themselves in debt but is uncertain about how to resolve the situation created.
- The Ombudsman recommends that in procedures concerning the granting of free legal aid, responsible authorities should consistently observe statutorily prescribed deadlines (General Administrative Procedure Act and Administrative Dispute Act) in regard to the issue of a decision.
- The Court recommends the courts to diligently handle cases for judicial protection. When making decisions, the fundamental constitutional guarantees regarding fair trial should be respected.

SUMMARY OF PROPOSALS AND RECOMMENDATIONS

- The Ombudsman recommends the Ministry of Justice to examine the need to suitably amend or modify Article 22 of ZP-1, within the scope of the envisaged repeated amending act of the Minor Offences Act.
- The Ombudsman recommends that the Ministry of Justice make an integrated examination of the issue highlighted in relation to fine enforcement, including a potential elimination of fine enforcement by way of imprisonment.
- The Ombudsman recommends the existing statutory regulation be examined from the aspect of appropriateness of an efficient legal remedy in the case of a State Prosecutor's refusal of a criminal report and a decision not to commence prosecution.
- The Ombudsman recommends a modification of the practice of State Prosecutors so that every applicant shall receive at least their first answer to every letter.
- The Ombudsman recommends that the Bar Association of the Republic of Slovenia and its disciplinary bodies increase their existing activities for the procedures concerning complaints and disciplinary procedures against attorneys-at-law initiated on their bases, and conclude them in the shortest possible time so that efficient actions could be taken against attorneys-at-law who perhaps violate their duties.
- The Ombudsman recommends the adoption of a regulation regulating anew the tariffs for attorneys-at-law's services as soon as possible.

CASES

7. More than fifteen years needed for the conclusion of estate proceedings

In a letter to the Ombudsman, an initiator highlighted lengthy judicial proceedings at Maribor Local Court. Estate proceedings in a case handled by Maribor Local Court, case no. I D 590/96, had not concluded after the passage of more than fifteen years. There are two judicial cases waiting for the conclusion of these proceedings. Since the court did not reply to the notices submitted by the initiator's lawyer, the initiator turned to the Ombudsman for assistance in expediting the handling of the estate case.

In a reply to the Ombudsman's inquiry, the judge who has handled the case, substantiated the lengthy judicial proceedings with the fact that the case had been handled by several judges, that the case is complicated and demanding from a professional point of view, that the judge himself was absent for a long period of time and that, as a result of staffing issues of the court, the judge was overloaded with other priority cases. At the same time he stated that he would seek to conclude the case "somehow" by the end of December 2011.

The initiative was considered as justified. Such a long wait for a decision in the estate proceedings is unacceptable in the Ombudsman's opinion. The initiator was therefore invited to inform the Ombudsman if the Court would abide by its assurances regarding the conclusion of judicial proceedings. Since the initiator did not make any contact, it is believed that the Ombudsman's intervention contributed to accelerate the case and that the court finally concluded the handling of the case concerning the estate after more than fifteen years. **6.4-86/2011**

8. Unjustified criminal proceedings against police officer

The President of the Police Officers' Trade Union of Slovenia submitted an initiative to the Ombudsman in relation to criminal proceedings against a police officer. It was claimed that he committed a criminal offence concerning an unjustified personal investigation under Article 147 of KZ-1 which was supposedly committed when inspecting a wallet and taking out items; ID card and credit cards from a detained person prior to accommodating that person in detention rooms. According to the communication of the Trade Union, these proceedings raised a significant interest among police officers, particularly in regard to the content of the allegation, particularly the grounds for the prosecution, and uncertainty regarding the use of this authority in the future. It is the authority which is used by police officers every day prior to detaining a person for the purpose of protecting a detained person.

The Office of the State Prosecutor General of the Republic of Slovenia ("the Office") refused to handle the case at the extended council as proposed by the Trade Union, stating that no justified grounds were given. The case was dealt with by the Criminal Department of this State Prosecution Office about which the State Prosecutor handling the case was informed.

The Ministry of the Interior informed the Ombudsman that when verifying the complaints of the detained person, the statements of that person were not confirmed since the expert service of the Maribor Police Directorate determined that the use of police powers was professional and in accordance with the law. In regard to the inspection of the wallet, members of the senate responsible for solving complaints established that police officers carried out a thorough safety inspection before accommodating the detained person in the detention room and that within the scope of this inspection a police officer also checked the contents of the claimant's wallet which is in accordance with regulations. Members of the senate therefore unanimously decided that the complaint was wholly unjustified since police officers carried out the procedure in accordance with the powers given. The Ministry of the Interior also believed that a police officer was actually obliged to carry out such an inspection. The Rules on Police Powers in Article 52 stipulate items and substances which may be used for an attack, escape or self-harm must

be confiscated from a detained person by a police officer. If these were not confiscated during the arrest, a police officer must confiscate them during the safety inspection before a person is accommodated in detention rooms. During this inspection, a police officer checks the interior of shoes and hidden places of clothes and covers which cannot be checked by touching and where small dangerous items or substances can be placed (for example, razors, needles, lighters, etc.). The Ministry of the Interior explained that according to experience and from practice there are cases when persons had hid adapted weapons and other dangerous items in wallets which were then used for self-harm and also against other inmates or police officers. During the handling of the case, the Specialized State Prosecution Office, Department for Investigation and Prosecution of Official Persons with Special Powers (outside the main hearing) withdrew in full the bill of indictment. When dealing with the case, the Human Rights Ombudsman of the Republic of Slovenia inspected the court file at Ptuj Local Court, the ref. no. IV K 52406/2010 and additionally addressed the Office, requesting an amendment of the answer, and asking for the reasons for the withdrawal of the indictment.

The Office replied to the Ombudsman's additional inquiry that the case was again handled by the council of the Criminal Department of the Office. A State Prosecutor handling the case explained that the indictment was withdrawn since the action by the police officer as presented in the bill of indictment and as demonstrated by the statement of affairs until the moment of withdrawal was not contrary to Article 38 of the Police Act and Article 52 of the Rules on Police Powers and therefore the statutory signs of criminal offence under Article 147, Paragraph 2 of KZ-1 were not fulfilled. The Office further stated that no standpoint was made in regard to the justified nature of lodging the bill of indictment since this was supposedly only possible after a professional supervisory inspection was made which in the case in question was not reasonable. The Office also explained that, within the authorities granted, a State Prosecutor (himself/herself) determines the statutory conditions for the lodging of an indictment and is independent and autonomous in this regard. The State Prosecutor dealing with the case at the beginning of the procedure, who is not employed at the State Prosecution Office now and does not carry out the work of a State Prosecutor, obviously judged that there were statutory grounds for lodging the indictment. The same opinion was also given by the court, which accepted the bill of indictment and did not refuse it.

On this basis, the following was established: without having carried out the evidence-taking procedure of the case and without any changes in the statement of affairs in the bill of indictment, a State Prosecutor who later handled the case withdrew the bill of indictment because it was assessed that the alleged conduct was not a criminal offence. With the same statement of affairs one State Prosecutor judged that there was a criminal offence in regard to the alleged conduct and another that there was not. According to the Ombudsman's assessment, this raises concerns, particularly since the grounds for the withdrawal of the bill of indictment show that the indictment was not justified and that criminal proceedings against a police officer were not substantiated. With the opinion of the Office that it does not make sense to carry out professional supervisory inspection and when taking into account that it is an authority (as pointed out by the Trade Union) applied by police officers every day, the Ombudsman requested the Office to complement the answer with a communication as to whether state prosecutors of the Department for Investigation and Prosecution holding special powers of a Specialized State Prosecution Office of the Republic of Slovenia (and others, if necessary) had been or will be informed of findings and reasons for withdrawing the bill of indictment of this case to prevent such cases in the future (including with reproaches that this is a case of lack of knowledge of police powers). The Ombudsman particularly requested information about whether police officers of the Department for Investigation and Prosecution of Official Persons with Public Powers had been in any way informed about the case since it cannot be ignored that ,in the criminal report lodged against the police officer, the then Specialised Department of the Office established the existence of a justified suspicion that the police officer had committed a criminal offence when performing a security check.

The Office replied to the Ombudsman's additional inquiry that, in their opinion, all necessary answers and explanations were given in the case in question. As explained, all of the other activities which had been pointed out fall under the responsibility of an autonomous and independent State Prosecutor and the institution handling the case. Taking into consideration the facts communicated, this institution assesses whether any further activities are reasonable and necessary after the case is concluded. The Office added that there are no data that the issue concerning the handling of such criminal offences would be general which would require a further and detailed examination. The initiative has been considered justified. The withdrawal of the bill of indictment shows that there were no justified statutory reasons to lodge the indictment. The initiation of criminal proceedings against the police officer was thus not justified. Any criminal proceedings, particularly for police officers, represent a certain pressure and inconvenience. Unfortunately, upon the mandatory test of the indictment and the assessment as to whether or not there are reasons referred to in Article 277 of the Criminal Proceedings Act (among other matters, a reason stating that the alleged action is not a criminal offence), the court did not find that the alleged conduct was a criminal offence and accepted the indictment for further handling. The Ombudsman's intervention contributed that, in the alleged action, it was determined that there were no justified reasons for a criminal prosecution of the police officer. It is also expected that following the Ombudsman's findings that such cases will not occur in the future. **6.1-19/2012**

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

In 2012, 106 initiatives were handled relating to police procedures (100 in the previous year). The duties and powers of the Police are (still) determined by the Police Act ("ZPol"); the act which will regulate anew the duties and powers of the Police was still in legislative procedure at the beginning of 2013. Police duties are carried out by the uniformed Police and criminal investigation Police and other specialized units of the Police.

Pursuant to Article 135 of ZPol, in October 2012, the National Assembly adopted the Resolution on the National Programme for the Prevention and Combating of Crime for 2012 – 2016 period (Official Gazette of the Republic of Slovenia, No. 83/2012). It has been established that the Ombudsman's comments were taken into account to a very large extent in the Resolution's preparation. It is also expected that all responsible persons as determined in the programme, and participating authorities, will take full care in its implementation and that a special inter-sectoral group will prudently monitor its implementation.

In 2012, the Police underwent some activities for simplifying procedures in terms of administration upon the deprivation of liberty. The Ombudsman had warned about this several times in the past. Thus, according to guidelines and mandatory instructions from the Ministry of the Interior, the Police ensured that fewer documents must be filled in by a police officer when depriving a person of their liberty and the use of uniform terminology regarding measures being implemented was ensured (commencement of procedure, apprehension, imposition of detention) by way of standard forms. The Ombudsman supported solutions to reduce the workload of police officers. The Ombudsman's Office took active part in the preparation of these forms in order to ensure a good traceability and transparency of police work.

Police officers may detain and deprive a person of their liberty, including a minor, under conditions laid down by the law. When doing so, they are entitled to inform them of the rights to which they are entitled. Being aware of the fact that minors need additional attention, assistance and care, the Police produced a special leaflet (in several languages) by way of which minors may learn in detail about their rights provided by the Police from the moment of the deprivation of liberty. Among other matters this includes a right for a minor to exchange letters with the Ombudsman in confidence and without interference. A minor is particularly advised to use his/her rights at any time during the period of deprivation of liberty, even though he/she may have waived them before. It is particularly important that the text of the leaflet is adapted to under-aged persons. It is also expected that this leaflet will contribute to a better and more integrated knowledge of minors in regard to the rights provided to them in the case of such a severe interference with the right to personal liberty as is the deprivation of liberty.

The additional (fourth) visit of the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") in Slovenia at the beginning of 2012, must also be mentioned in this section: the CPT visited six police stations ("PS"). In the light of these visits, some comments and recommendations were given which Slovenia is obliged to observe and to eliminate all established irregularities; the Ombudsman will follow developments in this in the future. The recommendations also include some advice that the management of the Police should communicate clear messages that the ill treatment of detained persons, regardless of its nature, whether physical or verbal, is not acceptable and will be punished accordingly. This has been highlighted in the judgement by the European Court of Human Rights in the case BUTOLEN vs. Slovenia of 26 April 2012 (case No.) in which the Court ruled that Article 3 of the ECHR had been violated owing to inhuman and degrading treatment that an applicant was exposed to during the police procedures and that the authorities failed to efficiently verify his claims of Police ill treatment.

2.5.1 Findings from initiatives handled

The Ombudsman constantly emphasizes that the attitude of police officers towards individuals must be respectful and procedures and measures enforced by them professional and lawful. During their work, police officers must always take into account the rights and freedoms guaranteed by the Constitution, the law and other regulations. The main guideline for their work must be an ethical and respectful attitude towards any individual.

The complaints procedure regarding the conduct of a police officer is governed by Article 28 of the ZPol. If an individual believes that by way of an act of a police officer or an omission of such act, an individual's rights or freedoms have been violated, he/she may file a complaint with the Ministry of the Interior or the Police in 30 days from the moment when learning of a violation. A complainant may lodge an oral or written complaint or via e-mail to the Ministry of the Interior or any organisational unit of the Police. This complaints procedure is free of charge and an individual may initiate it in addition to other more formal (judicial) procedures. The Ombudsman thus continued to encourage initiators to take advantage of the (internal) complaints procedures since it is correct that any person concerned should first use the complaints body within the system in which the alleged irregularity occurred. In some individual cases the Ombudsman initiated a procedure if this complaints method failed to fulfil a complainant's expectations or in other justified cases. By way of inquiries, the Ombudsman turned, as a rule, to the Ministry of the Interior otherwise directing and supervising the implementation of police duties. It is established with satisfaction that also this year the cooperation with the Ministry (and the Police) was very good, only rarely did the Ombudsman have to request additional information or definitions or even press for answers. The Ombudsman's Office wishes such cooperation to continue in the future. Police stations were also visited under the capacity of the National Preventive Mechanism (more is provided on this in a special report).

The greatest number of initiatives again related to the work of the Police as the minor offence authority in regard to conducting and making decisions in procedures concerning misdemeanours. Some of these findings are therefore reported in the chapter entitled Administration of Justice (Minor Offences). The practice of the expert service of the General Police Directorate (GPD) warns police units of irregularities established in these procedures, when supervising their work and when solving actual cases. Thus, for example, (before the amending act ZPrCP), some irregularities were established in cases when a road user failed to comply with an alcohol content test and also refused to sign the minutes of the test. The Ministry of the Interior agreed with the position of the Ombudsman that, in accordance with Article 107, Paragraph 2 of the ZPrCP, a breathalyzer test with an ethylometer or an expert examination should be ordered in cases when a driver refuses to take the alcohol content test and will not sign the relevant minutes. The expert service of the GPD informed the police directorates of the above mentioned opinion on 16 April 2012; before that, incorrect instructions had been communicated to police units, namely, that police officers can not order an expert examination in such cases.

Otherwise initiatives related to various aspects of police operation, for example, when confiscating items, reporting/handling of criminal offences, house investigations, use of coercive measures, provision of assistance by the Police in cases of forced hospitalisation, and other matters). Since some initiatives again highlighted the dissatisfaction of initiators because, in their assessment, police officers failed to act suitably in response to requests for

their intervention or the intervention by the Police was not such as expected (for example, when reporting a violation of public peace and order in a multi-apartment house, conflicts with neighbours, disturbances of sleep with loud music, conflicts in the family environment and similar matters). In its action, the Police must always take care for the safety of people and property, prevent deviating occurrences and provide for the feeling of safety to citizens of a certain area. When necessary, for example if it is an area which is under pressure in terms of security, a more frequent presence of police officers is useful as well as the intensification of their measures.

In some cases, the Ombudsman particularly dealt with the issue regarding the efficiency of the work of the Police. In one of the handled cases relating to the constant removal of a traffic sign prohibiting driving by cargo vehicles at night time past the house of an initiator, the municipality stated that they tried to place the traffic sign together with another sign "every week and by way of police security but an unknown offender manages to pull out the pole of the traffic sign at an unknown time (probably at night) so that traffic signage cannot be put in place." In its reply the opinion was stated that it would be best "if the Police would guard the mentioned location for 24 hours but this is hardly feasible considering the availability of police officers, distribution of their tasks and disproportionately high costs".

The Ombudsman has not been satisfied with the answer of the municipality because the problem, rightly highlighted by the initiator is not being solved in the long term. The traffic sign is owned by the municipality and as an owner and good manager, the municipality should, in the Ombudsman's assessment, do more for the protection of its own property. It was thus believed that the municipality failed to take advantage of all opportunities, from technical security to engaging its own resources for physical protection. That is why the initiation was handled in this way and some proposals were made to the municipality in regard to options that might be used for the settlement of the issue highlighted by an initiator.

It is surely not realistic to expect that the Police can constantly protect a traffic sign. Even the potential detection of a person removing the sign would not permanently solve the problem of truck driving when this is restricted, in the Ombudsman's opinion. Nevertheless, it was believed that the Police could also do more for the case, particularly in finding the perpetrator (or perpetrators) of the criminal offence concerning the damaging or demolishing of traffic signage referred to in Article 326 of the Criminal Code or any other criminal offence. This person has not yet been detected although it is clear who has a motive to remove the sign prohibiting the driving of cargo vehicles at night time. From the municipality's reply it was even possible to understand that additional placement of a traffic sign does not make sense any more. These all point to an obvious lack of power on the part of responsible authorities, including the Police to ensure the observance of legal order and justified the expectation of an initiator to have peace at night time. The Ombudsman thus additionally encouraged the Police to do more, in cooperation with the municipality, to find the perpetrator who is damaging and demolishing the traffic sign and provide for its observance. At the same time additional activities are obviously expected from the municipality in the direction of a permanent solution to the problem highlighted by the initiator.

In its reply, the Ministry of the Interior believed that the Police carried out all activities for the resolution of the actual case. Police officers continue to collect notifications based on reported criminal offences in order to detect a perpetrator or perpetrators and determine other circumstances. The PS also assured that it will continue to cooperate with the municipality and adopt other measures to solve the issue highlighted.

Some initiatives related to the enforcement of rights of persons deprived of liberty by the Police. The Ombudsman specifically points out that police officers must ensure all the statutorily guaranteed rights to which such a person is entitled to during the deprivation of liberty and when collecting notifications in regard to the criminal case. The Ombudsman also warned that in cases when police officers find that a detained person has injuries, which are obvious and visible, or which are as a result of the use of coercive measures (for example, owing to the use of handcuffs), it must be ensured that a doctor examines the detained person. In regard to this case, the Ministry of the Interior agreed with the Ombudsman's opinion that a detained person must be provided with emergency medical treatment wherever it is obvious that it is needed.

2.5.2 Police action during protests at the end of 2012

On the basis of some letters received in relation to actions taken by the Police during the protests at the end of 2012 and considering the media reports in this regard, the Ombudsman expressed an expectation (in a press release) that enforcement authorities would take suitable actions in these events and that they do not misuse their powers. A detailed explanatory note was provided regarding the complaints procedures in the case of any assumed irregular conduct by police officers during the protests. It was proposed to everybody who has felt they have suffered as a result of conduct by the Police to consider the use of the existing complaints procedures under the ZPol. It was added that, in these cases, individuals (if complaints procedures available will be used) will contribute to clarify all circumstances regarding the action taken by the Police. It was requested from the Ministry of the Interior that it submit a report on the committee appointed with the task to assess whether the coercive measures which police officers used in these cases were professional and in accordance with the law. The Ombudsman will definitely examine with due care the recommendations prepared by this committee and on their basis decide on potential further measures.

Without any prior announcement, a visit to the PS Maribor I was carried out on 4 December 2012 at 00.03 hours during the protest and mass detention of protestors in Maribor. The aim of the visit was to verify the police procedures regarding the detention of a greater than normal number of persons. During the visit, the Ombudsman's team found that police officers were well prepared for the detention of a greater number of people. The apprehension and the treatment of persons put into detention at the location of a protest were carried out without major problems. It was pointed out, however, that in the case of a detention of a larger number of persons (when providing for the necessary number of police officers to carry out procedures regarding the detained persons) also a suitable number of appropriate detention rooms must be provided for. Considering the established lack of capacities to accommodate the detained persons in cases of mass violations, the Ombudsman proposed to adopt measures ensuring an adequate number of suitable rooms for detention in cases of the detention of a larger number of persons. In fact it was considered questionable that, in PS Maribor I, the detained persons in this case had to wait for more hours in a cold unheated room (a garage) without any direct access to toilets or constant access to drinking water. Respect for human personality and dignity must also be provided for during the deprivation of liberty (Article 21 of the Constitution of the Republic of Slovenia). No detained person must be in any manner exposed to torture or other cruel, inhuman or degrading treatment or punishment or to any other form of violence or threats. That is why in the case of further use of this room in PS Maribor I as a detention room, in the Ombudsman's opinion, it would be necessary to consider its reorganisation at least to assure that it is heated and to place benches in the room (providing for their fixation in order not to pose any danger when used) where detained persons could be seated. The fact that minors were not accommodated separately from the adult persons detained and that detained persons were not separated on the basis of gender was also considered to be an irregularity in relation to the accommodation of detained persons. This finding also requires the adoption of the necessary measures for the separation of detained persons during detention, in the Ombudsman's assessment.

During the Ombudsman's visit, no significant irregularities were found in relation to the enforcement of rights attributable to a detained person (some small irregularities were pointed out during the visit). Police procedures observed during the Ombudsman's visit to this PS were conducted in a fair manner and with respect for the dignity of detained persons. Owing to the subsequent initiatives of some of the persons detained, the Ombudsman decided on a thorough verification of their claims regarding the irregularities in the procedure. This was not concluded in 2012 which is why no findings can yet be reported in this regard. It needs to be pointed out that police officers must consistently observe all regulations and guidelines from this field, also in the case of detention of larger numbers of persons, in order to provide for a legal and professional implementation of the detention and humane treatment of a detained person. It is particularly important that, at the time of apprehension, a police officer who has established that grounds for detention have been fulfilled informs every person about the actual reasons for detention and rights to which such a person is entitled to. The duty of a police officer in regard to detention is therefore also the enforcement of a right to an advocate (it is noteworthy that during the Ombudsman's visit none of any of the 119 detained persons asked for this right). The police officer must also make sure to provide for the right to fast notification of close relatives, and not only after several hours of detention, particularly when a minor is detained. If a detained person asks that his/her relatives be informed, a police officer must inform them of the reasons for their detention, the place and envisaged time of detention, rights of a detained person which will be provided by the Police upon such request and on other justified requirements on the part of a detained person. It needs to be pointed out in this respect that a repeat of such notification, including all elements, must be submitted if a detained person is transferred to another place for serving detention. It needs to be taken into account that a detained person may enforce the rights at any time, even though these rights have been previously waived and that the provision of rights (as highlighted by guidelines for the work of police officers in this field) is an active duty of a police officer. If necessary, medical assistance must also be guaranteed to a detained person and that, during the deprivation of liberty, a detained person may use prescribed medication and be enabled the use of measures for easing pain as prescribed by a doctor.

Particularly in a case of a detention of a larger number of persons, accurate and regular recording of all circumstances of detention is much more important, and in particular, in regard to enforcing rights to which a detained person is entitled (for example, when the implementation of a certain right was enabled, whether a person has enforced an individual right and in what manner and with what authority such right has been declined); otherwise the verification of procedures involving a detained person is made more difficult.

2.5.3 Warning or punishment?

The initiatives considered under this heading included a case when an initiator's vehicle registration permission was taken away by police officers since its validity had not been renewed. The initiator agreed that he had committed an offence but he also stated that police officers simply gave a warning about the same offence to another citizen who is a Director General of the Police. Since answers received in regard to this complaint by the Police and the Ministry of the Interior did not convince him of their conduct in accordance with the Constitution of the Republic of Slovenia and valid legislation, the initiator asked the Ombudsman to verify their acts and to take action in accordance with the authorities granted. The Minor Offences Act ("ZP-1") in Article 4, Paragraph 7 stipulates that under conditions and in a manner stipulated with this Act, a warning can be issued to the offender instead of initiating a procedure regarding a misdemeanour or issuing a decision on a misdemeanour. The issuing of a warning is regulated in detail in Article 53 of the ZP-1. It stipulates, that an authorised person from a minor offence authority may warn an offender instead of ordering punishment, if a minor offence is insignificant and an authorised person has assessed that the warning is a sufficient measure considering the importance of the action. The authorised official is obliged to present the minor offence which has been committed to an offender together with a warning. The minor offence body may keep a register of warnings which have been given but personal data must not be processed.

The pronouncement of the warning thus falls under the responsibility of an authorised official and the law does not even envisage a special legal remedy when the warning is verbal. Two conditions must be (cumulatively) fulfilled to pronounce the warning, specifically: that a minor offence is insignificant (an offence has been committed in circumstances which make it especially light and no damaging consequence has or will be created) and secondly, there must be an assessment by an authorised official that a warning is a sufficient measure considering the importance of the action instead of initiating a procedure concerning a misdemeanour or issuing a decision on a misdemeanour.

In addition to the assessment of a police officer that the offence committed is insignificant there must also be an assessment that the warning is a sufficient measure considering the importance of the action. This is determined by a police officer in regard to all circumstances available in an individual case, among other matters also by interviewing the offender and determining his/her behaviour (such as, whether he/she regrets that the offence has been committed, whether a person is a frequent offender, why and how the offence has occurred and whether there is any threat that an offender will continue committing the offence or repeat it). Only on this basis may an authorised official decide to give a warning in an actual case, obviously considering the purpose why such authority has been granted to a police officer. When using this instrument, an authorised official must take into consideration the scope and the purpose of the authorisation stipulated by the law.

If in an individual case, this authority is applied in accordance with the statutorily prescribed terms, this is not a violation of the principle of equality before law, in the Ombudsman's assessment, since the assessment of the correct application of a right to discretion executed by an authorised official is only linked to the circumstances of an individual case in question. The poor application of this authority in an actual case may therefore only be verified by means of legal remedies. In the initiator's case, an authorised person of a minor offence authority (a police officer) obviously assessed that there was no basis for giving a warning. An initiator could have tested the regularity of the mentioned person's conduct only by means of the legal remedies available, when having objections to the actions taken by the Police. If an individual disagrees with procedures conducted by police officers, a compliant concerning such procedure may be lodged in accordance with Article 28 of the ZPol.

Equality before the law means the non-arbitrary use of a regulation in relation to every individual. When an authority applies the law in an actual case, such a body is therefore obliged to treat the same situations in an equal manner and consistently apply the law without taking into account personal circumstances which are not stated as decisive in the legal rule. In other words, this means that the same rules must apply for the same conditions. That is why, in the case of authorised officials from the Police in the role of minor offence body, it is the Police and the Ministry of the Interior that must take care of this issue by way of suitable training and instructions for work and supervision. For this purpose, the Ombudsman's reply to the initiator, including findings, was submitted as a courtesy copy to the Ministry of the Interior in order to adopt additional measures in this regard, if necessary.

2.5.4 Unreasonable temporary confiscation of travel document from a foreigner

The cases considered in this field include a case of a foreigner who lived for a week in a bus shelter because the Police took away his passport for not paying a fine. The foreigner had no financial means to pay the fine.

2.5 POLICE PROCEDURES

The information in regard to the residence of this foreigner in a bus shelter was verified with the management of the PS Ljubljana Bežigrad. It was established that the information was correct, that the foreigner was a citizen of Spain who actually did stay in one of the bus shelters in the vicinity of Ljubljana. Police officers conducted several procedures with this foreigner. When imposing a fine as a result of an offence, police officers of PS Ljubljana Center temporarily confiscated his travel document, in accordance with Article 201, Paragraph 5 of the Zp-1.

On the basis of information obtained on PS Ljubljana Bežigrad, it was possible to conclude that, considering the foreigner's financial position, police officers did not expect the fine to be paid at all. That is why the question was raised whether the decision made by the police officers to confiscate the travel document was reasonable. Thus, a foreigner, being without any financial means, was still in a country which he could not leave without the confiscated travel document and at the same time he was not provided with accommodation or the means of subsistence.

The Ombudsman believed that the issuing of such a decision only incurs additional problems, both to the offender and the authority and the state; in addition, the obligatory confiscation of a travel document to secure the enforcement of a fine is not even envisaged by the ZP-1 but this should be assessed by the body making the decision about a misdemeanour. The Ombudsman asked the Ministry of the Interior to provide an explanation whether all cases regarding foreigners who have had a fine issued against them are handled in the same manner as by the police officers in this case, and whether the reasonableness of such a measure is verified before that, and whether any instructions or guidelines about how to act have been issued and submitted to misdemeanour authorities in this regard.

The Ministry of the Interior explained that the main purpose of the provision referred to in Article 201 of the Minor Offences Act, is specifically so that an offender whose identity has not been established or does not hold permanent residence in Slovenia or if, as a result of his/her residence abroad, the responsibility for the offence may be avoided, should immediately pay the fine. In this manner the equality of treatment of all offenders of minor offences in the territory of the Republic of Slovenia (either residing there temporarily or permanently) guaranteed by the Constitution is achieved. In the opposite case, certain violators, particularly foreign citizens were in a privileged position since they could avoid the payment of any fine since the service of the payment order and potential enforcement of the fine would be made difficult or even impossible. In this manner, violators residing in the territory of the Republic of Slovenia would be discriminated against.

In a case when an offender who should pay a fine immediately refuses to pay it or has no financial means to do so, an authorised official of a minor offence body (a police officer) may temporarily confiscate documents or movable property or securities, in accordance with Article 201, Paragraph 5 of the Minor Offences Act, in order to secure the enforcement of the claim. A decision is issued about the measure taken. The measure to secure the enforcement of the fine is not obligatory but, according to the explanation provided by the Ministry of the Interior, it is generally used in procedures concerning minor offences committed by foreigners staying in the Republic of Slovenia on a temporary basis. It is the duty of a police officer to conduct a procedure on a minor offence so that the fine is paid and he/she is not obliged to assess whether an offender could pay the fine or not. The purpose of the measure is to ensure further successful implementation of the procedure concerning the misdemeanour, and provide for suitable security that the fine will be paid. Measures regarding the security of fine enforcement are not to be implemented only rarely otherwise the security is eliminated during procedure about the minor offence. In such case, a decision of nullity is issued.

The Ministry of the Interior pointed out, that this is not a measure to suspend the procedure concerning the minor offence and that such a procedure is rarely carried out in practice, only in cases of high probability that the fine will not be paid. That is why it must be used very restrictively since it could be abused on the part of offenders. It is used following a prudent assessment of the circumstances of an individual case when the circumstances in which the offence has been committed are thoroughly examined, together with the rights and obligations of the offender. This measure still provides for a further successful implementation of the procedure concerning the minor offence, and an offender is given the chance to implement certain rights, or the enforcement of such rights is made easier. The duty of an offender is, however, to take into account instructions given by the minor offence body.

The Ministry of the Interior also communicated that two instructions had been issued in the past in regard to the security for fine enforcement, specifically, to all units. This is welcomed by the Ombudsman since it is believed that an authority must particularly provide for a uniform and, reasonable application of the measure highlighted, while carefully assessing the circumstances of an individual case.

2.5.5 Refusal regarding exit from the state as a result of invalid travel document

The Ministry of the Interior informed the Ombudsman that when monitoring the implementation of police duties and powers (refusal to allow exit from the state due to invalid travel document when performing border control), a measure was noticed for which the Ministry believes it has no legal basis. The Ministry submitted to the Ombudsman the relevant documentation for inspection and requested the Ombudsman's Office to provide an opinion.

The Ministry has established that there is no provision in the legislation to prohibit a foreigner from exiting a state (in the case of a person having the right of the Community to free residence, that is when a person is a citizen of the EU or such person's family members) and to refuse to allow an exit from the country owing to an invalid passport or relevant document (with an exception: a person is prohibited from exiting the state if criminal proceedings have been initiated against such persons, a procedure concerning misdemeanour or any other procedure in which the presence of such person is necessary and this is requested by a responsible authority). The Aliens Act and the Schengen Borders Code do not envisage and determine terms and procedures in regard to a refusal to exit from the state. In case of the possession of an invalid travel document, a fine is envisaged by the law, but the refusal to exit has obviously not been envisaged by the legislator, or the procedure or a complaint. That is why, for the Ministry of the Interior, this is a case of a legal vacuum. A person with an invalid travel document (for example, with an expired passport) who proves his/her identity and citizenship without any doubts, in the Ministry's view, should not have been prevented from leaving the country or having that person's right to the freedom of movement interfered with or violated since such procedure has no basis in the law and it would interfere with the person's right to the freedom of movement in a severe manner. In this case, police officers should carry out an expedited procedure concerning the minor offence and issue a fine and allow the person to leave the country; in case of a need for a measure which would refuse an exit, the legal basis should have been established. In a case "referring a person to the hinterland of the state" by the Police, this is an intervention in the right of a person to move freely since a police officer prohibits such person to continue with their travel and does not allow him/her to leave the country. The measure in regard to refusing someone to exit from the state should be regulated by norms (similarly to those for the entry into the state), by laws and implementing regulations. Therefore, there should be definite reasons for refusing to allow an exit, a procedure for the issuing of a form concerning the refusal should have been stipulated, as well as the procedure in regard to legal remedies. A record should also have been kept. At the same time, the Ministry has also determined that no uniform approach is established in police practice and procedures are carried out in a different manner.

The Police has substantiated its conduct in this field as follows: a person without a suitable document when exiting the country is treated in the same manner as when entering the country, it is referred to the responsible diplomatic representation and consular post or back to the home country. It is a legitimate order by a police officer which must be observed by a foreigner or a police officer shall resort to threatening some punishment. In the assessment of a police officer this is not a restriction of the freedom of movement since only passing the border is not allowed if conditions for this are not fulfilled (a person is and remains in the territory of the EU). It is only the verification of conditions for crossing the state border and consequently for a referral to the hinterland after a punishment for entering into Slovenia without a valid travel document has been issued. Thus, this is not a measure concerning the refusal of exit. The right to leave the territory of the EU Member State for reasons of a travel into another Member State is, according to the standpoint by the Police, subject to the possession of a valid identity card or a passport. The Police must also prevent the crossing of a border with invalid travel documents. There are no registers of refusal to allow an exit from the country since there is no legal basis for this. There is also no need for special directions since the legislation in this field is not clear.

The Human Rights Ombudsman of the Republic of Slovenia has not (yet) dealt with the issue highlighted, otherwise considered as a question important for the protection of human rights and fundamental freedoms and legal certainty in the Republic of Slovenia. No such initiative has been received. The Ombudsman's answer to the Ministry was thus only of a general nature.

The Ombudsman has pointed out several times that everything which is not specifically allowed is prohibited in the country. Every intervention of its law enforcement bodies with human rights and fundamental freedoms is prohibited except for those specifically allowed. The determination of the (method) of limiting rights and freedoms is left to a legislator who must take into account criteria stated in the Constitution of the Republic of Slovenia. That is why police officers may limit rights and freedoms of an individual only in cases determined by the Constitution and laws. Police powers must be thus regulated by the law, and the intervention with rights and freedoms must be determined and clear (lex certa). A narrow interpretation of the law when it is the matter of the operation of the Police is thus a necessity.

The Ombudsman agrees with explanations by the Police that crossing of borders with invalid travel documents must be prevented but in the Ombudsman's assessment, the refusal to allow exit from the country and referral into the hinterland is an activity interfering with the right to the freedom of movement for which a legal basis should be provided. The regulation of this field is without doubt required owing to the finding that a uniform approach has not been established in the practice in regard to the issue highlighted since procedures by police officers in this field vary. That is why the Ombudsman agreed with the Ministry's position that the refusal to allow an exit from the state as a measure interfering with the freedom of movement should have been regulated by law. This would surely mean a step forward in the light of the predictability of police procedures and towards the enhancement of the state ruled by the law (Article 2 of the Constitution of the Republic of Slovenia). The Ombudsman added that Article 7 of the Rules on implementing the State Border Control Act stipulates that a police officer, responsible for the organisation and conduct of border control at the border crossing keeps a daily report in which, in addition to other data, refusals, revocation of refusals and prohibitions of exit from the state is recorded. In addition, under the Aliens Act (as established by the Ministry) a foreigner is not permitted to exit the Republic of Slovenia if criminal proceedings have been initiated against such persons, or a procedure concerning a misdemeanour or any other procedure in which the presence of such person is necessary and this is requested by a responsible authority). It is therefore possible to prohibit a foreigner to exit the country also as a result of a finding that he/she does not posses a valid travel document and the procedure concerning a minor offence is therefore initiated against him/her. The Ombudsman proposed to the Ministry to take the Ombudsman's position into account in further activities in this field.

2.5.6 Private security and traffic warden service

Similarly to the year before, no initiative was handled in 2012 in which a basis would have been given for the Ombudsman to take action in the field of private security. Otherwise the Ombudsman explained to initiators the measures and duties of a security guard and complaints procedures. All initiatives handled in relation to the traffic warden service were handled within the category of initiatives relating to minor offences since no initiative received was such as to refer to the misuse of powers by traffic wardens and interfering with the rights of an individual.

SUMMARY OF PROPOSALS AND RECOMMENDATIONS

Police procedures

- The Ombudsman expects that the implementation of the Resolution on National Programme for the Prevention and Combating of Crime for the period from 2012 to 2016 will be fully provided.
- The Ombudsman recommends that the management of the Police should communicate clear messages that the ill treatment of detained persons (regardless of its nature, whether physical or verbal) is not acceptable and will be punished accordingly, while taking into account the recommendations of the CPT.
- The Ombudsman constantly emphasizes that the attitude of police officers towards individuals must be respectful and procedures and measures enforced by them professional and lawful.
- The Ombudsman proposed the adoption of relevant measures so that when more people are detained the appropriate number of suitable rooms for detention will be provided.
- Police officers must consistently take into account all regulations and directions from the field of detention when detaining more people, in order to ensure lawful and professional implementation of detention and humane treatment of detained persons.
- The Ministry of the Interior when preparing new rules on handling of complaints should thoroughly regulate all aspects of participation of representatives of the public in complaints procedures.
- The Ombudsman recommends that if necessary, additional measures for the provision of equal treatment be adopted by the Ministry of the Interior when a warning is used instead of a fine as a result of a minor offence.
- The Ombudsman emphasizes that all rights provided by the law to which a person suspected of a criminal offence is entitled during the period of deprivation of liberty be ensured by police officers and when collecting information in regard to a criminal offence.

10. Improper conduct by police officers in procedure with deaf person

An initiator stated that police officers of Police Station (PS) Maribor II came to his residence where he lives with his family. Since all members of his family are deaf, he showed the police officers a deaf person's card and asked them to call an interpreter to which a deaf person is entitled in accordance with the Act on the Use of Slovenian Sign Language. The police officers disregarded his request for the interpreter and continued with the procedure, which he opposed. Police officers used coercive measures against him and his son and detained them.

The Ministry of the Interior replied to the Ombudsman's inquiry that the procedure conducted by the police officers of PS Maribor II in regard to the initiator be examined since the initiator lodged a complaint about their procedure. The complaint was found to be justified. Members of the complaint senate believed that, when getting prepared for the decision on production of a person, police officers should have taken into account provisions of Article 10 and 11 of the Act on the Use of Slovenian Sign Language and provide for an interpreter for the complainant and his son to whom the order for presentation referred. It was established that in the abovementioned case the police officers knew that the person to whom the order on presentation had referred was deaf and that all of the family members were deaf therefore, regardless of the fact whether the initiator, in accordance with Article 12 of the Act on the card identified himself to police officers as a deaf person or not, the police officers should have provided for an interpreter as soon as he failed to understand and did not want to understand requests by the police officers. Owing to the irregularities established, according to the communication by the Ministry of the Interior, the police officers were warned about the consistent implementation of the rights of deaf persons in police procedures.

The findings of the complaint senate in the actual case show that poor preparation by the police officers before carrying out the order for the presentation of a person might have been a reason for the conflict and subsequent use of coercive measures against the initiator and his family members. The reaction of the initiator and his family members may thus be seen as a consequence of a difficult communication as a result of the disregard of the rights of deaf persons. If the findings resulting from the complaint hold true, the conduct of the initiator and his family members was not correct but their inappropriate behaviour might have been a result of the problems in communication with the police officers. A complemented answer was thus requested from the Ministry of the Interior, together with a message about what actual measures were being taken for such cases not to occur again. At the same time, the Ombudsman requested to be informed whether the initiator's claim "that when he told the police officers that he was deaf they gave him a piece of paper for his inspection which he could not read because he does not see well and he told that also to the police officers and said that he would fetch his glasses and intended to go back into the apartment. The police officers did not let him do that and they used tear gas." A reproach that due to his poor sight the initiator could not have read the police document may, in the Ombudsman's assessment point to a lack in providing considerate treatment of him and disrespect for his disability.

In its additional reply, the Ministry communicated that, owing to the opposing statements of the police officers and complainant given in the complaint procedure, it was not possible to clearly verify the initiator's statements. The Ministry otherwise agreed that the reactions of the initiator and his family members may also be considered as a result of difficult communication due to a disregard of the rights of the deaf persons. It was added that this cannot be an excuse for their behaviour when trying to prevent police officers by force from carrying out an official act within the scope of their rights. The case was included in the material comprising attention-attracting and instructive cases of complaints prepared by the Ministry and intended for the training of police officers in police units.

The initiative was assessed as justified. **6.1-80/2011**

11. Detention of a person responsible for a road accident after almost two hours

The Police Trade Union of Slovenia, the Regional Police Trade Union of Dolenjska and Bela krajina ("RPTU DBK") authorised for representation by an initiator, submitted an initiation to the Human Rights Ombudsman of the Republic of Slovenia to initiate a procedure. He requested that the case of an initiator which refers to a road accident involving fleeing from the scene and the procedure of his detention be examined and action taken in accordance with the powers granted.

Following the Ombudsman's inquiry, the Ministry of the Interior explained that by inspecting the register of offences it was established that the initiator was involved in a road accident of the first category. As the person responsible for the accident he failed to submit his data to the other participant and he left the place of the road accident not informing anybody about it. The injured party informed the Operation and Communication Centre of Novo Mesto Police Station (PS) which sent a patrol of PS Dolenjske Toplice to the location. Police officers found the initiator on the basis of the registration plate of the car which was found on the location of the road accident. After inspecting the scene and interviewing the driver of the vehicle involved in the accident and his passenger, after approximately two hours from the time of occurrence of the road accident, police officers went to the place of the initiator's permanent residence. In an interview with the initiator it was established that he was driving his personal vehicle during the road accident. Pursuant to Article 132 of the ZVCP-1 he was ordered to take an alcohol content test which the initiator refused. Because of that, his detention was ordered, pursuant to Article 238 (b) of the ZVCP-1.

After the answer from the Ministry of the Interior was received, the Ombudsman's team interviewed the initiator in person and examined in detail the documentation he submitted. On this basis, the Ombudsman again intervened with the Ministry of the Interior and warned about the findings in regard to some aspects of police procedures in this case.

The Ministry of the Interior substantiated the lag in the time regarding the breathalyzer test by way of the judgement of the Supreme Court of the Republic of Slovenia, Ref. No. IV Ips 73/2007, in which it was ruled that the imposition of a breathalyzer test at the home of a person responsible for the accident was justified although carried out an hour and a half following the accident, since a suspicion was given that the person causing the accident was driving under the influence of alcohol when committing the offence and that the reason for the time lag lies with the offender leaving the place where the offence had been committed. It was explained that to refuse the alcohol content test is an offence for which obligatory detention is envisaged. In such a case, a police officer does not have a discretionary right to decide whether to detain a person or not. In the Ombudsman's opinion, however, this was not the case in the initiation dealt with, since it could not be ignored that the initiator, when the alcohol content test was ordered, had not been driving for some time and showed no intention of doing so. One cannot object to the Decision of the Supreme Court of the Republic of Slovenia highlighted in this case but it has to be taken into account that, under the provisions of Article 238(b) of the ZVCP-1, a police officer may only detain a driver of a vehicle who has been caught committing the offence referred to in Article 132, Paragraph 13 of the ZVCP-1. This statutory provision is inserted into Chapter XIV of the Act in which safety measures, powers and other special provisions are regulated, therefore outside Article 132 of the ZVCP-1 which regulates the verification of physical and mental fitness for driving by a road user and a person involved in a road accident. The purpose of introducing detention of a driver of a vehicle who must be caught committing the offence are his/her "removal" from road transport and the prevention – not only the continuation of the driving with the vehicle – of using the road and thus the prevention of putting that person and other road users at risk (Reporter of the National Assembly of the Republic of Slovenia, No. 109/2007, Proposal of the Act Amending the Road Traffic Safety Act ("ZVCP-1E").

Considering the above mentioned intention of the legislator which was achieved with the provision of Article 238 (b) of the ZVCP-1, the time lag in imposing the breathalyzer test, and in particular the circumstances which did not show that the initiator would actively drive again and that this would be the reason to "remove" him from the road and prevent his participation there (because he might put his life and other participant's lives in danger), a question regarding the appropriateness of a reference to this statutory provision for detaining the initiator was raised. In this regard, the Ombudsman warned the Ministry of the Interior of a case dealt with in the past when the conduct by a police officer who failed to place a driver in detention who had refused to take a breathalyzer test was assessed as "realistic and justified" by one of the Police Directorates. The Uniform Police Directorate even stated that the police officer did not act illegally in this case when he had withdrawn (for "objective reasons") from the obligatory detention on the basis of Article 238(b) of the ZVCP-1.

In this regard the Ministry of the Interior communicated that, upon the entry into force of the Amending Act of the Road Traffic Safety Act ("ZVCP-1E"), the Police submitted directions to all police units in which the police procedure regarding a driver's flight from the location of a road accident was defined in detail. It also gave instructions that by means of a continued work following the sequence of casual events, such person is to be found and the alcohol content test is to be performed and a person detained if conditions for this are given. The new Act on Rules of Road Transport which started to be implemented on 1 July 2011, the guidelines were modified because there is a new provision in the Act allowing for an exception from the obligatory detention of a driver.

On this basis, the Ministry of the Interior believed that additional verification of police procedures in this case is not necessary since this was done by PS Novo mesto and the Ministry agrees with their findings. Some irregularities of procedures conducted by police officers with an initiator were established in this case and the Ministry of the Interior was warned about them. The Ministry obviously did not accept the Ombudsman's views in regard to the existence of the legal basis for the initiator's detention. In the initiator's case the police officers were obliged to determine all the circumstances of the road accident they started to deal with, including the verification of the initiator's physical and mental fitness as a participant in the road accident. But it was believed that (while taking into account the circumstances which did not show that he would drive any more that day and that he would have to be removed from the road and be prevented from driving because he might put his life or the life of other participants at risk) in the initiator's case there was no legal basis for his detention, which is why his initiative was considered as justified. The application of these police powers in the manner presented in the initiator's case, in the Ombudsman's opinion, fully ignores the intention of its introduction, that is his/her "removal" from the road and the prevention – not only the continuation of driving with the vehicle – of participation in road usage and thus the prevention of putting that person and other participants on the road at risk. The existence of an actual threat in continuing driving as one of the main conditions for the imposition of detention by reference to this statutory provision is warned of by the practice of other police units (for example, a decision on a offence of the PS Moste No. 55500 6076310 of 9 December 2010) and the case law (for example, the judgement of Ljubljana Local Court, Ref. No. PR-2434/2010-2409 of 16 February 2011 in relation to the judgement by the Ljubljana Higher Court of 19 May 2011, Ref. No. 586/2011). It was also determined that in this part (Article 238 (b) – Deprivation of Liberty), explanations of the Police for the work of police officers are not very clear. After the Ombudsman's communication to the Ministry of the Interior, these instructions were modified which is why (also considering a new statutory regulation allowing for exceptions from the obligatory detention of a driver) it is considered that a case such as the initiator's should not happen again. **6.1-101/2010**

2.6 ADMINISTRATIVE MATTERS

GENERAL

The number of initiatives handled decreased slightly. In 2012, 358 initiatives were handled, whereas 379 were dealt with in 2011.

2.6.1 Issues concerning foreign citizens

In regard to procedures concerning citizenship, 12 initiatives were handled, as compared to 19 in 2011. Initiators inquired how Slovenian citizenship could be obtained. Some disagreed with the entry conditions to obtain the citizenship. An initiative was handled in which an initiator inquired why there are double standards for obtaining citizenship. One standard applies to those asking for a regular granting of citizenship, while others to individuals who are famous, respected in their profession, for football players, doctors, or university professors. The Ombudsman explained to initiators that for an individual wishing to obtain citizenship of an individual country, citizenship is not one of the fundamental rights referred to in the European Convention for Protection of Human Rights and Fundamental Freedoms. Citizenship falls under the jurisdiction of an individual country and its regulations. They independently decide on entry conditions and may also express special interests. In regard to regular and extraordinary conditions concerning naturalisation, it is not possible to consider these as unequal since, in the opinion of the Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman"), this is a case of two different methods of obtaining citizenship and two different legal positions which cannot be considered to be equal. It may be an issue of equality if two persons were treated differently although both had fulfilled conditions for the granting of citizenship. One of the initiatives related to the lengthy procedure concerning the granting of citizenship by the Ministry of the Interior. An initiative was handled in which partners in a long-term relationship registered as a homosexual partnership claimed that, as regards the granting of citizenship, they are not treated in the same way as partners in a heterosexual partnership. For these, the Citizenship of the Republic of Slovenia Act, as a matter of fact, lays down the option to obtain Slovenian citizenship under easier conditions. The number of considered initiatives submitted by foreigners with the aim to regulate their status in the Republic of Slovenia amounted to 47 which is more than in 2011. Foreigners turned to the Ombudsman in order to obtain information concerning the regulation of their status in Slovenia, specifically: what the conditions are for obtaining and prolonging permission for temporary residence and permission for permanent residence, what the conditions are for obtaining a visa for short-term and long-term residence in Slovenia and other issues. Some initiatives referred to lack of response on the part of the Ministry of the Interior and the time consuming procedures concerning the regulation of the status of an alien. A case was handled in which the Ministry of Foreign Affairs twice annulled the decision of the first-instance authority, the Embassy of the Republic of Slovenia in Teheran. Only after the Ombudsman's intervention did the Ministry of Foreign Affairs decide to make a decision on the matter and only in terms of the content.

In the field of international protection, the Act Amending the International Protection Act ("ZMZ-C") was adopted in 2012. The Ombudsman must repeat: the refusal of free legal aid for applicants for international protection at the first level and withdrawal of the possibility to lodge applications at the Embassies of the Republic of Slovenia abroad means the decreasing of standards and it may have an impact on the quality of procedures. In this regard, the Ombudsman would also criticize the Rules on Amendments of the Rules on Rights of Applicants for International Protection, adopted in 2012. By means of these amending rules,

the amount of financial assistance provided for applicants for international protection is decreasing which means, for example, that an applicant for international protection who has been displaced to a private address for justified reasons (ethnic, religious, racial, etc.) receives only half the amount of social relief in financial aid. Before that amendment, an applicant would have received an amount equal to social relief. This is definitely not a position that is equal to that of an applicant accommodated in the Asylum Home where free-of-charge daily care is provided. The Ombudsman discussed the issue about lengthy procedures regarding decision-making about international protection in last year's report. No progress in this field can be reported for 2012. One of the initiatives received related to the restriction of movement for an applicant for international protection, limiting his movement only to the Centre for Aliens. The applicant went on hunger strike. The case was decided by the Supreme Court of the Republic of Slovenia, therefore no grounds were given for the Ombudsman's intervention. Two initiatives related to issues concerning interpreters and translators for certain languages (Pashto and Turkish). One of the initiators was not provided with a suitable interpreter when submitting the application and another applicant for international protection assumed that role. Some initiatives were received from "The Erased". The majority of initiators were interested in procedures pursuant to the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia, as well as opportunities available to them on the basis of the judgement by the European Court for Human Rights in regard to enforcing their compensation for loss of identity and subsequent maltreatment.

2.6.2 Denationalization procedures

Some initiators addressed the Human Rights Ombudsman of the Republic of Slovenia owing to alleged maladministration at the Administrative Unit, the Ministry of Economy and the Farmland and Forest Fund of the Republic of Slovenia. According to the statements of an initiator, the latter determines internal rules regarding the allocation of alternative pieces of land and does not publish these rules. The initiators wrote to the Ombudsman who disagreed with the decision made by responsible bodies. It has been established that procedures concerning denationalization are conducted but the reasons why the denationalization process has not finished are hard to understand. The Ombudsman believes that the process is too slow.

2.6.3 Taxes and customs duties

Approximately the same numbers of cases were dealt with in this field as in 2011. It has been determined from the initiatives which have been handled that the Ministry of Finance does not observe deadlines for making decisions on complaints. A case was considered in which an initiator lodged a complaint with the Ministry in May and it was decided six months later. The Ministry refers to problems concerning staffing and other matters leading to delays when explaining the issue. It was established in one of the cases that the Ministry of Finance needed almost two months to refer the complaint to the body responsible for its settlement. It was also found that it is possible that the first-instance body has not served the decision on the client's complaint for three months due to disagreement. Although from 1 January 2011 (entry into force of the Act Amending the Tax Procedure Act – "ZDavP-2D"), it is not possible to set off, postpone or pay pension and disability insurance contributions in instalments, the Ombudsman cannot report on any progress in this field. Non-payment of social security contributions is still a serious issue.

2.6.4 Other administrative matters

Initiators under this heading addressed the Ombudsman on various problems.A case was considered concerning a prisoner whoso name was erased from the Permanent Population Register while serving his prison sentence. Under the Residence Registration Act, he could not have registered his address at the address of the Centre for Social Work which on the last occasion provided him assistance in this respect: the above mentioned Act required that he actually lives within the territory of this Centre. Some initiators claimed that they had issues in enforcing rights financed from public funds. Many people complained about lengthy inspection procedures in regard to administrative and building inspection services. Two initiatives were handled in relation to inspection procedures referring to the disclosure of the applicant in the inspection procedure.

2.6.5 Property law matters

41 cases were considered (32 in 2011). The majority of initiators complained about unsolved land disputes with municipalities. The findings which were established in previous years have to be repeated again this year. The majority of cases concern civil relations between the initiators and municipalities. Some individuals have allowed that a public road or path runs over their private piece of land. The municipality does not ensure that a formal measurement is made, does not ensure compensation to parties concerned or the latter is ridiculously low. Many such issues could have been solved with the willingness to compromise, tolerant dialogue and respect for the equality of all parties involved. In such a manner, judicial costs would be avoided and the feelings that the municipality is a stronger partner who can afford years of trial at the taxpayer's expense would be spared. Some initiators are found in similar situations in relation to the Road Directorate of the Republic of Slovenia of the Ministry of Infrastructure and Spatial Planning and the Motorway Company of the Republic of Slovenia.

2.6.6 Remedy of injustices

The Ombudsman handled 29 complaints. The majority of initiatives related to the entry into force of the Fiscal Balance Act which, among other matters, has restricted the rights of war veterans, persons disabled as a result of war, and victims of war violence as well as disrupted pensions.

In 2011, the Ombudsman started to deal with the issue concerning the organisation of war cemeteries upon the Ombudsman's own initiative. The Ombudsman was particularly interested in activities conducted by the Ministry of Labour, Family and Social Affairs in relation to the following issues: the removal of corpses of the remaining victims of the post-war aggression who are still located in a mine pit, the arrangement of the ossuary in Barbara's tunnel, and when and how the symbolic burial of the post-mortal remains of victims is planned and how it will be possible for the relatives of the victims to access the burial place? The Ombudsman was also interested in plans and measures adopted and conducted by the Commission of the Government of the Republic of Slovenia for solving the issues of hidden burial grounds. It was clear from the media that the organisation, the search and the signage of new burial places came to a standstill as a result of the lack of financial funds, which supposedly also applied to the work of the Commission mentioned above. An inquiry was addressed to the Ministry in order to receive some clarification. The Ministry explained that the Commission of the Government of the Republic of Slovenia operated to deal with the issues of hidden burial grounds and that funds were provided for its operation and that the Ministry was preparing a project for the erection of a monument to all victims of all wars. Considering the explanations given, the case was closed.

2.6.7 Social activities

The number of initiatives handled in 2012 reduced by approximately 20 percent. Thus, 63 initiatives were handled in this field which varied greatly in terms of their content. Since the contents of chapters in this Annual Report partly overlap, some issues are presented in the chapter on the protection of children's rights.

In the field of pre-school education, an initiative was handled in which an initiator stated that she is a single mother with one child who was disadvantaged due to the injustice relating to the high fees for the nursery for her three-year old daughter whose father does not pay any child maintenance. Those parents with more children do not pay any fees for the second, third and subsequent children. The initiator views such a system as unjust since she pays quite a high amount for one child for the services of the nursery. The initiator's problem opened a broader question regarding the different treatment of families with one child as compared to families with several children.

The field of secondary schools in 2012 was marked by the following issues: the envisaged integration of secondary schools, the reduction of the number of enrolment places in some programmes and some secondary schools, the reduction of funds for teaching devices and education of teachers. The handling of these cases has not yet finished but the Ombudsman cannot ignore the feeling that these were cases of arbitrary integration of schools, that the reorganisation was not supported with relevant analysis and that not all of the affected members of the public were included in the project. It will be very difficult to achieve positive results with a great resistance on the part of teachers, the staff, parents and children and other persons concerned.

In relation to higher education, an initiative was handled in regard to allegedly unequal opportunities for the enrolment into university study programmes for candidates from Slovenia and republics of former Yugoslavia. According to claims by an initiator, these candidates, in their application for the granting of the right to further education, supposedly attached forged documents on completed secondary school education in their state of origin and presented higher qualifications on certificates than actually achieved. In this manner, candidates from the Republics of former Yugoslavia obtain more points and consequently better options for enrolment into university study programmes in Slovenia.

The initiator was given a reply from the University of Ljubljana which explained that if a foreign public document with a stamp and confirmation of the authentic nature of the signature of a person who has signed the deed is submitted to an authorised person and such person has doubts of its authentic nature, an inquiry letter concerning the veracity of the document may be sent to the responsible institution which has issued the certificate of education. Some initiatives submitted by dissatisfied students were handled. The first case, being an initiative which related to the conduct of the Faculty for Medical Science Maribor, was justified. The faculty enabled the initiator to take the exam before the commission only after a year and a half. In the Ombudsman's opinion, another initiative was also justified in which an initiator complained against the procedure concerning the passing of a test concerning special aptitude when the examination commission asked unprofessional and improper questions on the basis of which artistic talent could not have been determined.

SUMMARY OF PROPOSALS AND RECOMMENDATIONS

- The Ombudsman again requests that the Ministry of the Interior and Public Administration observes the International Protection Act and in cases when an application for international protection is not decided on within six months, informs the applicant of the reasons for delay and gives a deadline by which the decision will be issued.

- The Ombudsman proposes to the Ministry of the Interior and Public Administration that the Rules on Rights of Applicants for International Protection be modified so that an applicant for international protection who is displaced based on justified reasons (religious, ethnic, medical and others) receives financial aid to his/her private address in the same amount as social relief, and not only half of this amount.

- The Ombudsman proposes to the Ministry of the Interior and Public Administration the modification of the Residence Registration Act so that the registration of a permanent residence be possible also for individuals currently accommodated in prisons, correctional facilities and elsewhere and in facilities for homeless people. In the same Act, a deadline must be determined in which the procedure concerning the official determination of the actual permanent residence of an individual must be concluded.

- The Ombudsman proposes to the Ministry of Finance that it make decisions on complaints against first-instance decisions within statutorily prescribed time periods. The Ministry of Finance as the first-instance body should observe all instruction deadlines in the conducting of cases and decision-making in that regard.

- The Ombudsman proposes to the Government of the Republic of Slovenia that it should provide for suitable financial funds for the finding of hidden war burials and burials of post-war aggression and, in cases of the discovered burials to ensure a suitable symbolic burial of victims, memorial plaques and access to the place of burial for the relatives of victims.

- The Ombudsman proposes to the Ministry of the Interior and Public Administration that it should ensure that all public administration bodies respect their duty to give explanations, in accordance with the provisions of the Decree on Administrative Operation, and reply to clients within the statutorily prescribed 15 days. The Ministry should establish a means to respect all instruction deadlines in regard to making decisions in administrative procedures.

- The Ombudsman proposes to the Ministry of Education, Science and Sport to consider the potential integration, closure and other methods of reorganisation of secondary schools and when reducing the number of enrolment places, that this be carried out on the basis of objective analysis and by including all interested parties, and particularly in a transparent manner so that the notion of arbitrariness and disadvantage of certain regions in relation to education would not be created in the public mind.

- The Ombudsman recommends to everybody responsible, in particular: to the Ministry of Education, Science and Sport, the Government, and the National Assembly to approach potential modifications in the field of education, science and sport in a prudent and responsible manner taking into account the long-term consequences of potentially hasty decisions.

12. Lengthy nature of procedure at the Ministry of the Interior to regulate the status under the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia ("ZUSDDD")

An initiator turned to the Human Rights Ombudsman of the Republic of Slovenia stating that he lodged an application to regulate his legal status under the ZUSDD before Brežice Administrative Unit in 1999. In 2000, the application accompanied by a letter was referred by Brežice Administrative Unit to the Ministry of the Interior, responsible for its handling. The initiator stated that nothing has been decided on the application so far, and it is clear from a letter from 2012, sent by Brežice Administrative Unit to the initiator as a reply to his inquiry about the mentioned procedure, that the state of affairs is the same.

The Ombudsman addressed an inquiry to the Ministry of the Interior to receive an explanation as to why nothing has yet been decided on the initiator's application since more than 12 years have passed from the filing of the application. The Ombudsman also called on them to immediately decide on his application. The Ministry did not reply to the inquiry which is why the Ombudsman called on them again to answer by sending another request. Because the Ministry of the Interior failed to answer again, the Ombudsman sent another urgent letter and warned the Ministry that not replying to the Ombudsman means an obstruction of the Ombudsman's work.

The initiative has not been concluded yet; on the basis of documentation attached to the initiative, it has been considered as justified. The statutory period for making a decision has already elapsed since more than 12 years have passed from the time of lodging the application. **5.2-35/2012**

13. Unconstitutional categorisation of a municipal road

The Human Rights Ombudsman of the Republic of Slovenia handled an initiative in relation to a questionable categorisation of a municipal road in the Municipality of Moravske Toplice ("the Municipality").

During the procedure, the Ombudsman found that the initiator's statement was true and that the municipality did not purchase the piece of privately owned land on which a categorised road has run since 2001 by means of a legal transaction under a process of expropriation.

The Ombudsman addressed the opinion to the municipality stating that the municipality should categorise certain roads in accordance with regulations if a public interest has been demonstrated for such categorisation and if the road fits the criteria for the categorisation of public roads. If the piece of land on which the road runs is planned to be so categorised and the land is privately owned, the obligation of the municipality is to obtain the land in a manner compliant with legal regulations. The legislator has not determined the ultimate deadline by when municipalities should have carried out the expropriation. In spite of that it, is inadmissible that such an interference with property rights should last such a disproportionately long time. The Ombudsman urged the municipality to establish the lawful status as soon as possible and to implement the procedure concerning the abolition of a disputed public path in accordance with the law.

As it derives from the reply of the municipality, the municipality proposed to the owners of the land to purchase the land at a certain price. The owners refused their offer which is why the municipality requested the Road Directorate of the Republic of Slovenia ("the Directorate") to issue a consent to modifications of the Decree on the categorisation of municipal roads in Moravske Toplice Municipality. If the municipality receives the consent from the Directorate, it will abolish the categorisation.

The Ombudsman has considered the initiative as justified and again warns of the issue concerning the non-constitutional status of categorised municipal roads. **5.4-23/2011**

14. The Inspector of VARS stated the personal data of a complainant in the minutes and revealed the source of complaint in this manner

An initiator turned to the Human Rights Ombudsman of the Republic of Slovenia in regard to an alleged mentioning of a complainant in the inspection minutes. She lodged a complaint before the Koper Regional Unit of the Veterinary Administration of the Republic of Slovenia (VARS) owing to alleged irregularities in one of the shelters for abandoned animals. The responsible inspector carried out a supervisory inspection and wrote his finings in the minutes on inspection. The initiator obtained the above mentioned minutes on the basis of a request lodged under the Access to Information of Public Character Act. In accordance with the Personal Data Protection Act some personal data in the minutes were covered so she assumed these were her data.

In relation to the initiator's statements, the Ombudsman carried out an audit of the inspection file with the VARS. During the inspection of the file it was established that the inspector who conducted the procedure actually stated the name and surname of the complainant. In the Ombudsman's opinion, this is a violation of Article 16 of the Inspection Act ("ZIN"). The above mentioned Article defines the protection of business and other secrets and the confidentiality of the source; the second paragraph determines the duty of an inspector to protect the confidential nature of the source of the complaint and other sources of information on the basis of which the inspection supervision is carried out. The Ombudsman can understand that in some cases it is possible to deduce from the content who the complainant is but it is believed that in this case this is only a matter of deduction. But if an inspector directly states the name and surname of a complainant in the minutes on an inspection, there is no doubt of the complainant's identity. During the inspection of the file in question, the Ombudsman reviewed some other minutes on inspections carried out on the basis of complaints by individuals but similar violations were not found in other cases. It was proposed to VARS that during their work the provisions of the ZIN in regard to the confidential nature of the source be consistently observed and that veterinary inspectors carrying out the provisions of the ZIN in the field be advised of the same.

In its reply, VARS explained that in the case in question, owing to actual requests made by the complainant, the inspection would not make sense without mentioning her name since her complaint referred to actual events related to her name. It is believed that an official vet, even though he would not have stated the name of the complainant in the title of the minutes, could not have avoided the disclosure of the complainant's name. It is believed that, in certain cases, the potential complainant may be deduced from the content of the case inspected by an inspector, which is not contrary to the ZIN. But in the actual case it was not only about the possibility of deduction but about the direct mentioning of personal data of the complainant. Considering the above mentioned, the initiative has been considered justified. **5.7-58/2012**

2.7 ENVIRONMENT AND SPATIAL PLANNING

GENERAL

In the field of the environment and spatial planning, 120 initiatives were handled in 2012, while 132 were dealt with in 2011. Some initiatives were received in which initiators asked for assistance because municipalities had not replied to their requests or had not explained the issue to them in terms of content. The conduct by Straža Municipality ("Municipality") should be highlighted: the Municipality passed the application of an initiator in regard to some data on the quality of drinking water over to the municipal utility company as the holder of the public utility service. The Municipality did not even handle the initiator's application nor send a reply to the initiator as requested by the minimum standards of operation in the administration service. The Decree on Administrative Operations stipulates that a reply must be submitted to every letter within no later than 15 days. The Municipality behaved scornfully even in relation to the Human Rights Ombudsman of the Republic of Slovenia and did not reply to an inquiry, in spite of a repeated request.

In regard to the storage of waste in the industrial facility Brest – Top tapetništvo, the Ombudsman dealt with an initiative by Postojna Municipality. At the Inspectorate of RS of Agriculture, Forestry, Food and the Environment ("IRSKGHO"), the inspection procedure was checked. The inspection decision to remove the waste from the location with the address Podskrajnik 18, Cerknica was issued to Papir servis, the responsible company, from Ljubljana in May 2011. Since the company did not comply with the inspection decision on a voluntary basis, the enforcement procedure commenced; first with monetary fines, then by means of enforcement through another person. In September 2012, the company started to remove the waste from the location in question by itself. In December 2012, IRSKGHO informed us that the company had removed all waste from the location in question in November 2012. The inspection decision issued in May 2011 was realised and the inspection procedure concluded.

An initiative was handled in which an initiator complained about a violation of the right to free access to the sea in the natural bathing area San Simon in Izola, Debeli Rtič and Strunjan. The managers of these bathing areas charged entrance fees and thus prevented free access to the sea and the general use of the sea. Pursuant to the Waters Act ("ZV-1), IRSKGHO (an Inspector for the Environment), initiated the inspection procedure and ordered the managers of the mentioned natural bathing area to stop collecting entry fees for swimming in the sea and allow free access to the sea.

The Ombudsman also dealt with the requirements which have to be fulfilled by an author of environmental reports and reports on the environmental impact assessment in accordance with the Environment Protection Act ("ZVO-1"). In Article 55, Paragraph 6 the ZVO-1 stipulates that the Minister must lay down conditions to be fulfilled by the author of the report; these are their proving method, the method of obtaining authorisation and the authorisation's withdrawal. The Ombudsman warned the Ministry of Agriculture and the Environment that the above mentioned obligation should be fulfilled. It would also make sense to start implementing Article 158 of the ZVO-1 which stipulates that an individual action prior to the issue of a decision in inspection matters, particularly the determining of facts and circumstances and the supervision of the observance of decisions and measures ordered by inspectors may also be implemented by supervisors for environmental protection within the scope of inspection. Inspectors would be relieved of some work in this manner.

2.7.1 The public in developments in open space and the environment

Many initiatives were received in regard to improper participation of the public in the adoption of regulations in the field of the environment. The complaints related to the time period concerning the publication of a certain regulation and its modifications. Initiators stated that public publication and deadlines to submit opinions and criticism of clients usually clash with holidays and free days. Many who are interested in the subject matter are thus prevented from participating in the procedures for the development of regulations. Something else has been noticed; the deadlines for public participation are indeed short although numerous regulations stipulate what is the recommended time period for the responses from the public. A case regarding the modifications of the Environment Protection Act and the Waters Act was handled. The Ministry of Agriculture and the Environment laid down a 4-day period for comments and opinions, with an apology that this was a case of small modifications for the encouragement of economy.

2.7.2 Issues regarding water

In 2012, the Act Amending the Waters Act ("ZV – 1B") was adopted which has simplified the procedure concerning the granting of concessions for small hydro power plants. According to this new Act, the concession for the production of electricity in small hydro power plants does not need to be obtained from the Government which used to be a very lengthy procedure until now. This type of water right is now to be obtained by means of a water permission issued by the Slovenian Environment Agency ("SEA").

It was expected that modifications in the field of obtaining water rights would also include one's own supply with drinking water and simplifying procedures. In spite of prior announcements that a simple registration with relevant authorities would be enough for one's own supply of drinking water, this did not happen. The Rules on the Drinking Water Supply (with the exception of Articles 9 and 10) were replaced with the Decree on Drinking Water Supply which has envisaged new rules concerning any manager of a private water system supply. Since the method of the determination of a manager of a private water system supply used to create problems until now and a barrier to the issuing of a water permit for one's own water supply, the Ombudsman hopes that this will not also happen under the new Act and SEA will solve the backlog of cases in this area in an accelerated manner. Unfortunately, it can not be reported that any progress was made in this field in 2012.

2.7.3 Inspection procedures

No new findings or progress can be reported in the field of inspection services. The situation is not acceptable; the same violations have occurred as in previous years. Answers to the questions raised by the Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") often lack any content and are conflicting. In 2012, a lot of work was dedicated to the questions regarding the setting of priorities in the work of inspection services. Based on experience from previous years, it was determined that it is not clear why some of the applications received were dealt with earlier than some others. It is believed that the criteria for priority in handling applications and in the work of inspection services should be regulated by means of a regulation and not in the internal rules of inspection services. Transparency would thus be ensured and trust in the work of inspection services would increase.

2.7.4 Noise

Every year, some initiatives complain about the noise from restaurants and bars, motorways, motor-cross courses, events on sports grounds and in other locations. The Ombudsman explains to the initiator that supervision over the implementation of the Decree on Limit Values for Environment Noise Indicators is implemented by IRSKGHO (an Inspector for the Environment and Nature).

2.7.5 Noxious smells

The Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") received letters from initiators complaining about noxious smells. It came from various sources: composting plants, pig farms, henhouses, purification plants, printing plant, sewage systems, turkey farms, tanning businesses, fast food restaurants, bars, a factory for grinding and processing stone or metal, because of fertilization with liquid manure, because of incineration of waste. Smells due to impregnated railway sleepers, smells from nearby factories and other sources of smell were mentioned.

Numerous initiatives point to the seriousness of the issue and warn about the urgency of adopting a regulation on emission of noxious smells into the environment which the Ombudsman has warned about for several years.

Area of emission measurement

The selection of an authorised party implementing the measurement of emissions is still left to the manager of a facility or a plant which is also the payer for the measurements. In the Ombudsman's opinion, measurements should have been carried out by authorised parties who are independent of the managers. In this manner, the trust of the public in the credible nature of the results of measurements would increase.

2.7.6 Pollution with dangerous particles PM 10

It cannot be reported that any potential measures have been taken for the improvement of the quality of air as a result of exceeded limit values of PM 10 particles. Slovenia should have adopted the first measures in 2006. Since Slovenia failed to do that, the European Commission has initiated and is conducting procedures against Slovenia. Owing to the lack of action, Slovenia is threatened with a fine of more than 10,000 euros for each day of the lack of action.

SUMMARY OF PROPOSALS AND RECOMMENDATIONS

- The Ombudsman calls on all responsible bodies, particularly, the Ministry of Agriculture and the Environment, the Ministry of Infrastructure and Spatial Planning and bodies of local administration to ensure that the participation of the public be consistently enabled in the adoption of regulations which may have a significant impact on the environment, as provided for by the Aarhus Convention and other regulations.

- The Ombudsman again recommends the Ministry of Agriculture and the Environment and the Slovenian Environment Agency that measures for the elimination of delays in the issue of permissions for the use of water be immediately adopted. Both responsible authorities should immediately start settling property ownership relations on pieces of land adjacent to water.

- The Ombudsman requires that all responsible inspection services observe the provisions of the Decree on Administrative Operations and inform the applicants on the receipt of the application and on the time period envisaged for its handling.

- The Ombudsman proposes to the Ministry of the Interior and Public Administration that the modifications of the Inspection Supervision Act be prepared so that the criteria for the determination of the priority in the handling of an individual complaint and the priority of the work of inspection services be clearly determined and defined in advance.

- The Ombudsman again requires that the Ministry of the Agriculture and the Environment prepares regulations to regulate the area concerning the emissions of noxious smells into the environment.

- The Ombudsman has repeated over several years that the Ministry of Agriculture and the Environment should regulate at system level the obtaining of authorisations for the implementation of permanent measurements, the supervisions and financing of measurements in the field of emissions.

- The Ombudsman recommends to all responsible authorities, particularly the Government, the Ministry of Health and the Ministry of Agriculture and the Environment that they should responsibly accede to the adoption of measures to improve the quality of air as a result of exceeded limit values of PM particles.

15. Lack of response from the Ministries upon claimed irregularities in the procedure concerning the adoption of the municipal detailed spatial plan

In regard to the adaptation of the Plečnik stadium in Bežigrad and the envisaged construction on the green zone at the northern side of the stadium, a representative of the Coordination Committee of the residents of the Fonda's houses ("the Committee") who has been actively involved in the procedures for the adoption of the municipal detailed spatial plan for this area ("MDSP") addressed the Ombudsman. He also informed the Ombudsman of the request submitted to the Ministry of the Environment and Spatial Planning to audit the conduct of Ljubljana City Municipality in relation to the amended draft for MDSP. Considering the issue mentioned, and particularly in regard to the alleged lack of observance of the Decree on the Denomination of Works by the Architect Jože Plečnik in Ljubljana as Cultural Monuments of National Significance ("the Decree"), the initiator also turned to the Ministry of Culture. He did not receive any answer to his letter either from the Ministry of the Environment and Spatial Planning or from the Ministry of Culture.

After the Ombudsman's intervention, after almost four months, the initiator received a reply from the Ministry of the Environment and Spatial Planning. However, in its letter to the Ombudsman, the Ministry of Culture stated that no reply was provided since the actual question in the letter could not be understood because the letter contained standpoints of the Committee concerning the lack of harmonisation of the complemented draft of the MDSP and the Environmental Report with the Cultural Heritage Protection Act and the Decree. Since the explanations of the Ministry of Culture were unacceptable and the other Ministry failed to provide any, the Ombudsman called on both authorities to make more consistent observance of the principle of the participation of the public which is also defined in the Spatial Planning Act and is the basis for the conduct of the procedures in which the initiators sought to get involved. Both Ministries were called on to give consistent observance of the Decree on Administrative Operations which stipulates that every letter or question must be answered within no more than 15 days.

The Ministry of Culture adopted the Ombudsman's proposal. They assured that it would be observed in the future but the initiator received their reply only this year, after the Ombudsman's repeated intervention. The Ministry of the Environment and Spatial Planning stated in their reply that they agree with the fact that the participation of the public is important in decision-making and that their goal is to involve civil society as much as possible in the preparation of plans. During the handling of the initiative, the initiator informed the Ombudsman's team that after receiving the reply from the above mentioned Ministry, he again addressed the Committee's remarks on the lack of suitability of the Environmental Report and alleged violations of the material regulations in the Environmental Report for the MDSP but did not receive any reply from the Ministry.

The Ombudsman again addressed an inquiry to the Ministry of the Environment and Spatial Planning calling on them to respond to the initiator sooner. The initiator also informed the Minister of the Environment and Spatial Planning, Prof. Roko Žarnić, of the alleged irregularities in the Environmental Report in question, at the meeting with the representatives of the civil society acting in the field of environment and spatial planning. The Minister proposed to him that he submit his comments in writing to the responsible Ministry which will take a stand in this regard.

After the Ombudsman's intervention, the Ministry of the Environment and Spatial Planning finally answered in terms of the content to the initiator's letters. The case shows how the lack of cooperation of the general public in cases regarding the environment and spatial planning takes place and it also demonstrates the Ombudsman's action in obtaining a reply with some content from the responsible ministry. **7.2-27/2010**

16. In 2010, an agricultural building was bought at a public auction of the Local Court for which the inspection procedure was initiated in 2001

An initiator bought an agricultural building at the public auction at the Local Court in December 2009. Following the decision of the Local Court of 6 May 2010, the building was registered in the Land Registry. Two years later (17 July 2012), the initiator received a letter from the Inspectorate of the Republic of Slovenia for Transport Energy and Spatial Planning ("the Inspectorate") entitled Invitation to submit comments and statements in the inspection procedure in which a building inspector informs him that, in 2002, an inspection procedure was initiated as a result of the construction of the vineyard cottage, the facility bought at the public auction by the initiator.

In the inspectorate procedure, it was determined by the building inspector that the facility was built contrary to the conditions in the building permission of 22 December 1995 which is why, under Article 2, Paragraph 1, Item 12.2 of the Construction Act ("ZGO-1"), the building is in breach of permission. The initiator also explained that in such cases, pursuant to Article 153 of the ZGO-1, the building inspector is authorised to order building work to stop until the developer obtains a modified building permission or to prohibit the use of the facility. The developer must apply for the modification of the building permit within one month after the permission is issued and it can only continue with the building work after such permission is final.

If a developer fails to apply for the modification of the building permission one month after the measure has been ordered or if the responsible authority for construction matters refuses or denies his application for the modification of the building permit, a responsible building inspector shall order that the part of the facility built contrary to the building permission be removed at the developer's costs and the situation be established as determined in the building permit. The inspector warned the initiator that by purchasing the facility he took over all rights and obligations in relation to the building of the facility, therefore, including the consequences of the building in breach of permission. At the same time, he called on the initiator to take a stand in regard to his findings or else it will be considered that he had no comments.

The initiator explained that there is no basis in the spatial planning document for the issue of the modified building permission but he did not wished the Ombudsman to intervene in the case considered. Since the Ombudsman was not satisfied with the conduct of the inspection procedure, it is only the unacceptable duration of the procedure that is highlighted. All reasonable deadlines were exceeded. The building inspector failed to finish the procedure for ten years. During all this time he failed to issue a suitable inspection decision in spite of the clear determination that there was a building in breach of permission. If the inspection decision were issued, there would be no legal transaction since the prohibition of entering into a legal transaction would have been registered in the Land Registry based on the inspection decision. The initiator was justified in expecting that the building he bought at the auction organised by the responsible Local Court was not a building in breach of regulation. He could not have found that out by acting with due care, that is by inspecting the construction permit issued for the facility in 1995 and by inspecting the Land Register since no suitable notice was recorded. Not even the court was familiar with the inspection procedure. This should have been already known to the building inspector in 2002, however, he only took action ten years later.

The initiation was justified. All reasonable time periods for decision making were violated in the case concerned. The initiator was unjustifiably affected in this case who, not anticipating anything untoward from the state, represented by the Local Court, bought the piece of property which, as a result of the lack of action on the part of the inspection service, nobody knew was built in breach of permission. **5.7-52/2012**

2.8 PUBLIC UTILITY SERVICES

GENERAL

The number of initiatives in the field of public utility services dealt with in 2012 remained at nearly the same level as the year before (52, whereas 51 were handled in the year before). The number of cases related to energy industry services, transport and concessions decreased, cases related to the public utility sector remained at the same level, while the number of cases related to communications increased.

The right to water is a universal human right

In 2012, the Human Rights Ombudsman ("the Ombudsman") also dealt with issues related to the provision of the right to water relating to the disconnection of a supply of water as a result of the non-payment of costs for its supply.

The right to drinking water is a universal human right and without it a whole series of other fundamental rights cannot be ensured, including the right to life and human dignity and the right to a healthy living environment. This is especially clear from the documents and activities of the United Nations.

The obligation of the state and the local community is to permanently and uninterruptedly provide the supply of drinking water under certain conditions, also in such a way as to provide for the supply of drinking water at a certain price. The regulations adopted at the national level (Environment Protection Act and the Rules on Drinking Water Supply) do not regulate the disconnection of the drinking water supply in the case of the non-payment of services for drinking water supply. Since drinking water supply is a mandatory municipal public utility service in the field of environment protection, the arrangement of issues relating to the disconnection of the drinking water supply is left to independent regulation at the local, municipal level. Thus, in this regard, a question is raised as a matter of principle, whether, in terms of norms and also by way of a different arrangement of the drinking water supply, particularly the determining of conditions for the disconnection of the drinking water supply only at the local level, is appropriate and in accordance with the principle of the welfare state referred to in Article 2 of the Constitution of the Republic of Slovenia, since, in practice, municipalities arrange for the disconnection of the drinking water supply in different ways. Owing to the nature of the right to water as a universal human right, it is believed that its arrangement, and particularly any interference with this right, demands the adoption of suitable statutory solutions at a national level. A similar position was also recorded in the Regular Ombudsman's Report for 2011, specifically within the framework of the discussion regarding the Roma issues, and in a Special Report on Living Conditions of the Roma in the Area of South-East Slovenia.

The state has not yet modified the Act on Graveyard and Funeral Activities and on the Organisation of Graveyards

An initiator who turned to the Human Rights Ombudsman also in 2012 supposedly had issues in relation to a "family grave". The majority of these cases received by the Ombudsman deal with the conflicts between the members of the narrower and broader family in regard to the (continuation) of the right to lease a family grave. If there is no such consent among the relatives and a tenant of the grave and other relations, it may even happen that the municipal utility company or the manager of the graveyard empties the grave containing their relatives, often direct ancestors, without any knowledge of the parties concerned. The Ombudsman could not help the initiator in this particular case but only confirmed his statement that the current arrangement of the graveyard and funeral activity is not satisfactorily arranged in terms of norms and explained the Ombudsman's standpoint regarding this issue.

For several years, including in annual reports, the Ombudsman has been drawing attention to the fact that the legislation in this field is outdated and proposed its amendment but in spite of some statutory initiatives, the law has not yet been modified. Pursuant to the still applicable Act on Graveyard and Funeral Activities and the Organisation of Graveyards (hereinafter referred as: ZPPDUP) adopted in 1984, only that person who has covered the costs of the funeral (Article 22) has the right to lease the grave. This right may be transferred to another person only in writing. It may be renewed or extended only under conditions determined by the municipal community or the local community. Other family members of the deceased (those who have not ordered and paid for the funeral) are not granted any sort of rights in regard to the grave. The Ombudsman has determined that in cases of potential dispute among the relatives in regard to the continuation of the lease of "family graves", the municipal ordinances do not stipulate any procedures. Also the case law denies them any protection since they are not the parties to the lease relationship.

A new Act on Graveyard and Funeral Activities has not yet been adopted although, in accordance with the Public Utilities Act of 1993, it should have been revised. The graveyard and funeral activities need to be adapted to the predominating civilisational level of the attitude to the deceased which, also taking into account the development of personal rights, applies in contemporary time.

The Ombudsman saw as one of the potential solutions the fact that municipalities and their concession holders in the field of graveyard activity would provide to the parties concerned the possibility to apply for mediation when an agreement among the concerned parties in relation to the lease of the family grave could not be reached. One municipality to which the Ombudsman turned with such a proposal a few years ago did not accept this proposal. That is why the Ombudsman reiterates the proposal that this issue be regulated in a uniform way and by means of law. Only in this manner, will the relations of the deceased be able to have an equal expression of their respects to the deceased ancestors across the whole of the country.

SUMMARY OF PROPOSALS AND RECOMMENDATIONS

- The Ombudsman recommends to the responsible ministry that it prepare a modification of regulations regulating the field of chimney sweeping services in such a way so as to ensure greater competition and quality of the implementation of chimney sweeping services. The Ombudsman also recommends enhanced inspection supervision over the operators of the chimney sweeping service.
- The Ombudsman recommends to the Government that it prepare and propose a new Act on Graveyard and Funeral Activities to be adapted to the currently accepted consensus regarding attitudes to the deceased and to regulate in a more suitable manner a non-uniform practice of municipalities in relation to the right to the (continuation) of the lease of graves.
- The Ombudsman recommends that the right to water be introduced into the legal system of the Republic of Slovenia as a fundamental human right.

CASES

17. Radiotelevizija Slovenija (Radio-Television of Slovenia) demanded an initiator to provide evidence which it should have obtained itself

An initiator turned to the Human Rights Ombudsman of the Republic of Slovenia in relation to an invitation by Radio-Television of Slovenia (RTV Slovenia) to submit evidence on his financial and social situation in a procedure to write off his contribution for performing radio and television activities (RTV contribution) since he believed that the latter should be obtained by RTV Slovenia itself.

The Ombudsman asked RTV Slovenia for an explanation why it could not obtain the relevant evidence from the official registers by itself.. RTV Slovenia submitted an answer from which it was clear that in the meanwhile the requested certificate had been obtained by itself and on the basis of this certificate, the initiator was issued a positive decision. The initiation was justified. **8.2-4/2012**

18. DARS d.d. and the Sežana Local Court supposedly did not reply to applications of an initiator (in English)

An initiator turned to the Human Rights Ombudsman of the Republic of Slovenia with a "complaint" in the English language against a payment order received by the Motorway Company in the Republic of Slovenia, d.d. (DARS d.d.) due to a committed offence for not having a vignette. Among other matters, the initiator reproached DARS d.d. and the Sežana Local Court that they had not responded to his e-mailed letters (in English) on the status of the procedure concerned.

The Ombudsman asked DARS d.d. and the Sežana Local Court for explanations. DARS d.d. explained that answers to the initiator's electronic letters were given for which a thank you note was supposedly sent by the initiator. DARS d.d. submitted the evidence proving the statement. The Sežana District Court explained that no reply to the initiator's electronic letter was provided since the procedure is still underway. The Court stated its anticipation that the case would be shortly decided.

On the basis of the initiation given and answers received it was believed that there were not enough justified circumstances demonstrated in the discussed case which would warrant our further intervention. The initiator was warned of the fact that the official language in the Republic of Slovenia is Slovenian and that the only exemptions are areas where the Italian and Hungarian languages are also deemed to be official languages. As a result, applications are lodged, decisions are written, conclusions, minutes, official records and other communications are made in Slovenian, as well as all acts within the procedure. The recommendation was thus given to the initiator to lodge all communication documents in the discussed case in a formally proper manner and in Slovenian and to have the documents received translated into Slovenian since, in a contrary case, the discussed case may lead to consequences unfavourable for him. Although the mentioned rules also apply to the Ombudsman, the answer to the initiator was provided in his own language. The initiation was not justified. **8.4-6/2012**

2.9 HOUSING MATTERS

GENERAL

In 2012, 44 initiatives were handled in the above mentioned area which is significantly fewer than in 2011 (93 cases). For the Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") this may be linked to the fact that people have lost confidence in the state and those institutions with the authority and responsibility to assist them. The social situation for many people is getting worse. Housing matters are closely linked to the financial situation and the social status of an individual.

Many initiators addressed the Ombudsman owing to the allocation of nonprofit apartments to rent, since there were no invitations to tender for the renting of the nonprofit apartments and also because of improper conditions in municipal apartments and residential units. The Ombudsman also dealt with initiatives regarding the possibilities of allocating a suitable apartment to a person with disabilities and to a family with children with disabilities. Many initiatives related to requests for advice on where to turn to in case of eviction, how to pay the rent and other costs, how to obtain a subsidy for market rent and other matters.

In most cases the initiatives were referred to the responsible bodies, and options and methods for settling the problems were explained.

The Ombudsman is not pleased with the situation in the field of housing relations. No progress has been noticed. The Ombudsman's recommendations remain unrealised from year to year. The last Government's response report even states that housing matters are suitably regulated, that the legislation is suitable and that there is no need for any modifications. The Parliament observed this report and did not adopt any of the Ombudsman's recommendations to improve the situation in this field. Not only that, by way of austerity measures, with the Fiscal Balance Act ("ZUJF") the state interfered with such a basic area as housing policy and related housing relations.

SUMMARY OF PROPOSALS AND RECOMMENDATIONS

- The National Assembly should adopt the National Housing Programme as soon as possible.
- The Ministry of Infrastructure and Spatial Planning should prepare modifications of the Housing Act and determine an obligation for the municipalities to provide for a specific number of residential units (for example, in regard to the number of people in a municipality), of suitable quality and give to municipalities the relevant incentives as recommended by the Ombudsman in the last report.
- The Ombudsman recommends to the Ministry of Justice and the Ministry of Labour, Family, Social Affairs and Equal Opportunities that modifications to the Enforcement and Securing of Civil Claims Act be prepared and subsidies for rent be omitted from the enforcement of claims.
- The Ombudsman expects that the Government will finally observe the findings by the European Committee for Social Rights with the Council of Europe in regard to the violations of rights of tenants in denationalised apartments and prepare measures for the elimination of violations in this regard which have been established.

19. A disabled person in a wheelchair succeeded in getting a new apartment

An initiator, who is a disabled person who has lost both legs, wrote to the Ombudsman. He must use a wheelchair for movement. He lives with his mother in a block of flats, without a lift. He can leave the apartment, which is owned by the Slovenian Railway Company, only with the assistance of volunteers. He was trapped between four walls. Over a long period of time the initiator had tried to obtain a suitable apartment so that he would not have to ask for help whenever he wanted to leave home. The Ombudsman stated that he would do everything possible if he was unsuccessful. He tried with Slovenian Railways, the owner of the rented apartment. Since the Company had no suitable apartment available to make an exchange, he was given an opportunity to exchange it with any other suitable apartment. He then addressed the Deputy Mayor of Maribor City Municipality and applied to the call to tender issued by the Housing Fund to rent a nonprofit apartment accessible with a wheelchair. He reached 376th place out of 404 applicants.

The Ombudsman was disturbed by a statement in the initiator's story that the reaction of the Deputy Mayor and the Housing Fund to his requests was inappropriate and unkind. The Ombudsman turned to the Maribor City Municipality ("the Municipality"). In a letter, they were reminded of the Mayor's statement which had been repeated in public several times, that he wished Maribor to be a city which was friendly to persons with disabilities. The Ombudsman expressed her surprise at the use of unusual criteria and how the municipality could allocate a new apartment to a questionable member of the Council of People with Disabilities (a fortune-teller K.J.), whereas not even a single reply was afforded to the initiator's request for assistance.

The Deputy Mayor rejected the reproach about his lack of action. He stated that he had proposed to the Slovenian Railway Company to exchange the initiator's apartment. After the consent for the exchange of the apartment was given, he submitted the case to the Housing Fund for its further handling. It was communicated by the Housing Fund that possibilities of exchange were examined from among apartments intended for persons with disabilities but no solution could have been found since all apartments were occupied. The exchange of the apartment with an apartment in another town was not possible owing to transportation problems, namely access to the initiator's doctor.

Although during the consideration of the case it was determined that the Municipality did not do everything to solve the abovementioned problem, the Ombudsman was later informed that a new apartment that was adapted to his needs was allocated to the initiator. The news was accepted with satisfaction. The intervention was considered justified. **9.2-47/2011**

20. Unclear operative part of the decision of the Housing Fund of the Republic of Slovenia

An initiator addressed the Ombudsman. He complained about the procedures at the Housing Fund of the Republic of Slovenia, the public fund ("HFRS") in regard to the granting of subsidies to young families for their first solving of the housing problem, and in regard to the subsidy granted for the market rent of an apartment for 2010.

The initiator attached a decision of the HFRS on the granting of a subsidy for 2010. The decision ruled in favour of his application but he had some scruples against the decision. He enforced them in the complaints procedure. His scruples related to the time of the commencement and the period of receiving the subsidy. The initiator succeeded with his application only after a year and a half from lodging the application, specifically, in a procedure with legal remedies. After the initiator's understanding of the content of the decision, he had actually already qualified for the 24-month period for which the subsidy is granted but he will not receive the subsidy for this period since he is supposedly eligible to receive it only after the decision becomes final. The initiator therefore also complained about the lack of clarity of the operative part of the decision.

After the inspection of the operative part of the decision, the Ombudsman also believed that it was not clear. Specifically, the exact time of the commencement of the right granted to the initiator was not clear, neither was the time of its expiry and drawdown, which the operative part of the decision should include in accordance with Article 213, Paragraph 6 of the General Administrative Procedure Act ("ZUP"). These irregularities of the operative part cannot be eliminated by any potential additional explanations in the explanatory part of the decision. The decision of the right to a client, in terms of the content, must be determined so that it is directly and clearly expressed in the operative part. Only the operative part becomes final and executable.

The Ombudsman submitted the opinion to the HFRS which was ignored. Later the Ministry of Infrastructure and Spatial Planning, as the second-instance body, determined, when dealing with the complaint of the initiator, that the operative part of the decision in question was unclear and therefore it changed the decision in that part. In principle, it agreed with the Ombudsman's opinion and therefore the initiative was justified.

Regardless of the above, the initiator disagreed in terms of the content with the decision issued at second instance. But the Ombudsman could not assist him in this part. The decision in question was assessed by the Ombudsman only from a formal point of view. To assess the content of the decision, the initiator should have used further legal remedies which he supposedly also did. **9.2-3/2012**

2.9 HOUSING MATTERS

2.10 EMPLYOMENT RELATIONS

GENERAL

In 2012, 175 initiatives were opened in the category under this heading into which, according to the classification plan, cases in relation to the following matters are included: employment relations, unemployment, public officials, scholarships and questions, requests and other. In 2011, 187 initiatives were handled.

The key issues dealt with are again as follows: the non-payment of salaries, non-payment of social security contributions, bullying, harassment and mobbing in the workplace, forcing employees to start working as sole traders or within their own company and then performing the same work for the employer (a company) that they used to do when employed by this employer, violations of rights of workers in cases of contracting work out to external providers of services, issues related to agency workers, issues of inspection procedures, long decision making in procedures to obtain scholarships and issues in relation to the unemployed.

An initiative of a public employee who works in shifts and has no possibility of public transport to work was handled. That is why his transportation costs were reimbursed. His colleague who works when public transportation is possible receives a reimbursement for the costs of public transport for travel from the same town. These costs are almost double the amount of his transport cost for the use of his own vehicle. The initiators also report on cases when employers "punish" them owing to their membership of a trade union. An initiative is being processed and it will be reported in the next report on the Ombudsman's work.

In 2011, it was reported on issues of persons employed in prisons, particularly prison officers. Many prisoners, too few police officers, unsuitable working equipment, poor relations and other issues were the topics handled in 2012. There is no progress from the past years.

The decision-making of the Ministry of Labour, Family and Social Affairs in complaints procedures proved to be very problematic. The statutory time period in which to issue a decision on a complaint, i.e. not later than in two months, was exceeded beyond any reasonable limit.

2.10.1 Non-payment for the work performed

The right to receive a salary is not explicitly stated in the Constitution of the Republic of Slovenia but it is determined in relation to other rights and freedoms in the field of labour, particularly with the rights to personal dignity and safety, the freedom of work and the right to social security. The abovementioned area is regulated by a series of international legal documents applicable also in Slovenia (particularly; the International Covenant of Economic, Social and Cultural Rights, European Social Charter, conventions of the International Labour Organisation). In accordance with these documents, payment for the work performed should have been at least such as to provide for a decent life to an individual and his family. Unfortunately, this is only a dead character on a piece of paper, while the reality is completely different. Numerous cases from the private sector were dealt with in which individuals claimed that they have received no payment for the work performed. The Ombudsman dealt with the case when an employee in a restaurant, for a significantly increased scope of work, received only a minimum salary on her account and the rest by cash in hand. Not even a salary slip was issued. It is absolutely clear that no social security contributions were paid relating to the part paid in hand.

The lack of payment of severance pay in bankruptcy proceedings was also noticed as a problem. It is believed that at least in cases of companies partially owned by the state, it is the state that should have taken the responsibility to pay the severance pay and pay workers what they are entitled to. When writing this report, the answer of the responsible ministry (the Ministry of Justice and Public Administration) had not yet been received.

A case was handled when an employer failed to pay sick pay during an employee's sick leave. The employer had liquidity problems and could not make that payment, although this amount would be later repaid by the Health Insurance Institute of Slovenia ("ZZZS"). According to the currently applicable rules of conduct, an employer pays an advance payment for the compensation of salary for an employee's sick leave which is subsequently claimed as a reimbursement from ZZZS, arising from health insurance. The Employment Relationship Act ("ZDR-1") abrogated the above mentioned practice and it provides for the possibility that sick pay is paid directly by the ZZZS to an employee.

Thus, initiatives received by the Ombudsman, as well as reports by the Labour Inspectorate of the Republic of Slovenia show that the number of violations determined in regard to the payments for work is increasing. The finding that, on the other hand, procedures for establishing companies (companies and sole trader) are getting simpler is significant. It is believed that, together with providing for entrepreneurial freedom, the state should establish an efficient system for the protection of employee's rights and not to create an impression that the rights of employees are sacrificed on the account of free economic initiative.

A warning must again be issued: unclear responsibilities, poor supervisory systems and unsuitable records lead to many violations of rights of employees in the payment for work performed.

2.10.2 Issues regarding voluntary traineeships in the public sector

This year, a mass occurrence of voluntary traineeships in the public sector was encountered. An initiator turned to the Ombudsman who saw a TV programme in this regard. She stated that it presented the arguments of various employers, including state employers, who said that there is no legal basis for paying any kind of award to these young people, not even to pay for their transport costs and meals at work when they perform the same work as their colleagues – trainees who are in an employment relationship. She believed that the principle "fair payment for fairly performed work" should be taken into account in the Republic of Slovenia and these trainees should be paid at least a minimum salary.

The issue in this regard is very broad and multifaceted and it needs to be regulated at the system level. In current conditions, when the supply of the labour force exceeds available work posts such volunteer traineeship creates possibilities for the exploitation of a young educated work force; young people are literally forced to perform any type of work for free in order to get some experience for the future. The Ombudsman believes that, by following the example of the business sector where subsidies for the recruitment of unemployed young people are provided, suitable sources should have been found to finance this type of traineeship, maybe also through European structural funds. The Employment Relationship Act ("ZDR-1") has brought about changes so that trainees who are volunteers receive a reimbursement of costs related to work.

2.10.3 Bullying, harassment and mobbing in the workplace

This type of violence in the workplace is continuing with even greater dynamics than in 2011. The fear of losing a job with every-day threats of discharges obviously acts in favour of violators since the persons affected often do not dare to report violators to the responsible institutions. Very complicated methods of determining these phenomena and protecting individuals greatly contribute to this.

The Labour Inspectorate of the Republic of Slovenia only verifies if an employer has adopted all measures for the protection of employees against sexual and other harassment or bullying in the work place as stipulated by ZDR. Making a decision on the fact whether bullying, harassment and mobbing actually happens to an individual and potential liability for compensation by damages on the part of an employer falls under the responsibility of the court.

2.10.4 Violations of rights of employees in the Slovenian Armed Forces

In 2012, in a similar way to in 2008 and 2010, the Ombudsman again handled cases in which initiators claimed that the Slovenian Armed Forces ("SAF") do not recognise special rights due to them which are referred to in Article 190 of ZDR providing for protection during pregnancy and parenthood in regard to night work and overtime. They refer to Article 96 of the Defence Act ("Zobr"") stipulating that, upon a decision of a superior, an employee who professionally carries out work in the field of defence is obliged to carry out work in special working conditions when so required by the needs of the job. It is reiterated: the rights referred to in Article 190 of ZDR must be guaranteed to all employees, including those in SAF: The above mentioned Article 96 of Zobr does not regulate any of the special rights referred to in Article 190 of ZDR in any different manner and thus all employees in SAF must be given all of the rights referred to in Article 190 of ZDR.

The Ombudsman dealt with an initiative in which the initiator claimed that his fixed-term employment contract was illegally terminated. In accordance with Article 61 of the Service in the Slovenian Armed Forces Act, the employer should have informed him about not prolonging the contract at least 120 days prior to the expiry of the employment contract. The employer failed to do this in the case in question. The initiator's employment agreement terminated automatically with the expiry of the time period. In the employer's opinion, the 120-day period was supposedly not of a preclusive nature.

2.10.5 Employment and subcontracting of "agency" workers

In last year's report the issue concerning the provision of workers to another user and employment brokerage was reported. It was envisaged that the Act regulating the Labour Market will limit the "renting" of workers and thus limit the violations of rights of workers and their exploitation. However, no progress can be reported in this field. Many stories of workers who have carried out the same work through various agencies were noticed in the media. It is believed that the provisions of Article 59 of ZDR which limit in terms of time the possibility of carrying out work for the same user are completely clear and that recruiting a worker for a fixed term through various agency for the same user is not legal if time limits for fixed time have been exceeded and there are no reasons for the fixed time employment.

2.10.6 Termination of employment contract as a result of fulfilling retirement conditions

In relation to the entry into force of the Fiscal Balance Act ("ZUJF"), several initiatives were received from public employees whose employment agreement terminated as a result of fulfilling the conditions for retirement. Initiators did not wish to retire but wished to stay in the employment relationship. Some stated that they still have a lot of energy and expert knowledge to perform their work. Others wrote that during the time when ZUJF had not yet been prepared they had taken on a loan and would have difficulties repaying it with their pension which is much lower than their salary. The Ombudsman lodged a challenge to the constitutionality of Articles 188 and 246 of ZUJF to the Constitutional Court of the Republic of Slovenia, since the above stated violates the following provisions of the Constitution of the Republic of Slovenia, in particular: prohibition of discrimination based on sex and age referred to in Article 14, Paragraph 1 of the Constitution of the Republic of Slovenia, in relation to Articles 49 and 66 of the Constitution of the Republic of Slovenia on the freedom and protection of work, the autonomy of the University determined in Article 58 of the Constitution in relation to the freedom of science and art referred to in Article 59 of the Constitution and the principle of the trust in law as one of the main principles of the state governed by the rule of law referred to in Article 2 of the Constitution of the Republic of Slovenia. It was also proposed to the Constitutional Court of the Republic of Slovenia that it withhold the implementation of Articles 188 and 246 of the Constitution of the Republic of Slovenia until its final decision. The Constitutional Court did not take into account this proposal and the Ombudsman is still waiting for the final decision.

2.10.7 Scholarships

There were 20 initiatives related to the field of scholarships as compared to 18 in 2011.

Rights of foreign students

Many foreign students studying in the Republic of Slovenia wrote to the Ombudsman. They complained about the issue concerning the abolition of state scholarships for students with foreign citizenship. The Ministry of Labour, Family and Social Affairs replied to dilemmas within the scope of the existing legislation. The Exercise of Rights to Public Funds Act ("ZUPJS") lays down that only citizens of the Republic of Slovenia will be eligible for state scholarships which depend only on the financial status of the applicant's family and are dedicated to partial payment of costs of education. The provision of ZUPJS on persons eligible for scholarship from the Zois Fund started to be implemented with the school year 2012/2013.

The Ombudsman is aware of the difficult situation which has been created last year as a result of modifications of the above mentioned legislation for many individuals enforcing rights to public funds, both Slovenian citizens as well as students with foreign citizenship. It is believed that not all regulations are developed in the best possible manner and that some statutory goals could have been achieved with less problematic means. It is thus believed that the elimination of state scholarships and Zois scholarships for students with foreign citizenship is not compliant with the principle of justice. Foreign students have arrived in the Republic of Slovenia hoping for and expecting the granted scholarships. This money would be used in the Republic of Slovenia. Their education means the establishment of international social networks for the future. Numerous foreign students find a job in Slovenia after successfully completing their studies, some return home but the links of friendship and potential cooperation, which are also beneficial for the state, remain. The need for saving is understandable but it is believed that in this case the positive effects are greater than the envisaged financial goals, particularly since great sums are not in play.

Lack of observance of deadlines to decide on scholarships

Further, in relation to scholarships, the lengthy decision-making on the right to a scholarship has to be pointed out. Authorities responsible for decision making, in regard to state scholarships, these are centres for social work and for Zois scholarship the Slovenian Human Resource Development and Scholarship Fund, stated as excuses that there is a great number of applications and a lack of personnel. The decision making of the Ministry of Labour, Family and Social Affairs in complaints procedures was far more problematic. It took, as a rule, more than six months.

Unsuitable criteria to obtain Zois scholarship for students who are parents

An initiator, who is a young mother, who used to receive the Zois scholarship, wrote to the Ombudsman. In spite of motherhood she performed her obligations in due time but she achieved an average grade of 8.43 which, in accordance with the Rules on Granting Zois Scholarships, was 0.07 too low an average of grades to continue to receive the scholarship She complained about the discriminatory nature of Article 48 of the Scholarship Act which stipulates that the scholarship relationship is put "on hold" and the scholarship is not paid to a student who has failed to pass the year but a student is allowed to enrol into the same year again except if he/she has failed to pass the exams for the year on the basis of excused and proved reasons or owing to parenthood. An opinion was addressed to the Ministry of Labour, Family and Social Affairs that special criteria for granting scholarships be developed for cases when recipients of Zois scholarship are young parents.

Elimination of a supplement for education outside the place of permanent residence

Several students, recipients of Zois scholarships wrote to the Ombudsman and highlighted the issue concerning the elimination of a supplement for education outside the place of permanent residence. The initiators stated that in order to prove the eligibility to the above mentioned supplement, a certificate on temporary residence, specifically from 1 October 2012, should have been attached to the application for the Zois scholarship, although the deadline for the application for the Zois scholarship was 10 October 2012. The initiators also stated that the responsible Ministry set the deadline to arrange for the temporary residence as a condition in an arbitrary way and violated the principle of regularity in this manner. The initiators lodged a complaint against the decision of the Slovenian Human Resource Development and Scholarship Fund. They have not received any decisions yet.

An inquiry was addressed in order to deal with the highlighted issue to the responsible Ministry. The Ombudsman expressed an opinion in which it was emphasized that for some secondary school and university students the scholarship is the only source of subsistence which is why it is improper that such lack of clarity appears in relation to conditions for the eligibility to obtain scholarships. The condition concerning the arrangement of a temporary residence prior to the commencement of the school year should, in the Ombudsman's opinion, be clearly and explicitly determined, for example not later than the first day of the month immediately following the submission of the application. In the opposite case, this cannot be requested as a condition to obtain a scholarship. No explanations from the Ministry of Labour, Family and Social Affairs were received which is why the unravelling of events will be reported in the next year.

SUMMARY OF PROPOSALS AND RECOMMENDATIONS

- The Ombudsman again recommends to the Government that all measures be adopted for the procedures before institutions of inspection (inspectorates, courts and other) to proceed quickly and to be concluded in reasonable time periods. This is why staffing should be reinforced in these institutions, perhaps also by reallocating public officials.

- The Ombudsman proposes to the Ministry of Justice that all modifications of the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act be adopted so that payment for the work which an individual has had to perform before the extraordinary termination of employment relationship may be lodged (that is, for three months in sequence or in the period of six months) be treated as a priority claim.

- The Ombudsman also proposes to the Ministry of Justice that it draft modifications to the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act and transfer liability for the payment of severance payments in cases of companies in partial state ownership to the State.

- The Ombudsman again warns the Ministry of Defence that special rights referred to in the Employment Relationship Act providing for protection during pregnancy and parenthood in relation to night time and overtime work must be also ensured to employees in the Slovenian Armed Forces.

- The Ombudsman demands from the Ministry of Labour, Family, Social Affairs and Equal Opportunities, that modifications of the legislation be immediately prepared to make conditions for the work of agencies for employment brokerage stricter and for registration in the registry of the responsible ministry. The inspection supervision must become stricter and violators be more severely punished.

- The Ombudsman proposes to the Ministry of Labour, Family, Social Affairs and Equal Opportunities that suitable solutions in regard to state scholarships for foreign students be prepared as well as special criteria for the granting of Zois scholarships to scholarship receivers, particularly young parents.

- The Ombudsman proposes to responsible authorities that potential modifications in the field of scholarship be introduced in a responsible and prudent manner and that they should inform the potential receivers of scholarship about that in due time. In this manner, numerous complaints and lengthy decision making processes will be avoided in the future.

21. Avoiding rights of employees by including various associated companies

The Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") dealt with an initiative of employees performing services for the operation of one of the larger Slovenian companies in which the state is the majority shareholder. The employees were in no contractual relationship with this company which concluded contracts with various business partners. These then performed services for the company. Thus, at the company's headquarters, work which is often similar is carried out by employees in this company and employees in various associated companies (contractors).

The employees of contractors have complained of significantly worse working conditions than employees in the mother company. Numerous violations of rights were mentioned which they were forced to allow or else they would lose their jobs.

The practice of employers to force employees to register as a sole trader and then perform the same job for the employer as they used to do when employed by the same employer has become a frequent practice.

In formal and legal terms, the same regulations apply for all employees of all employers and the same respect of rights is provided for them. This equality would also be real if few cases were noticed in practice of companies which employ many workers but have little property and assets. The Ombudsman often encounters statements that the same private persons may also be the sole shareholder in various enterprises. One of these companies take on various liabilities, other simply get the benefits. Employees in companies which are intended to take over liabilities are often forced to permit violations of their rights since efficient procedures for the protection of their rights are usually not available to them. An employee may usually enforce protection of his/her rights only in judicial proceedings. After the conclusion of the judicial proceedings, the employees are only left with a judgement in their hands because the employer who should have settled liabilities from the judgement does not exist any more or has no funds available to comply with the judgement.

Inspection services and other state authorities also warn of issues related to companies failing to settle their obligations, which stop operating and which exist with many unsettled liabilities and then are replaced with other companies of the same shareholders performing the same activity in the same market. The Ombudsman is aware that no system can entirely prevent various abuses which obviously does not mean that it is necessary to constantly take suitable action and eliminate undesired phenomena. It is believed that even higher standards for state-owned companies must be set and maintained. The state must implement its policy in a consistent manner and with all available means. It is unacceptable that the state establishes companies and creates profit whilst at the same time violating rights of employees (similarly to other employers). It seems that the violation of rights of employees is often planned and intended to obtain material gain for employers and the clients ordering the services of these employers.

In such entities (state-owned enterprises or public sector companies and their associated companies – contractors), the respect for the rights of employees should have been just as important as the attainment of profit or rendering services at as high a level as possible. It is unacceptable that the state avoids such responsibility by referring to the fact that contractors are independent entities which cannot be influenced. When a state-owned company or a body governed by the public law decides to decrease costs by outsourcing various phases of its working process to various external (sub)contractors, it is mandatory to ask at whose expense will such reduction of costs be achieved and whether that party can afford it.

When handling the initiative in question, the Ombudsman's team operated well with the Management Board of the company which has taken certain measures for the respect of rights of employees of this company's contractors which was the most the Ombudsman could have done with regard to the limitations of the Ombudsman's authorities. **4.1- 49/2011**

22. The right to salary compensation for sick leave

Several initiators complained to the Human Rights Ombudsman of the Republic of Slovenia that, for various reasons, employers did not pay compensation for salary owing to their sick leave. The initiators failed to understand why they had not received this compensation although it was a right guaranteed from public funds.

Although the Ombudsman is not directly responsible for the supervision of employers, the initiatives were handled in regard to the fact that the state should have ensured the payment of sick pay in spite of any problems experienced by the employer. It was determined that the main reason for the non-payment of compensation lies in the fact that employers facing liquidity problems cannot pay sick pay even though these funds would later be reimbursed from the budget, or rather, from the health insurance fund.

The Health Insurance Institute of Slovenia ("ZZZS") believed that, considering Article 137 of the Employment Relationship Act ("ZDR"), the obligation to pay sick pay falls under the responsibility of an employer and an employee cannot enforce this right directly from ZZZS.

The above mentioned statutory provision is clear and such compensation is paid in advance by an employer who is later reimbursed by ZZZS. It is nevertheless believed that there is no barrier in the law for an employee to obtain the salary compensation directly from ZZZS in extraordinary cases. The right to the compensation is not a right arising from the concluded employment contract but a right arising from the concluded health insurance. For this right, every month, an employee pays a contribution to the health insurance fund. In the Ombudsman's opinion, various problems experienced by employers should not have an impact on the enforcement of this right. It is true that in a case of non-payment of the compensation an employee may enforce the claim by initiating an action at court, and an employer may incur a fine for the offence. However, neither of these two options provide for the main purpose for which the health insurance has been concluded and contributions have been paid – an employee must at least partially be protected against the risk presented by a sudden illness.

The Ombudsman is not familiar with the reasons why ZZZS does not establish a system for paying out the compensation of salaries directly to employees in extraordinary cases. The Ombudsman is aware that this may be connected with some issues however these must not limit the rights of individuals. It also seems unacceptable that the health insurance fund, as a part of the apparatus in power, has a direct gain from the fact that certain employers cannot pay or do not pay sick pay since for the fund this represents a saving; specifically that, an employer pays to an employee the compensation of salary and then claims for its reimbursement from ZZZS. The same conduct is defined as an offence and the State therefore officially describes it as unwanted, but at the same time it brings material gain to the State. As already stated, this issue is regulated in the Employment Relationship Act (ZDR-1). **4.1-50/2012**

2.11 PENSION AND DISABILITY INSURANCE

GENERAL

The National Assembly adopted all recommendations proposed by the Ombudsman in the Annual Report for 2011 in the field of pensions and disability insurance. Some recommendations were fulfilled by way of the coming into effect of the Pension and Disability Insurance Act ("the ZPIS-2") at the end of 2012. The feedback from the Ministry of Labour, Family and Social Affairs which has promised the examination of the arrangement regarding the Council of Persons with Disabilities within the Equalisation of Persons with Disabilities Act and the harmonisation with the provision of Convention on Rights of Persons with Disabilities is, however, still awaited.

By the enactment of ZPIZ-2, the decision by the Constitutional Court concerning the right to partial retirement has been finally realised. This issue was highlighted in annual reports for 2011 and 2010.

In accordance with the decision by the National Assembly it is also expected that all responsible national authorities will develop the implementing regulations as fast as possible to enable the implementation of the Convention of the Rights of Persons with Disabilities and the Equalisation of Opportunities of Persons with Disabilities Act.

2.11.1 The Fiscal Balance Act has seriously interfered with pensions

In July 2012, the National Assembly, following a "super fast-track" procedure (a session of the responsible commission lasted for the entire night prior to the adoption of the law), adopted the Fiscal Balance Act ("the ZUJF"). This Act interfered with more than ten other acts by reason of its provisions. Among other matters, by way of its provision of Article 143, it interfered with the amount of the pensions of more than 26 000 beneficiaries. The reduction of pensions was of a selective nature. Some pensions were thus decreased for some categories of pensioners for which the portion of pensions is contributed by the budget. Among other matters, pensions to some groups of veterans (of the Second World War) decreased, pensions to those who had worked a part of their years of service in the republics of the former Yugoslavia and to some other categories of pensioners who were granted a higher pension by way of special regulations and for whom a portion of their pensions is contributed to by the Pension and Disability Insurance Institute of the Republic of Slovenia ("ZPIZ") and is specially contributed to by the budget. The reduction in pensions depended on their size and it amounted to up to 350 euros per month. Pursuant to this Act, ZPIZ only issued a notification on harmonisation (read: reduction) of pensions to individual categories of beneficiaries which included no legal advice on the possibility of protest or complaint.

Immediately after the receipt of first notification, an avalanche of complaints, protests, comments and criticisms concerning the reduction of pension fell upon the Ombudsman's Office, some also submitted a protest to ZPIZ, actions in court and applications to the Constitutional Court. Since, according to the established practice of the Constitutional Court, a constitutional complaint may only be lodged after all legal remedies have been exhausted the Constitutional Court dismissed the immediate complaints explaining in the grounds to one of its decision that the responsible body (ZPIZ) should have issued appropriate decisions on the reduction of pensions. This standpoint by the Constitutional Court, although stated only in the grounds of an individual decision on the dismissal of a complaint, was taken into account by ZPIZ which started to issue declaratory decisions which contained the appropriate caution.

The Ombudsman also received initiatives to begin procedures concerning the determining of alleged violations of human rights from numerous non-governmental organisations and from more than 250 outraged pensioners who claimed damage due to an unjust and anti-constitutional interference with their right to a pension, explicitly guaranteed by the Constitution (Article 50, Paragraph 1).

In the middle of July 2012, the Ombudsman lodged a challenge to the constitutionality of ZUJF to the Constitutional Court of the Republic of Slovenia, pointing out the following reasons:

- the method of adopting ZUJF was contentious from the point of view of the Constitution,
- the violation of the principle of clarity and determination of regulations referred to in Article 2 of the Constitution,
- the violation of the constitutional principle of the National Assembly being bound by the referendum decision referred to in Article 90 of the
- Constitution,
- the violation of human dignity,
- the violation of the right to social security and right to a pension referred to in Article 50 of the Constitution,
- the violation of the equality before the law and prohibition of discrimination referred to in Article 14 of the Constitution,
- the violation of assurances referred to in the Fundamental Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia,
- the violation of trust in the law and the violation of expected rights,
- the violation to the right to a legal remedy (Article 25 of the Constitution) and the principle of the finality of legal decisions (Article 158 of the Constitution).

The Ombudsman made the judgement that ZUJF means an interference which, although it refers to a legitimate goal concerning the saving of the state in conditions of economic crisis, it was enforced in such a manner that it was painful and it

- interfered with the human dignity of the people concerned in a discriminatory and disproportional manner, making them take
- a disproportional burden in the solving of the economic crisis, it has seriously worsened their economic situation and violated
- a series of human rights determined in the Constitution and the European Convention of Human Rights and Fundamental Freedoms (hereinafter
- referred to as: "ECHRFF"), other international treaties committing the Republic of Slovenia and
- deviating from the principle of a state governed by the rule of law and a welfare state. According to the established practice of the European Court of Human Rights (hereinafter referred to as: "the ECHR"), such a measure is not urgent in a democratic society and does not maintain a fair balance between the public interest and human rights and the interests of the parties concerned.

The financial consequences of the controversial reduction of pensions are not negligible by any means. The same financial impact might have been achieved by a general reduction of all pensions by 0.7 per cent, which would be dubious only in the case of the lowest pensions.

The Constitutional Court decided on the Ombudsman's application at the beginning of 2013. The controversial provisions of ZUJF were revoked owing to their inconsistency with Article 14 of the Constitution (Equality before the Law) which is why other arguments from the Ombudsman's application were not dealt with and no position was taken in that regard. In its decision the Constitutional Court pointed out that at a certain amount a pension is a statutorily determined and obtained right protected within the scope of the principle of the protection of trust in the law. Economic incapacity of the state to cover social contributions may be an admissible reason in terms of the constitution as a result of which a legislator may reduce the statutorily determined and obtained rights from that point onwards but the legislator

must take into account the principle of equality before the law (Article 14, Paragraph 2 of the Constitution). By way of the challenged arrangement, the legislator treated the situations of some pension beneficiaries, which were essentially similar, in a different manner when they should have been treated equally (for example, military pension holders). Also some pension beneficiaries in essentially different situations were not treated in an equal manner without having an admissible reason granted by the Constitution or a sensible reason founded upon the nature of the matter. The classification of groups of pension holders under Article 143, Paragraph 2 of ZUJF was arbitrary and as a result non consistent with the constitutional provision concerning equality before the law. Similarly, the circumstances concerning the non-payment of contributions under a decision by the Constitutional Court are not an admissible reason under the Constitution to justify unequal treatment in relation to other pension holders.

Since, in accordance with the law, the decision by the Constitutional Court cannot interfere with relations that have been decided on by way of a final decision, the responsible ministry prepared a special law which would provide for the repayment of any pension funds that had been decreased and had not been payed to all beneficiaries, including those who had not initiated any complaint procedures or judicial proceedings. The National Assembly had already adopted the law and ZPIZ began its implementation.

The case concerning ZUJF clearly shows how important and sensible is the question of anticipating the consequences of an individual regulation which has been prepared and adopted only for a particular objective without taking into account all the potential consequences. In spite of the revoked provisions, ZUJF surely contributed to the reduction in public spending. However, a question is raised in regard to the soundness and effectiveness of such a short-term saving which, as a matter of fact, only postponed a portion of spending in terms of time while having caused an enormous increase in the workload of individual authorities and consequently also costs which will have to be paid back from the same source (public spending).

The Ombudsman's successful application to the Constitutional Court preventing a discriminatory reduction of pensions to more than 26,000 persons concerned represents one of the greater achievements in the past and present work of the Ombudsman.

2.11.2 Functioning of Commissions of Persons with Disabilities

In the past, following complaints by individual insurance holders, the Ombudsman has warned the Pension and Disability Insurance Institute of the Republic of Slovenia (hereinafter referred to as: "ZPIZ") several times that a personal examination of an insurance holder had been carried out in too swift and careless a manner. It was possible to understand from answers given by ZPIZ that the Commission for Persons with Disabilities does not view a personal examination by the Commission as decisive but relies in particular on medical documentation when judging circumstances influencing the provision of an expert opinion. Such a position by ZPIZ was accepted since it is hard to imagine that, in regard to providing an expert opinion, a personal examination may be more important than numerous test results by specialist doctors which are a part of a medical examination. However, ZPIZ was advised by the Ombudsman to explain to the insurance holder the purpose and the method of conduct of a personal examination and the impact of such an examination on the provision of an expert opinion.

The Ombudsman is not in a position to judge the accuracy of an expert opinion (and, thus, a professional medical decision). However, it has to be noted that the obtaining of data important for the production of an expert opinion must be conducted in a proper manner. This particularly holds true for a personal examination of an insurance holder. Although an insurance holder should have an equal and active role in determining facts and circumstances, apparently, in practice, there are actions by individual members of Commissions for Persons with Disabilities owing to which insurance holders feel hurt and placed in an inferior and degrading position. Such conduct is improper and to be deplored.

The Commission for Persons with Disabilities providing an expert opinion is composed of three members: two are doctors and one member is an expert in the field of pensions and disability insurance, safety and heath at work, organization of work, industrial psychology or technology and other relevant fields. When providing an expert opinion, the Commission is obliged, among other matters, to take into account the Code of Experts and general as well as ethical principles of the discipline (Article 14, Paragraph 1, indent 5 of the Rules on Organisation and Method of Operation of Commissions for Persons with Disabilities and Other Experts of the Pension and Disability Insurance Institute of the Republic of Slovenia ("the Rules").

It has been determined that the Rules does not stipulate precisely which Code of Experts and specifically which ethical principles of the discipline must be observed by the expert bodies of the said Institution when providing an expert opinion (it has been concluded, however, that the Code of Medical Deontology was meant), particularly since a member who is not a doctor and therefore not bound by the Code of Medical Deontology participates in the Commission. It is proposed that this issue be settled upon the development of new Rules pursuant to the Pension and Disability Insurance Act ("ZPIZ-2").

2.11.3 Occupational diseases

The issue regarding occupational diseases, in particular the process for their determination and verification (recognition) has not been set out for quite some time since the Pension and Disability Insurance Act ("ZPIZ-1") has not established any basis for the arrangement of the procedure in regard to the determination and recognition of occupational diseases by way of an implementing regulation (Rules). Similarly, the list of occupational diseases has never yet been revised or amended. Since occupational diseases are not registered and the registration of occupational diseases is decreasing from year to year, there are no data on occupational diseases. According to the Ombudsman's assessment, reasons for this fact lie in the current systemic arrangement which stipulates that only employers who also pay for the services of authorised doctors – specialists in occupational medicine are the only ones to register an occupational disease.

Since this is an important field for regulatory arrangement, it should have been settled as swiftly as possible. Some progress in this direction has been shown by a recently adopted new Pension and Disability Insurance Act ("ZPIZ-2") which has finally established a suitable legal basis for a more exact arrangement of the procedure regarding the determination, recognition and registration of occupational diseases (Article 68, Paragraph 2). The preparation and the issuing of the implementing regulation to arrange for the above mentioned issue falls under the responsibility of the Minister responsible for health. It is expected that the said regulation be issued in the period of the 12 months following the coming into force of the Act. (3.2-25/2011)

SUMMARY OF PROPOSALS AND RECOMMENDATIONS

- The Government of the Republic of Slovenia should examine the possibility of a more precise definition regarding the envisaging of consequences of new regulations and during the regulation development procedure obtain the opinion of responsible operators as to how the regulation is to function in practice.
- Responsible executive bodies should develop and issue all implementing regulations as envisaged by the Pension and Disability Insurance Act as soon as possible.

2.12 HEALTH CARE AND HEALTH INSURANCE

GENERAL

"In spite of announcements, the Ministry of Health did not prepare the new health legislation." This was the introductory sentence into the chapter presenting the work done in the field of health care in the Annual Report for 2011. The situation has not changed at all in 2012. Out of everything that was promised as well as urgent modifications to legislation in the field of health care, only the Health Services Act was partially modified without bringing any direct benefits for patients as its amendment only unites the Institutes of Public Health and the National Institute of Public Health reorganizing them into two new institutes.

The number of initiatives handled in the field of health care was lower compared to 2011, primarily due to health care insurance.

2.12.1 Health Services Act

The Ombudsman has warned about the inappropriate arrangement of supervision in the health care system several times; supervision is partially left to chambers which, unfortunately, charge high fees for their services consequently turning away patients from the option to enforce their right to a service performed to a good standard.

The Advocate of Patient Rights informed us about a case of a patient who had submitted a complaint to the Medical Chamber of Slovenia ("ZZS") complaining about a dental service performed by a private dentist without a concession. The President of the Commission for Expert Dental Issues held within the Committee for Dental Care of ZZS, **four months after lodging the complaint** and after making several phone calls unsuccessfully seeking information about the status of the complaint settlement, sent her a letter in which two methods of resolving the issue were proposed:

1. a request for an expert supervision may be submitted in which the costs of such a supervision are high and have to be borne by herself and she was notified that a delay in its performance might be expected,
2. or to carry out an examination at the Stomatology Division of the University Medical Centre Ljubljana through which the test result should be submitted by ZZS.

At the Stomatology Division she received an explanation that such examinations are not carried out and that there are two experts at the ZZS for that purpose. The President of the Commission for Expert Dental Issues held within the Committee for Dental Care of ZZS explained to her in a short telephone conversation that, indeed, the chamber has two experts but that the costs of the expert opinion in the sum of 1500 euros must be paid by her. Since it was also explained to her that there was not a high chance of success in the complaint she withdrew it.

The Rules on Expert Supervision with Counselling, adopted by ZZS provide for an extraordinary expert supervision carried out outside the regular annual programme and it is paid for by the party ordering such a supervision. However, concerns have been raised as regards the amount of these costs. Such a high fee without questions turns the users of health care services away from lodging an application to even initiate an expert supervision. As a result, the initiation was considered to be justified as it is believed that ZZS should not have charged such high fees for expert opinions. The issue was referred to the Minister of Health who assured the Ombudsman that the case would be resolved together with other outstanding issues with ZZS.

2.12.2 Special protection measures (SPM)

In the Ombudsman's Annual Report for 2011, attention was again drawn to the lack of an appropriate legal basis regarding the use of special protection measures outside the wards under special supervision of psychiatric hospitals (secure wards) and in secure wards of social care institutions. The use of SPM is regulated by the Mental Health Act and it is therefore used without the legal basis in all other health care and social institutions. The Ministry of Health has already prepared the amending Act of the Patient Rights Act which will regulate this field in a suitable manner.

More on the issue regarding SPM is written in the chapter on the restrictions of personal liberty and in a report on the work carried out by the National Prevention Mechanism.

2.12.3 Settling patients' complaints in a non-formal manner

The Ombudsman received several initiatives stating that the Health Care Centres do not settle the patients' complaints according to procedures provided for by the Patient Rights Act but in a much more informal manner, only by the exchange of letters between the responsible person of the Health Care Centre and a patient. In one of the Health Care Centre, the Ombudsman came across the internal instructions of a Medical Director according to which complaints were not being resolved according to the law.

The Ombudsman's position is that the providers of health care services cannot regulate their complaints procedure in a different manner to that required by the Patient Rights Act. Specifically, a statutory power of attorney should have been established for such an arrangement which, according to the Ombudsman's assessment, would be contrary to the objective of the law, that is, that all patients are provided with the same rights in the procedure. A provider may internally arrange for matters which are not dealt with by the law in the necessary detail or does not take into account certain specialities but the internal methods of resolving complaints cannot be a substitution for the resolving of complaints for which the basis for handling is given in the law.

The Ombudsman submitted the above mentioned position to Health Care Centres which adopted it and modified their internal legal documents and the disputed practice.

In this regard, the Ombudsman again emphasizes that the regulated procedures should not be a burden to the providers of health care services but, if carried out in a proper and efficient manner, also their protection.

2.12.4 The Health Care and Health Insurance Act

In the field of health insurance, the content of initiatives did not change in comparison to those from the previous years. Initiators were mainly dissatisfied with decisions in regard to medical treatment, decisions in regard to sick leave, and after the entering info force of the Fiscal Balance Act ("ZUJF") also with the reduction of rights of war veterans.

Since in the autumn of 2013, a new arrangement regarding the enforcement of health care services in the European Union will enter into force, it needs to be noted that we are not yet ready for such modifications. It will be necessary by means of the law to arrange precisely the procedure regarding the making of a decision to refer for medical treatment abroad and the rights in this regard. The current arrangement, as a matter of fact, regulates precisely the procedure of the referral for medical treatment abroad but, in practice, it is found all too often that the actual waiting time period may be unreasonably long.

A case of an initiator was dealt with when her application for the approval of medical treatment abroad by the Health Insurance Institute of the Republic of Slovenia ("ZZZS") took as long as eight months.

In accordance with the process laid down in regard to approval of medical treatment abroad, the ZZZS asked the responsible clinic for an expert opinion, which was not produced for more than six months.

Such procrastination in the procedure of decision-making in regard to rights arising from health insurance is unacceptable which is why time periods for the individual phases of a procedure should have been determined in a more precise manner while also taking into account that there will be more and more applications for medical treatment abroad.

2.12.5 Obligatory medical examinations of students must have a legal basis

The Ombudsman wrote about the issue regarding general medical examinations of students in the Ombudsman's Annual Report for 2011. The Ombudsman's position is that the obligation of a student to participate in a general medical examination must be founded on the law as it represents intervention into an individual's physical integrity. Thus, the arrangement of this field by virtue of Rules is not appropriate.

On this basis, it was suggested to the University in Ljubljana not to make the students' progress into the next study year conditional upon an obligatory medical examination until an unambiguous legal basis is enacted for such an obligation. Since the handling of this initiative took longer, the final findings of the handling of the case and responses from the ministries and universities and their impact on the Ombudsman's opinion were not presented in the last year's report. These are thus presented in the remainder of the text. More detailed information on the content of proposals and the handling of the initiative can be found in the Ombudsman's Annual Report for 2011.

In regard to the Ombudsman's opinion, the Ministry of Health has replied that the participation of students in a general medical examination is not obligatory, but it is a right which is offered to a student by the health care system which is why, in the Ministry's view, there are no reasons for amending the legislation in the field of health care. The Ministry of Education, Science, Culture and Sport agrees with the Ombudsman's proposal and will examine the need for regulating the right or the obligation of students to take part in a general medical examination by way of regulations from the field of higher education. The Ombudsman's initiative will be examined in terms of suitable statutory regulation.

In its extensive reply, the University of Ljubljana makes a reference to Article 23 of the Health Care and Health Insurance Act which stipulates that the obligatory insurance of students in full-time schooling and the payment for general and other examinations of a preventive nature is provided for in full. In the University's opinion, it derives from the above stated that the legislator has linked the schooling obligation with public health. It was further stated that obligatory medical examinations and vaccinations are provided for by legislation from an individual's early youth onwards, being defined by years and educational levels with the aim to establish an efficient control and prevent as a precaution pathological medical conditions of younger generations. The University of Ljubljana believes that, in accordance with the above stated, the legal basis for carrying out preventive general medical examinations exist and that the method of control of their implementation falls under the responsibility of an individual university. It was added that the University of Ljubljana, in the capacity of a public institution, is obliged to act in the public interest and in accordance with the public purpose and provide the opportunity to students for a smooth implementation of their rights and obligations. The mere fact that the nature of the general medical examination is not explicitly defined by the law as obligatory but it is indicated cannot be a reason to refrain from such method of providing health protection and protection of human life. At the end of the reply it is added that, although it is true that in the case of the general medical examination and vaccination it is a matter of a measure which in fact narrows the freedom of action but, from the point of view of health protection and protection of human life, it is admissible in terms of the Constitution.

The University of Maribor agreed with the Ombudsman's position and added that it is not specially determined in any of its general legal documents that the general medical examination of students is a criterion for a student's progressing into the next school year nor does such an obligation arise from any accredited study programme, however Maribor University agrees with the position of the University of Ljubljana that higher education institutions carry some responsibility for the care of public health.

The University of Primorska replied that their university informs their students about time periods when the general medical examination may be carried out and encourages them to take part in general medical examinations in accordance with the instructions of the regional Health Care Centre and that a student's progression into the next school year is not subject to a general medical examination. The University of Primorska believes that a general medical examination is urgent in cases of those study programmes in which students have to carry out field training exercises and clinical training as a part of their study obligation.

It was determined from the replies received from the ministries and universities that to a certain degree, everybody, with the exception of the University of Ljubljana, agrees with the Ombudsman's position; the obligation to perform a general medical examination is defined as a criterion for progressing into the next school year only at the University of Ljubljana.

It is a pleasure to report that, subsequently, the University of Ljubljana accepted the Ombudsman's proposal and submitted an instruction to its member Faculties in which, in addition to the instructions on vaccination, it is stated that the medical examination is obligatory only when determined as a criterion for enrolment into the study program in the Call for Enrolment. A student must carry out such an examination prior to enrolling into the study program as it is a condition for enrolment. If the medical examination is not determined as a criterion for enrolment, the medical examination is only a right and not an obligation of a student.

By way of presenting the above, the Ombudsman wishes to clearly demonstrate how, while handling an individual initiative (in this particular case, a disagreement with having a blood test), a broader issue regarding the implementation of human rights is opened and in what manner such open issues may be eventually settled with the cooperation of everybody involved.

2.12.6 The Complementary and Alternative Medicine Act

In the last year's report, the Ombudsman warned about the fact that the Complementary and Alternative Medicine Act had not been fully implemented yet since the Complementary and Alternative Medicine Chamber, envisaged by the law ever since 2007, had not yet been established. The question has arisen of the soundness of dealing with issues in terms of regulation which consequently are not achieved by the executive branch of power and which it does not attempt to achieve. If, in the time following the entry into force of the Act, it was shown that there are no realistic conditions to establish such a Chamber and there is not enough interest in doing that, the Ministry of Health should determine that and suitably react by preparing amendments to the legislation. In the current situation, the users of complementary and alternative methods of treatment are not provided for with the suitable security and protection of their rights although the law provides for the legitimacy of such activities.

SUMMARY OF PROPOSALS AND RECOMMENDATIONS

- The Ministry should prepare as fast as possible a proposal of urgent modifications and amendments of the legislation in the field of health care and proposals of new Acts, and include any relevant expert members of the public and the users of health care services in public debates on proposed statutory solutions.

23. Inappropriate response by a doctor on duty and emergency medical assistance

Two initiators informed the Ombudsman that a 26-year old man, a drug and alcohol addict, died in a homeless shelter (hereinafter referred to as: "the shelter"), allegedly as a result of an improper action by a doctor on duty in a Health Care Centre. The initiators complained that the doctor on duty did not examine the patient but gave instructions for his treatment over the telephone This is supposedly a general practice.

The initiators started the procedure in accordance with the Patient Rights Act ("ZPacP"). They also turned to the Police and addressed a complaint to the Medical Chamber of Slovenia ("ZZS"). The Ombudsman addressed inquiries to the Velenje Health Care Centre. The Ombudsman was interested to know how the Velenje Health Care Centre managed the procedure in accordance with ZPacP and what action was taken. Since the initiators lodged an application to deal with a violation of patient's rights, but did not receive an invitation to the handling of the application in spite of the expiry of the deadline, it was assumed that the Velenje Health Care Centre did not consider the application which is why they were asked to explain their reasons. In a reply to the Ombudsman's first enquiry, the Velenje Health Care Centre informed the Ombudsman's Office on the work of the emergency medical assistance team by way of chronologically formulated opinion which was prepared by a Head of the Emergency Medical Assistance Service on the basis of interviews with the parties involved. A day prior to his death, the patient was resuscitated in the premises of a shopping centre after inducing a failure to breath by an over dose of narcotics. When he fully regained consciousness he declined to be hospitalised. Caring for his health, nevertheless, the doctor on duty informed the Police. According to the account by the parties involved, the 26-year old addict showed signs of fresh contact with drugs when located in the shelter. The doctor on duty was informed of his condition who, owing to his uncooperative attitude to hospitalisation, gave instructions on the phone for his treatment and gave a warning that his breathing and behaviour should be observed. She believed that considering his uncooperative attitude, "nothing else can be done and must not be done". At 4 o'clock in the morning, the person on duty in the shelter saw that the patient was still breathing calmly. Towards the morning, according to the statement of the head of the emergency service, "the consequences of a long-term poisoning of the body became too strong and became mortal leading to the fatal result". The opinion of the Head of the emergency service team is that the emergency service carried out its work very effectively since the first resuscitation of a patient in his critical condition had been successful.

In accordance with Article 6, Paragraph 2 of ZPacP, a patient has a right to emergency medicalassistance which cannot be possibly conditioned in any way. Urgent medical care is, as a matter of fact, an absolute and general right. The Health Care Centre stated that the reason for the doctor on duty not to react to the call from the shelter by visiting the patient was the patient's refusal to accept the proposed hospitalisation following the first intervention by the doctor on duty in the premises of the shopping centre. In the procedure regarding the handling of the case, the Ombudsman did not come across the deceased's explicitly stated desire that, together with the hospitalisation, he refused the emergency medical assistance. In any case, his desire should have been expressed in writing in advance about what medical care he would reject if he found himself in a situation needing a valid approval but not being capable of giving it. On the basis of the above mentioned, the Ombudsman does not accept the position of the Health Care Centre that together with refusing hospitalisation, the patient also refused medical assistance in the case of an emergency.

The Ombudsman assessed the initiation as justified since it is believed that the deceased's refusal of hospitalisation cannot be equated with the refusal of emergency medical assistance. Upon the action taken by the doctor on duty, a question has been raised to the Ombudsman, whether her action would be similar in the absence of the deceased's addiction to illegal drugs and alcohol. The Ombudsman also believes that it is unacceptable that the Health Care Centre did not even consider the complaint of the initiators, let alone have it dealt with in accordance with ZPacP. It is also worrying that neither the shelter's Director nor the Director of the Velenje Health Care Centre found any reason upon the death of the 26-year old patient to conduct relevant procedures and to determine potential irregularities in the treatment of the patient. The reaction of the Medical Chamber to this event is alien to the Ombudsman's Office. **3.4-23/2012**

24. Critical conditions at the emergency department

Several initiators turned to the Ombudsman complaining about the conditions at the emergency department ("A&E ward") of the University Medical Centre Ljubljana ("UMC Ljubljana"). An initiator wrote to the Ombudsman who had sought assistance at the A&E ward for her injured mother. After four hours of waiting, the initiator's mother was examined at the Department of Traumatology where her wound was treated, and a surgeon instructed additional examination by a specialist in the internal medicine to be carried out at the Internal Medicine First Aid department (IMFA).

The Internal Medicine First Aid department was crowded, and after the triage of a properly qualified nurse the initiator's mother was classified into a less critical group of patients which is why she had to wait in the corridor. When waiting, the previously treated wound started to bleed again, the nurse reacted to her request for help only after 15 minutes. The initiator and her mother had to turn back to the Department of Traumatology to have the wound sown up again, but the surgeon still believed that the lady had to return to the IMFA department. The lady was examined at the IMFA and at around midnight taken home by the rescue team. From her arrival at the A&E ward until her departure home, approximately twelve hours had passed. In the meantime, according to the statement by the initiator, she and her mother had to wait in crowded premises where there were no chairs outside the consulting room, trolleys were crammed into the corridors, and in a narrow space some patients relieved themselves while others were receiving transfusions. In her letter to the Ombudsman, the initiator expressed her feelings at the A&E ward, stating in particular (a quotation): »... "/.../ that we and other patients are the pigs and the staff are the farmers since it is not much better than in a stable in this terrible A&E ward ."

The Ombudsman informed the UMC Ljubljana of the initiator's letter and expected to receive itsresponse in regard to her statements. An answer came from the Internal Medicine Clinic, from the Head of the IMFA department where the complaint was dealt with. The UMC Ljubljana is aware of the poor conditions at the A&E ward but it was also explained that patients are treated according to seriousness and not according to the order of their arrival and that the number of patients examined at the IMFA unit exceeded the capacities of the current IMPFA a long time ago. In order to improve the situation, two more units were introduced, a specialist consultant doctor who may examine a patient anywhere within the A&E ward, a 24-hour consulting phone line for doctors of emergency medical assistance and family medicine and a 24-hour hospital in which 3,000 patients per year are treated, thus unburdening the Internal Medicine Clinic. In spite of all of the above, the crowd is often unbearable (particularly in the winter time) and the IMFA service cannot do much to influence this. The problem is also that the time needed for a patient's admission into the hospital is increasing since the Department of Internal Medicine lacks beds. Owing to limitations of the existing A&E department in terms of space, comfortable and orgnaised accommodation cannot be ensured and the increased number of patients present sometimes exceeds the capacity of the personnel at the IMFA unit. Although employees are experienced and resilient, constant pressure sometimes tries everybody's patience. This was also what happened on a day when the initiator visited the IMFA unit with her mother. As stated by the Head of the IMFA unit, the initiator's and her mother's route from the Department of Traumatology to

the IMFA unit was not needed since a doctor-consultant could have examined her in the Department for Traumatology and they would have been spared all of the inconveniences.

The IMFA unit thus admited that the initiator's experience had warned them to again inform colleagues in all consulting rooms of the A&E ward of the service of the doctor-consultant. The employees try their best but at the same time they are aware of the fact that works in the facility dedicated for the new A&E unit which wil improve the quality of patients' stay during their treatment, proceed at a slow pace. Until the completion of its construction, the premises at A&E unit will, however, remain restricted.

The Ombudsman has assessed the initiation as justified as it is believed that the hospital environment must be such as to preserve the dignity of a patient and the medical personnel taking care of a patient. The Ombudsman informed the Minister of Health and the Director of the UMC Ljubljana of critical conditions at the A&E ward. Both of them are aware of the issues mentioned. In spite of that, the Ombudsman again urges the Ministry of Health and the management of the UMC Ljubljana to act and expects that everything necessary will be done to make the current, often unbearable conditions for patients and personnel at the A&E ward of the UMC Ljubljana improve. **3.4-2/2012**

2.13 SOCIAL MATTERS

GENERAL

The number of initiatives in the field of social security increased which is probably mainly a result of an increasing financial and economic crisis, and partially also due to the modified legislation which in 2012 significantly changed conditions for enforcing rights arising from public funds.

The number of initiatives in relation to social benefits increased significantly and the number of initiatives in the field of poverty more than doubled. The data shows that social issues are becoming deeper and the unwillingness of the state to carry out the measures to be adopted in a timely and efficient manner contributed a great deal to this.

In the light of this situation and the trends anticipated in this field, regular cooperation with the responsible Directorate of the Ministry of Labour, Family and Social Affairs has been established; by being in direct contact it is possible to point out the outstanding issues in a more efficient way whilst also learning of additional circumstances regarding the settling of issues at state level. Thus, some of the viewpoints of the Ministry which were sought to be harmonised during the year are summarised in the remainder of the text.

The growth of initiatives demonstrating people at risk as a result of lack of money and an increasing number of violations in regard to their right to dignity have been observed. In addition to the fact that individual rights of individuals are being restricted or removed for various reasons, an additional problem is caused by an inefficiency and lack of action by responsible state authorities in relation to new situations, and also an increased number of complaints which fail to be settled within the statutorily prescribed time period.

The Ombudsman is therefore especially concerned about the data on inefficient settling of complaints lodged against the first-instance decisions regarding rights arising from public funds (at the time of writing this report, there were 10,133 complaints outstanding) since the foundations of the welfare state and the state governed by the rule of law are thus being undermined.

It is assessed that the new regime regarding the enforcing of rights from public funds, which entered into force on 1 January 2012, interfered a great deal with the rights of the weakest group of people in society causing them extraordinary problems in providing normal living conditions, particularly for minors.

In the Ombudsman's opinion, the scope of rights of the weakest group of people in society should not be reduced in the slightest. Regardless of the unquestionably hard situation resulting from the economic crisis, in our country it should not be forgotten that the rights of those in the worst financial situation were already at their worst which is why their rights could not be reduced further. The income of the weakest, socially, were below the subsistence minimum before the crisis and therefore these persons cannot be treated as people who must contribute to the improvement of the economic situation in society by "tightening their belts". The poorest had tightened their belts even before the economic crisis. Further tightening of belts might be afforded by those who still have certain reserves and not by those who day by day are increasingly isolated due to their poverty.

The Ombudsman supports measures in order to reduce or limit the abuse of rights to money from public funds for those persons who have received public funds in spite of the fact that they

are capable of providing funds for their own subsistence. It seems unacceptable that owing to abuses the system is being modified in a manner that reduces the rights of the group of people socially most at risk, putting them in a position which is contrary to the constitutional right to personal dignity and safety referred to in Article 34 of the Constitution of the Republic of Slovenia and in connection with the right to the welfare state referred to in Article 2 of the Constitution.

Interventions in the rights of children, which should afforded special protection by the state in accordance with the provision of Article 56 of the Constitution is particularly alarming.

But, in addition to the above mentioned, many of the received initiatives highlight various problems, which, in the Ombudsman's opinion, represent interventions with human rights or at least a violation of the principles of fairness and good management. Some problems are linked to the applicable legislation and in some cases, it is the practice that is questionable, in the Ombudsman's opinion.

When dealing with initiatives, the Ombudsman noticed general problems, chiefly the time consuming procedures regarding making decisions about rights and particularly the lengthy procedures for decision-making on legal remedies. Problems were noticed in regard to eliminating obvious errors determined in the decision-making procedures at first instance which cannot be remedied due to existing software solutions. There are many signs that other problems regarding the software solutions appear which interfere with the rights of applicants. It is an absolutely inappropriate excuse for responsible authorities to say that the information system prevents different solutions when in fact such irregularity is determined by themselves. Whichever party has prepared an information system must take responsibility for its efficient and proper functioning, but must chiefly pursue its main purpose, that is: providing assistance to people.

All of the problems regarding delays in decision-making, all problems regarding the functioning of computer systems and all of the problems regarding the organisation of all the necessary processes have become the burden of a person who has had absolutely no influence in these matters, that is; a citizen in social distress. An example of one child is mentioned as just such an example: in September 2012, a decision was issued in a child's favour awarding him a right to a meal subsidy for the period January – June 2012. With such a decision the child might have obtained the subsidy for the previous period if he had actually had meals during that period of time. Owing to the poverty of the child's family, the child did not have meals, but he could have had if the subsidy had been decided upon in time. As a matter of fact, the Ministry of Labour, Family and Social Affairs explained that this issue was settled by virtue of an amendment to legislation made in the meantime, but it was not willing to find any solution for the previous period regarding the child in question.

It should be pointed out that the Ombudsman is highly concerned about how easily the legal order imposes new obligations on individuals when at the same time an individual may lose certain rights for a small deviation from the prescribed regulation. An individual carries all the risk for any type of complication which might even be only a consequence of the fact that an individual is not very resourceful when finding himself amid the mass of various and sometimes even conflicting regulations. At the same time, the same individual also carries the entire risk for all the mistakes made by state authorities or holders of public powers. It seems questionable that the system cannot provide an individual with a right in a timely fashion owing to its own inefficiency when it later explains to that individual that the right has now been delayed and this cannot be changed. Such viewpoints seem incompatible with the respect for human rights and fundamental freedoms.

2.13.1 Issues regarding the functioning of the Information System

Some collected data show that certain barriers occur with the use of software supposedly preventing the modification of the data which has already been entered and which in some cases may cause unnecessary problems. Quite possibly such a software solution provides a safety net, however, this might have been otherwise ensured by a programme providing suitable traceability of interference with the data necessary for making decisions about the rights of an individual.

The Ministry of Labour, Family and Social Affairs disagrees with the Ombudsman that specific problems had supposedly occurred in the functioning of the computer system which is why all of the circumstances will be investigated in 2013. At the time of the development of this Annual Report, the Ombudsman received some more initiatives which show the possibility of even more serious problems and interference with the rights of individuals. But the Ministry explained that it was urgently required that the system should prevent any corrections being carried out by Social Work Centres since, in such cases, a body would be needed which would verify their work on an ongoing basis. Such a body is, however, currently non-existent.

2.13.2 Grounds for decisions

Issues were encountered in regard to grounds for decisions which are extremely hard to understand or even incomprehensible. It is not clear to the Ombudsman what role is played by the software in the production of a decision but it seems that it is a rather automated process which may be highly problematic as regards grounds for decisions. In the grounds for decisions, various legal bases are mentioned which have already been mentioned in regulations but very little is written about why an individual statutory provision applies or does not apply in any particular case. It is this that, in the Ombudsman's opinion, is key to the grounds for a decision. When dealing with initiatives, several decisions have been made which failed to be understood, not even with the assistance of legal experts, which is why it is believed that such decisions are even less clear to the average citizen. The clear and understandable grounds for a decision seem particularly important in cases when a right has not been granted to an individual.

The Ministry of Labour, Family and Social Affairs assured the Ombudsman that, when drawing up decisions, the part of the text, which is automatically reproduced, is amended specifically in each case with the text necessary for understanding an actual decision. The said Ministry committed itself to send an instruction to all Centres for Social Work with a clear warning that especially negative decisions must be clearly explained.

2.13.3 Servicing of decisions on the grant of rights from public funds

The Ombudsman dealt with an initiative when a Centre for Social Work dealt with an initiator's application for minimum pension support together with the application of his partner for social relief although they each separately lodged their own application. The Centre for Social Work decided on their right collectively by way of one decision which was served on only one of them.

The Ombudsman encountered some similar cases when Centres for Social Work decided on various rights of several persons but the decision on eligibility or the lack of eligibility to such right was served only on one person while others were not even informed about the fact that their right had already been decided on. In this manner, any individual concerned could not have acted in accordance with legal caution and could not lodge any complaint against the decision since the decision was neither served nor available for inspection. This problem is even more obvious when it is the case of former partners who live in the same household or were living in the same household at the time of submitting the application but no longer do so.

The Ombudsman disagrees with this type of practice of the Centres for Social Work. It is believed that a decision should have been served on all parties in the procedure, that is on all individuals whose rights have been decided on by way of a decision. In this manner, all would have the possibility to enforce the legal remedies available to them. It is also hard to understand which criteria or circumstances Centres for Social Work have used as their basis when making decisions on the rights of persons in issuing only one decision, and how they decided which of the parties involved to serve the decision on. In fact, by making such a decision, a Centre for Social Work de facto deprives its clients of their status of a client, and therefore effectively removes them from the procedure and does not give them an individual decision on their case.

2.13.4 The circle of persons and the extent of assets taking into consideration when determining the financial position of a family

The Ombudsman presented the Ministry of Labour, Family and Social Affairs its viewpoints regarding the suitability of the existing statutory regulation when determining who is considered a member of a family, and in which cases, and what income is calculated as the family income, all of which are of relevance when determining an individual's eligibility for rights to public funds. The Ministry committed itself to re-examine the Ombudsman's viewpoints in the amendments to the legislation in the field of social affairs. Its work will be monitored by the Ombudsman in the future.

Problems have been noticed when special assets of children (for example, assets which grandparents have transferred to a child's account in the form of long-time savings which one day may serve to cover the costs of the child's study) have been considered as part of the family income. In this manner, the provision of Article 3 of the Rules regarding the method of determining assets and its value in allocating rights from public funds and on arguments for reasons of reducing amounts in the procedure of the allocation of monetary social relief was not taken into account. It was explained by the Ministry of Labour, Family and Social Affairs that it will try to arrange new forms of specially dedicated savings for children in agreement with the banks. Consequently, this would mean that such specially dedicated funds would no longer be taken into account when determining the financial position of a family.

2.13.5 Including assets without any economic benefit for a beneficiary

A few initiators have warned the Ombudsman that the sums due to them allocated from public funds were influenced by immovable property which was of no economic benefit to a beneficiary. An individual who, for example, has at his disposal a small percentage share of pieces of land, cannot independently dispose of or encumber that property which means that such property is actually of no value to one's subsistence.

Other cases were encountered when an individual's plot of land was included in the individual's assets even though the property might be encumbered with a legal easement a mortgage, or even be under possession proceedings.

It is believed that the aim of granting rights to money financed from public funds may only be achieved if such rights are allocated to everybody in such need. Taking the legal title of an asset into account in assessing social benefit rights may, in the Ombudsman's opinion, be justified only in cases when it enables an individual to obtain funds in real terms by way disposing of the asset or encumbering it to provide for the individual's subsistence. It is believed that it would make sense to also take into account how an individual deals with his assets in cash terms, when granting rights to benefits financed from public funds.

The Ministry of Labour, Family and Social Affairs agreed with the Ombudsman and an information system connection will soon be established with the Land Registry. Thus, data on encumbrances under the law of property recorded in regard to a piece of real estate will always be visible. The Ministry committed itself that, when amending the legislation in the field of social affairs, possible solutions will be considered in light of the fact that assets which would be found impossible to be converted into cash at the assessed value would not be considered as assets when determining the financial position of a family.

Presumption of an existence of cohabitation

The Exercise of Rights to Public Funds Act ("ZUPJS") in its Article 10 and the Financial Social Assistance Act ("ZSVarPre") in its Article 9 lay down a presumption that cohabitation exists among two persons who have not entered into marriage regardless of its duration if a child of the relationship has been born to them or a child has been adopted by them and it is not a case of a single-parent family and there are no reasons for the marriage to have been deemed invalid (it is worth noting that one of the reasons for the invalidity of a marriage is the absence of free consent of both parties – Article 17 of Marriage and Family Relations Act – such a free consent, however, might not always be presumed by the fact that a child of the relationship is born to two persons). Beneficiaries may prove that such a statutory presumption is not correct.

According to oral explanations received by the Directorate for Social Affairs at the Ministry of Labour, Family and Social Affairs, it can be concluded that such a regulation has been introduced as a result of a large number of people who have falsely represented their family situation in order to obtain pecuniary advantage. Centres for Social Work had no right to enter a beneficiary's apartment and could not verify the real status of statements in the applications for income from public funds which is why it was necessary to introduce a solution in a form of such a statutory presumption.

It is believed that the above arguments are not proportional to the intervention with rights of an individual brought about by such a presumption. The rule regarding the reversal of the burden of proof in our law appears extremely rarely and, as a general rule, only in cases when an attempt is made to make some inequality of the parties equal. The reversal of the burden of proof should have been defined in regard to a special field of risk on the basis of fairness and a fair weighing up of interests. The reversal of the burden of proof should protect the weakest of parties in any given relationship and not for the state which has all the facets of power at its disposal to assist in interfering with the rights of the socially deprived people.

From the practice noticed during the handling of initiatives, it can be concluded that when making decisions on this issue it is not enough for a beneficiary to state that he/she does not live in the long-term relationship but must, as a rule, prove his/her claims via witnesses. For many, the above mentioned may present too serious an interference with their dignity and individuals may also lack witnesses of their intimate life for various reasons. It is believed that in order to prove that such a statutory presumption is not correct, it is vital to take into account the simple statements of the parties without additional proof from witnesses or from elsewhere. When a client submits such a statement, the reversal of the burden of proof regarding showing that the statement made by the parties is not truthful, should be transferred to the state.

The Ministry of Labour, Family and Social Affairs explained that after the entry into force of this regulation Centres for Social Work were released from this burden to a certain extent and many families who were presented as single-parent families before have been proclaimed two-parent families. In their opinion, such an arrangement does not present too severe an interference with the dignity of individuals. In no aspects did the Ministry agree with the Ombudsman's viewpoints and it has no intention of amending the regulation.

2.13.6 Including child maintenance into the family income

The provisions of Article 12, Paragraphs 4 of ZUJPS and ZSVarPre define that child maintenance be included in the family income up to the level of the minimum income which a person would be entitled to by the law regulating family social assistance when in lack of any other income.

It is believed that such regulation is problematic mainly with the most socially deprived families and it also means an interference with rights of children.

Child maintenance for a minor is, as a rule, determined in judiciary proceedings in the case of the dissolution of the parents' marriage or union. Upon the judicial determining of the amount of child maintenance, children's need and the abilities of both parents are taken into account. Each of the parents should have contributed his/her own share to a child's subsistence.

In cases when a child lives with a parent who has no income, the only income of the family may be the child maintenance which is paid for the child's subsistence by the other parent. Such child maintenance is no longer dedicated to the provision of a child's needs but with this child maintenance a minor must support one of the parents even though this parent should have contributed his/her own portion to the child's subsistence.

The statutory regulation under which only child maintenance up to the minimum income is included into the family income and not also a potential higher amount of the child maintenance seems particularly unusual. In a conversation with the representatives of the Directorate for Social Affairs at the Ministry of Labour, Family and Social Affairs, an explanation was given that child maintenance in an amount up to the minimum income is dedicated for subsistence and as such forms part of the family income, whereas when it exceeds the minimum income it is dedicated to the provision of the child's needs for comfort and it thus cannot be included in the family income. Such a standpoint seems cynical and it can be interpreted to mean that a child with low child maintenance must support the child's family members who have a low income, while no reference is made to the wealth of the child's family members where a child has a potentially high child maintenance. On one hand, the applicable regulation acknowledges a right to high benefit to some children, while on the other hand denying other children their right to basic human dignity.

Such logic is, in the Ombudsman's opinion, unacceptable and contrary to the principle of fairness. It is believed that an opposing solution might be considered acceptable. The child's maintenance up to the level of the minimum income should have been dedicated exclusively for the child's needs and should not be included in the family income. If an individual child had maintenance higher than that amount, this surplus could have been included as the income of the entire family. The Ombudsman is aware that such a modification would have negative financial impacts for the budget since there are very few child maintenance amounts exceeding the minimum income and child maintenance is mostly under that limit.

The Ministry has assessed that everything is satisfactory with such a regulation. The Ministry also refers to the decision by the Constitutional Court of the Republic of Slovenia No. U-I-116/2003 which is interpreted slightly differently by the Ministry than by the Ombudsman. In the Ombudsman's opinion, the above mentioned decision by the Constitutional Court should be construed in a manner that contradicts the statutory regulation. In regard to each child maintenance payment it is possible to determine a portion which is dedicated to the contribution to the payment of common costs of the household (heating, electricity supply, other costs of the apartment, and similar). In terms of principle, such determination is derived from each and every court decision on the determination of the child maintenance amount. But while taking into account the applicable statutory regulation it may be understood that the entire amount of child maintenance is being dedicated only to the meeting of the common needs of the child and the family, leaving nothing left from these funds for a child's subsistence (while taking into consideration the information that only a negligible portion of child maintenance payments in Slovenia are higher than the minimum income). The Ministry of Labour, Family and Social Affairs is aware of the fact that the limit laid down by the law is actually too high considering the situation in the country and it will be decreased with the amendment to the legislation which, in the Ombudsman's opinion, is a suitable solution, if such a decrease of the limit will be significant and not just a cosmetic correction. However, a warning has to be made that even after the decrease, families in the worst financial position need to be taken into consideration and a realistic assessment needs to be made of how much common costs should be for families with the lowest income for which child maintenance is paid. In the Ombudsman's opinion, it should never be the case that a parent is forced to provide for his/her subsistence with funds dedicated for child maintenance as a result of statutory regulation.

2.13.7 Institutional care

Non-eligibility to minimum pension support in the case of round the clock institutional care

The Ombudsman received several initiatives which were referring to the right to minimum pension support under the new legislation in the field of social affairs. A few initiators complained of having lost their right to minimum pension support only because they are placed in the round the clock institutional care where 100% care is provided for them, whereby in a decision, it was not stated on what legal basis such a decision had been made by a Centre for Social Work.

The Ministry of Labour, Family and Social Affairs explained in this regard that persons in round the clock institutional care have no costs for which minimum pension support might be granted which is why the granting of minimum pension support to these persons was supposedly contrary to the aims for which minimum pension support may be granted. Specifically, the minimum pension support provides funds to a beneficiary for his/her residence in the Republic of Slovenia to cover the costs of living incurred over a longer period of time (costs in relation to the maintenance of an apartment, substituting permanent consumable goods, and similar) and are not costs for satisfying the minimum needs of life. As a matter of fact, if the minimum pension support had been granted to them, this amount should have been dedicated to the payment of social assistance service, which means that these funds would never be directly available to them.

The Ombudsman disagrees with the Ministry's viewpoint that persons staying in institutional care cannot have their own costs for which minimum pension support may otherwise be granted. Persons in institutional care have or might have in their possession certain permanent consumables, for example, a TV or radio, a mobile phone, a personal computer, a bicycle, etc. If the legislator wished to limit the right to minimum pension support only to beneficiaries not staying in round the clock institutional care, this should be unambiguously written into the law, in the Ombudsman's opinion. But even such statutory regulation would not eliminate the above mentioned issues.

The Ombudsman therefore proposes that the Ministry should re-examine the right to the minimum pension support for persons staying in round the clock institutional care and propose suitable amendments.

Annual supplement for adult beneficiaries in round the clock institutional care

In the field of institutional care, initiatives linked to the payment for round the clock institutional care service of adults stood up in terms of their frequency. Beneficiaries to this service are, in fact, obliged to contribute to the payment for the service in accordance with their financial

ability which means the surplus of the determined income above the social security limit. Considering the limit of social security determined in this way, the beneficiaries who are single persons (and the majority of beneficiaries are single) are left, as a rule, only with minimum funds, a kind of pocket money, that is a little above 20 euros, after the payment of the costs for the service and the payment of the supplementary health insurance. Up until now, for those with lower pensions, the annual supplement was an important source of funds to cover their own needs, which, has to be allocated for the payment of institutional care since, following the entry into force of the Exercise of Rights to Public Funds Act ("ZUPJS"), it started to be considered as the determined income. In addition, some beneficiaries had to contribute an annual supplement for the payment for the service, while some others did not since ZUPJS had not envisaged that the exemption from payments for social assistance services would be verified ex officio but it is verified only in the case of the early decision-making under ZUPJS.

The Ombudsman believes that such differentiation is unjustified and the Ombudsman is even more concerned about the warning made by initiators that their quality of life is being significantly reduced by way of including the annual supplement in the determined income. As a matter of fact, some do not have relatives that might assist them financially or do not wish to or cannot help them. As a result, they are not able to buy clothes, shoes or items for personal hygiene, pay for a bus or train ticket or even afford themselves a cup of coffee or any other treat. It seems humiliating to them that in spite of the pension they have and they (mainly) dedicate it for the payment for the service they cannot afford anything else outside the scope of the service and care provided. In this manner, their personal needs are entirely ignored. The Ombudsman believes that the warnings made by initiators are justified and proposes that the level regarding social security be determined in such a way that, after the payment for the service, the weakest beneficiaries in terms of their financial position be left with higher "pocket money" than just 0.2% of the basic amount of the minimum income.

SUMMARY OF PROPOSALS AND RECOMMENDATIONS

- The Ministry of Labour, Family, Social Affairs and Equal Opportunities should ensure that decisions at the first and second instances of decision making be issued in the statutorily prescribed time periods by taking financial measures and measures in relation to human resources.
- The Ministry of Labour, Family, Social Affairs and Equal Opportunities should examine the findings of the Institute for Social Security and the Ombudsman and prepare relevant amendments of legislation on this basis.

CASES

25. Non-payment of monetary social relief as a result of unsuitable functioning of the system

An initiator who found himself in a severe social distress turned to the Ombudsman. The initiator lives in a house without water supply and heating and because he could not pay for the costs of supply, the electricity supply was disconnected.

He obtains water in plastic bottles from neighbours who occasionally provide him with a hot meal. The initiator is a recipient of monetary social relief. Since the decision on his monetary social relief has expired he submitted to the Centre for Social Work an application for an extension of the right to receive monetary social relief. Although he had submitted the application within the correct time he still had not received a new decision. The initiator turned to the Ombudsman because he was left without the monthly monetary social relief and he was also concerned that by means of the termination of the right to the monetary social relief he was left without health insurance.

The Ombudsman made an enquiry at the Centre for Social Work. The Ombudsman was interested whether the initiator was eligible to receive monetary social relief and if he was, why he still had not received the decision and when the decision could be expected. The Ombudsman also wished to find out whether the Centre for Social Work was familiar with the initiator's living conditions and whether the initiator is eligible for extraordinary monetary social relief. A social worker at the Centre for Social Work explained that the initiator was eligible to receive monetary social relief but he would not receive it in the current month. The reason for that was in the time consuming obtaining of data from other authorities which are needed by the Centre for Social Work to make a decision about any right to monthly social relief.

Since the social worker did not have all of the data she could not give approval to the initiator's application which was why the payment of monetary social relief was delayed for a month and a double amount would be transferred to his account in the following month (for the past and current month). The Centre for Social Work was informed of the initiator's living conditions since the neighbours provided these pieces of information. The social worker also explained that the initiator would have been eligible to receive the extraordinary monetary social relief but he had not submitted an application. She proposed to advise the initiator to visit her in person in order to help him to fill in the application for the extraordinary social relief.

The Ombudsman assessed the initiation as justified. As a matter of fact, it is believed that in no way must the applicants for monetary social relief bear the consequences created as a result of a poorly functioning system to approve applications. Although a person responsible for the situation created was not sought for it is believed that it is unacceptable that the initiator did not receive the monetary social relief for the current month although he had submitted the application for its extension in due time. The Ombudsman therefore concludes that the system of obtaining data and approving applications at the Ministry of Labour, Family and Social Affairs is not suitable since it does not ensure that individuals who fulfil the conditions to obtain a particular benefit actually obtain it regularly and in due time. **3.5-114/2012**

26. Questionable action by the Municipality was changed after the Ombudsman's intervention

The Human Rights Ombudsman of the Republic of Slovenia was addressed by an initiator to whom his Municipality provided an additional payment for the social assistance service to the family at home and secured its claim by entering a prohibition of the disposal of the property and encumbered it for the benefit of the municipality. When the initiator wished to pay off his debt, this was refused by the Municipality stating that no justified reason was given to repay the claim. The Municipality also believed that the initiator would need social assistance services in the future for which he would have to ensure the additional payment into the municipal budget which was why the Municipality rejected his proposal to delete the encumbrance and to repay the claim.

The Ombudsman sent an opinion to the Municipality that arguments for the refusal of the application from the initiator to repay the claim were unjustified and with no legal grounds. On the basis of additional payments provided for the service a debt had been created and the legal basis for this payment is given in Article 271 of the Code of Obligations. Similarly, the argument for the refusal of the initiator's application to repay the debt cannot be based on the possibility that the initiator will need social assistance services in the future for which the municipal budget will have to ensure additional payments. It was thus proposed to the Municipality that it should notify the initiator of the amount of his debt arising from the municipal additional payment for the service and how it can be paid and, when the debt is paid, to issue the relevant certificate of the repayment of the debt.

The Municipality took into account the Ombudsman's opinion and accepted the Ombudsman's proposal since it communicated that the initiator had already been informed about the amount of the claim and attached the payment order with which the claim might be paid. This is what the initiator desired. The initiation was justified and the Ombudsman's intervention was successful. **3.6-6/2012**

2.14 UNEMPLOYMENT

GENERAL

In 2012, almost the same number of initiatives (29) were handled in the field of work under the heading of unemployment as in 2011 (31). Considering the current state of affairs in the country, the number of initiatives considered is not great. However, one needs to take into account that owing to the system of recording cases with the Human Rights Ombudsman of the Republic of Slovenia and the predominant issues (labour relations, social distress, housing matters), many of the initiatives also stating unemployment have been categorised in other groups.

In regard to solving unemployment, it cannot be reported that any material action has been taken by responsible authorities, the Government and the Ministry of Labour Family and Social Affairs, that would contribute to the improvement of the situation. The Ombudsman's recommendations from previous years have not been taken into account.

Several cases considered related to the deletion of peoples names from the register of unemployed persons. Initiators complained about illegal and unfair deletion by the Employment Service of Slovenia ("ZRSZ") from the register of the unemployed. This supposedly took place because an individual was caught working in the black market or because he failed to participate in workshops organised within the active employment policy programme or was not active in looking for a job. Many complained of lack of information provided by employees at ZRSZ and their improper behaviour.

Pursuant to Article 10, Paragraph 5 of the Labour Market Regulation Act ("ZUTD") the Employment Service of Slovenia decides ex officio on the termination of keeping a person on the register of unemployed persons owing to the above mentioned arguments by means of a decision. As a result, an individual is prohibited from registering in the above mentioned register for six months. The right to unemployment benefit and monetary social relief also terminates. Amounts of money, unjustifiably obtained from this source, must be returned. In the Ombudsman's opinion, it is problematic that the prohibition of a repeated registration in the register of unemployed persons starts running only from the day when the decision on deletion becomes final. The same applies for the obligation to repay any illegally received social relief. It is believed that the six-month prohibition of the entry in the register of unemployed persons should start running from the date of the deletion and not when the decision becomes final. Thus, individuals who have been deleted from the register receive social relief until the decision becomes final and then, in the case of a refusal of their complaint, they have to return the monies received for the past period, as a result of unjustified receipt of funds. The decision on the deletion only becomes final with the decision of the Ministry of Labour, Family and Social Affairs on the complaints. The Ministry exceeds the statutory periods in complaints procedures and thus makes the hardships of individuals even greater.

Cases were handled in regard to community work programme. Individuals complained about: the lack of community work being advertised, the lack of transparency in engaging individuals for a certain job through the community work programme and discrimination in the public call to tender for the selection for the community work programme published by ZRSZ for 2012 only in May. The first public invitation for 2012 was published at the end of 2011. Since all of the funding had been exhausted, the programme had already concluded at the beginning of February in 2012.

In the second invitation to tender from May 2012, an initiator complained about the positive discrimination of the Roma who may become immediately involved in the community work programme regardless of the duration of their unemployment.

In 2012, issues were noticed related to subsidies for self-employed persons. In December 2011, ZRSZ temporarily suspended the implementation of this type of active employment policy measure. Owing to a great interest from unemployed persons and persons seeking work, the funds were completely disbursed. By means of the revised budget, additional financial funds were approved which is why ZRSZ started to implement the measure for the promotion of self-employment in July 2012. Funds that were available for the subsidies amounted to 1,100 new self-employment positions. In relation to obtaining this subsidy, a case of an unemployed person was handled who became a sole trader during the time when it was not possible to apply for the measure due to the lack of funds, who then wished to subsequently obtain the subsidy. This was not possible because the measure is intended for unemployed persons and persons seeking employment. It would be necessary to ensure the implementation of such a measure which would treat all potential candidates for the subsidy in an equal manner and not that the granting of the subsidy to an individual depends on the fact of when they applied for the subsidy and whether financial means for the subsidy are available at that time. It would be very necessary to introduce a measurement of the efficiency of the above mentioned measure. The mere fact that the receiver of the subsidy maintains his/her self-employment status within the contractual period of two years does not point to the efficiency of the measure but it may also mean a reduction of the number of unemployed persons in official registers. It would make sense to verify the statistical data concerning the duration of the self-employed status of a receiver of the subsidy.

An initiative should be mentioned which was submitted to the Ombudsman by a person with disabilities, categorised under the II category of disability. The employer illegally terminated his employment agreement. The initiator did not know that until he received the decision by ZRSZ refusing the right to unemployment benefit. At that point of time, the lodging of an action against the termination, which is a condition for obtaining the right to unemployment benefit in such cases in accordance with the provision of Article 63, had already expired.

SUMMARY OF PROPOSALS AND RECOMMENDATIONS

- The Ombudsman recommends to the responsible authorities, particularly the Government and the Ministry of Labour, Family, Social Affairs and Equal Opportunities that such measures concerning the active employment policy be prepared so that all potential candidates from various regions be treated in an equal manner, and its implementation and financial assessment of candidates be transparent and the actual effects measurable.

- The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities decide on complaints against decisions on deletion from the register of unemployed persons within the statutorily prescribed period, specifically, not later than within two months from the receipt of a complaint.

- The Ombudsman recommends that the Government analyse the efficiency of services of the Slovenian Employment Service and, considering the findings made, adopt organisational, staffing and other measures which will contribute to a faster response to the needs of unemployed persons.

CASES

27. Recognising the right to unemployment benefit

An initiator turned to the Human Rights Ombudsman of the Republic of Slovenia (“the Ombudsman”), a person with disabilities categorised as a II level disability, owing to the lack of recognition of the right to unemployment benefit.

On 1 October 2010, he was given a regular termination of employment agreement for business reasons with one month’s notice. His employment relationship was terminated on 31 October 2011. On this day, the time period for the lodging of an action against the termination elapsed. On 8 November 2011, he applied to the Employment Service of Slovenia (“ZRSZ”) which refused his application to recognise the right to unemployment benefit in accordance with Article 63, Paragraph 2, item 8 of the Labour Market Regulation Act (“ZUDT”) because the initiator failed to lodge an action against the termination of his employment. The initiator complained to the Ministry of Labour, Family and Social Affairs (“the Ministry”) against the decision issued by ZRSZ. The Ministry rejected his complaint. Whether he lodged an action against the decision by the Ministry, before the Labour and Social Court is not known to the Ombudsman. In Article 63, ZUTD stipulates that a right to employment benefit cannot be enforced by a person who has become unemployed due to his own fault or will and an employee is also considered as such whose employment agreement has terminated as a result of the employer’s regular termination contrary to the provisions of the act regulating employment relationship and stipulating a special protection of an employer against the termination and where an employee has not requested the arbitrary decision of judicial protection for the protection of his/her rights. The termination was supposedly illegal since the employer failed to obtain on opinion of the Committee of the Ministry for the determination of the basis for the termination of the employment contract (“the Committee of the Ministry”) that no other work post was available for the initiator which should have been done by the employer owing to the initiator’s disability. This provision was not known to the initiator until he received the decision of ZRSZ. At that time it was too late to lodge the action. The time period for the lodging of the action is, in accordance with Article 204 of the Employment Relationship Act (“ZDR”) “30 days from the day when the termination is served or from the day when an employee has found out about the violation of the right”. The case law of the Higher Labour and Social Court (“VDSS”) has taken the stand that there is only one time period, that is 30 days from the service of the termination and that it cannot be considered that an employee has learned of the violation only 30 days after the service of the termination, for example, when told so at ZRSZ (where the initiator went only after the termination entered into force and when the time period for lodging the action had already elapsed). Inquiries with the Ministry and the ZRSZ were made. It was pointed out that the case in question is a case of a person with disabilities who did not know that, in accordance with the labour law, the employer is obliged to obtain the opinion of the Committee of the Ministry prior to terminating the employment contract. That is why he did not know that the termination of the employment contract was illegal. Neither was he familiar with Article 63 of ZUDT. It is however true, that the lack of knowledge of the law is damaging. But in the case concerned, under the assumption that in the administrative procedure the principle of the protection of the client’s rights applies (Article 7 of the General Administrative Procedure Act (“ZUP”)), the decision by the Ministry could not have been accepted by which all the burden is transferred to the employer who has already been disadvantaged with a lost job. The Ombudsman expressed the opinion that the provision of Article 63, Paragraph 2, indent 8 of ZUDT is unsuitable if employees are not familiar with it. The Ministry and ZRSZ refused to accept the Ombudsman’s statements. Since the initiator came under the scope of ZRSZ for the first time only when the deadline for his complaint had already expired, it is believed that no reproach about the omission of the principle of the protection of the rights of clients can be made in this case. ZRSZ expressed their disagreement with the case law in regard to the commencement of the time period for

lodging the action. If the Supreme Court changed this case law with their decision, clients lacking legal knowledge who would only become familiar with their right when approaching ZRSZ, might successfully enforce their right in regard to insurance against unemployment. If courts did not refuse such actions as being too late, the right to unemployment benefit would have been recognised upon the submission of evidence of the action lodged. In order to prevent cases similar to the initiator's, ZRSZ informs their users on their web site on conditions for obtaining the right to unemployment benefit, and in addition, a contact centre has been established two years ago which provides all the necessary assistance to persons in terms of basic information.

The initiative was assessed as justified. It is believed that activities undertaken by ZRSZ in regard to informing employees and unemployed persons on rights and obligations in cases such as the one presented are not satisfactory. It is proposed to the Ministry that it should regulate the matter differently, specifically, to the benefit of employees. The Ombudsman still believes that the provision of Article 63, Paragraph 2, indent 8 of ZUDT is unsuitable if employees are not familiar with it. **4.2-5/2012**

28. Lengthy decision-making of the Ministry of Labour, Family and Social Affairs on complaints against decisions issued by the Employment Service of Slovenia

An initiator whose name was deleted from the register of unemployed persons by way of a decision of the Employment Service of Slovenia ("ZRSZ") addressed the Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman"). He lodged a complaint against the decision which was not decided on by the Ministry of Labour, Family and Social Affairs ("the Ministry") two and a half months after receiving the case for settlement. When the initiator asked at the Ministry when the decision could be expected he learned that there were many unsolved complaints and that they did not know when it would be his turn to have his complaint handled. The initiator may again register on the register of unemployed persons six months after the decision with which the termination of his registration in this register becomes final. Since he lodged a complaint against the decision of ZRSZ, this decision would become final with the service of the decision at second instance. The Ministry had already exceeded the instruction period of two months as determined by the General Administrative Procedure Act ("ZUP") by the time the Ombudsman had received the initiation. Thus, the six month period, after which the initiator could again register on the register of unemployed persons and again lodge a request for unemployment benefit, had still not started to run.

In the past, the Ombudsman has addressed ZRSZ and the Ministry in relation to similar cases. It is believed that the six-month prohibition on the entry on the register of unemployed persons should start running from the date of the deletion and not when the decision becomes final. In addition to the prohibition of the registration for six months, the current arrangement causes debts to be incurred to people as a result of unjustifiably receiving social relief which they have difficulties repaying. This arrangement denies the individuals concerned the opportunity to use legal remedies since they are actually punished when lodging the complaint against the first-instance decision with the prolongation of the time period after the expiry of which they may again register on the unemployment register and again apply for social relief. It is, however, of key importance that statutory time periods are strictly respected in procedures.

The Ombudsman submitted an inquiry to the Ministry in regard to this initiative The Ombudsman urged the Ministry to immediately decide on the initiator's complaint. In addition, the Ombudsman was also interested in the current position in solving such cases at the Ministry, precisely in what time period the Ministry decides on complaints and what the reasons are for delays. However, the Ombudsman cannot instruct authorities how to decide on a case in question which is why the Ombudsman did not interfere with the content of the decision made by the Ministry. There were legal remedies available for that purpose to the initiator.

The Ministry informed the Ombudsman that the decision on the complaint was actually made immediately after receiving the Ombudsman's inquiry (three months and seven days after accepting the complaint for its consideration). In its reply, the Ministry also stated that the control of persons registered in the registers kept by ZRSZ is implemented by ZRSZ ex officio and not at their own discretion. Since ZRSZ strives for regular control, the result is that many violations are made by a great number of unemployed persons.

Thus, the number of complaints against the first-instance decisions passed by ZRSZ started to increase at the end of last year and this has not changed ever since.

As stated in the reply, the Ministry monitors all affairs in regard to unemployment benefits and social relief and the termination of keeping a person on the register of unemployed persons. The Ministry presented their finding that in spite of there being few personnel deciding on procedures at second instance, the Ministry managed to solve complaints in the instruction period of two months up to March of 2012. Since then, the time needed to solve complaints has gradually been prolonged due to the increase in the number of complaints received.

The Ministry will monitor the developments in regard to the increase and will adopt relevant measures in case of a further increase in the number of complaints. Considering the Ombudsman's proposal on the modification of the commencement of the running of the six-moth period for a repeated registration on the register of unemployed persons, the Ministry communicated that the proposal would be examined and they would seek to take it into account upon the next modification of legislation. The initiative was considered to be justified since the Ministry exceeded the instruction period of two months as stipulated by ZUP in regard to making a decision on a complaint. Even after receiving the explanations from the Ministry, the Ombudsman insists on the opinion that it is essential to observe statutory periods in these procedures. **4.2-16/2012**

2.14 UNEMPLOYMENT

2.15 PROTECTION OF CHILDREN'S RIGHTS

GENERAL

The number of initiatives in this field remained at the same level as in 2011 but, within individual fields, the number of initiatives regarding child benefits increased significantly. Such an increase (by 66%) is attributed to the amendments in legislation in the field of social transfers which has tightened the criteria for enforcing rights to public funds. More is presented on this topic in the chapter on social matters.

Several times the Ombudsman has repeated her assessment that the rights of children determined by the UN Convention on the Rights of Children are provided for at a satisfactorily level in the Republic of Slovenia which, does not signify that the level achieved cannot be improved. Therefore, all statutory amendments in individual fields are also assessed from the aspect of providing the rights of children and their status. The Family Code which failed to achieve referendum support would, in the Ombudsman's assessment, improve the situation particularly in the field of family relationships where the state is largely limited in its possibilities in normative regularization and intervention in terms of power.

Among other matters, by rejecting the Family Code, the prohibition of the physical punishment of children was also rejected and thus Slovenia has remained one of the rare European countries which has not made its stand regarding this issue not even at declaratory level. (More on this can be found on the web site of the non-governmental organisation Global Initiative to End All Corporal Punishment of Children).

In 2004, Slovenia received a recommendation by the UN Committee on the Rights of the Chid to regulate this issue by virtue of the law. Similar warnings were received by the responsible European authorities but in Slovenia, it is only the Slovenian Association of Friends of Youth that actively deals with this issue. It needs to be highlighted that advocates of the prohibition of physical punishment of children do not wish to enforce new penal punishments or any new authorisation of state authorities in this field. The only desire is that the state takes a position that violence against the child is a violation of the rights of the child and therefore unacceptable.

According to the Ombudsman's information, a law suit regarding the prohibition of physical punishment has been lodged by a non-governmental organisation against the Republic of Slovenia before the European Court of Human Rights owing to a violation of the European Social Charter.

The rejection of the Family Code has also postponed the enforcement of the Advocacy of Children legislation which is why, at the beginning of 2013, a report on the Advocate – Child's Voice Project was submitted by the Ombudsman to the National Assembly. More about this is contained later in this text.

In November 2011, a special brochure about the issues concerning the rights of the child was produced and sent to all primary and secondary schools which were invited to take part in the project in 2012. The Ombudsman's wish was to establish a stronger and broader cooperation with individual schools (classes) which might participate with the Ombudsman in dealing with some broader issues concerning the rights of the child. Unfortunately, the Ombudsman's invitation did not receive the desired response. Nevertheless, this question was pointed out during the Ombudsman's visits to individual schools. It is believed that the implementation of the right of the child to participate is not yet satisfactory which is why other methods of establishing more direct contacts with the young are sought. Over several years, the Ombudsman has participated in the work of the Children Parliament Project organised by the Slovenian Association of Friends of Youth; in the Ombudsman's assessment, the project is a very good form of getting to know the pupils of the primary school and their rights while also a method by which the adults may learn about the thinking and problems of children. Unfortunately, the representatives of state authorities undervalue this form of democratic expression of children's opinions which is particularly shown in their (un)willingness to participate in their debates and obviously also in failing to take into consideration the opinions expressed and decisions made at the Children's Parliament's Sessions.

Within the framework of the Children's Rights Ombudspersons' Network in South and Eastern Europe (CRONSEE), the issue concerning the protection of children against internet abuses was discussed and at the conference organised by the European Network of Ombudspersons for Children (ENOC) the issue concerning child criminality was dealt with. As a matter of fact, the Ombudsman regularly cooperates with individual institutions seeking data on the actual outstanding issues through e-mail. In this manner, experience and knowledge about cases of good practice in individual countries are efficiently exchanged and the correctness of the Ombudsman's work is verified.

2.15.1 Advocate – Child's Voice Project

The Advocate – Child's Voice Project, which implements an important right of the child to express his/her opinion freely, has run smoothly during 2012 (see more about the Project in the previous Ombudsman's Annual Reports). After six years of "pilot" operation it has been assessed that the instrument concerning the advocacy of children must be regulated in the normative and institutional manner. That is why a special report was developed in 2012 which was submitted to the National Assembly in the beginning of February 2013 proposing to the National Assembly that the Government of the Republic of Slovenia be compelled to prepare the relevant statutory basis for the advocacy of the child within one year. Until the adoption of the statutory regulation, the Advocate Child's Voice Project should continue in the manner already established and spread across the entire country so that each child will be provided with the same accessibility to the Advocate.

2.15.2 Family relations

Parents' decision-making and joint decision-making

In 2012, the Ombudsman again encountered many problems that parents, their children and also national authorities and holders of public powers face, when parents decide to discontinue their long term relationship The stories from the Ombudsman's previous Annual Reports continued in 2012, just with other players. Initiatives do show that some new topics of which the Ombudsman has already warned will occur more often in the future.

One of the schools warned the Ombudsman of a case which stood out from the initiatives received so far in a manner which, to some extent, represents a positive move for the better. Until now, the Ombudsman had dealt with issues of parent's joint decision-making concerning the life of a child which referred to basic questions: Who has the right to decide on the place of residence for a child and which school to attend? were questions which alerted parents and responsible authorities to the fact that one of the parents cannot be simply erased from a child's life. One such case which has been drawn to the Ombudsman's attention by a school is case No. 11.0-64/2012. In this case, participation in decision-making is not in question, but only the decision-making on questions of a child's daily care.

The Marriage and Family Relations Act in Article 113 stipulates that the above mentioned issues fall under the responsibility of the parent who is entrusted with the care and upbringing of a child but the actual family situation must be taken into consideration when interpreting regulations. The question: “What will a child eat for lunch?”, is surely a question regarding a child’s daily care which is why, as a rule, this is decided by the parent who has been entrusted with the child’s care and upbringing by way of a court decision. However, it would not make sense to demand that this decision be made by the same parent when the child is with the other parent, even if it is not determined either by the law or by court decision. In the Ombudsman’s opinion, it would not be consistent with life and in practice it could be even extremely damaging for a child, and as such unacceptable, if the legislator or the court were to grant a right to one of the parents to decide how the other parent should feed a child (this position by the Ombudsman is not held in regard to requirements concerning any special diet dictated by medical reasons).

In many initiatives it can be seen that there is a desire from the parent who has been entrusted with the care and upbringing of a child to determine how the counterpart parent should speak to, dress, play or spend time with a child and what the child should eat and who to socialize with. It is pointed out that during the time that a child is with another parent, that parent is a parent with absolutely all rights without any limitations. The only limitation in the implementation of the parental right applies equally for both parents: without the consent of the other parent it is not possible to make decision which might represent a significant impact on the child’s life. As with all similar issues the conclusion to be drawn is that an inability of the parents to cooperate reasonably and sensibly viewing the child as an absolute priority, is a violation of the rights of the child.

The question of the applicability of commitments under the civil law accepted by only one of the parents was dealt with upon an initiative which pointed out that a child was baptised without the consent of one of the parents. The initiator asked for assistance to obtain a declaration of nullity of the sacrament.

Since the Ombudsman cannot judge over potential interventions with the rights of an individual which supposedly have been committed by one of the parents or the church, the Ombudsman could not assist the initiator. However, the following was pointed out: the provision of Article113 of the Marriage and Family Relations Act stipulates in what manner parents may implement their parental rights and how they should obtain consent in regard to certain questions. This provision regulates the method of implementing the provision of Article 54 of the Constitution of the Republic of Slovenia which defines that parents have the right and duty to maintain, educate and raise their children as well as Article 41 of the Constitution stipulating that parents should provide their children with a religious upbringing. As a rule, parents decide on all questions in relation to a child in consensus – together. If parents do not live together any more they are obliged to find consensus only in regard to questions which have a significant impact on a child’s development. The law does not stipulate in actual terms which these questions are and this is left to the judgement of the court. In the Ombudsman’s opinion, the decision regarding the religious beliefs of a child would belong to those issues for which a consensus of both parents is needed.

Where the consensus of both parents is required but a decision is made without taking into account the desire of one of the parents (if not decided by the court), this is a violation of rights of the child. It is parents themselves who should watch out for such violations, but also everybody else having the possibility to prevent such an act. The illegality or inappropriateness of a unilateral decision may only be judged by the court which may also determine the method of eliminating the consequences of such a decision.

Publication of personal data of the child

In last year’s Annual Report, the Ombudsman warned about the issue regarding the publication of personal data of children on the world-wide-web. Since similar initiatives are still being received, since it is believed that violations of the rights of the child will only be intensified with the use of the web media. In all the previous years, the Ombudsman has actively pointed out the violations of rights of the child in the traditional media which may extend even further. Such violations are committed by professional journalists earning their income by virtue of them. Such violations are not a consequence of stressful inter-personal relations between two former partners. This is why such violations seem particularly questionable and the Ombudsman has always given specific warnings about them, also by consistently reporting violations of the Journalist’s Code of Ethics to the Journalist’s Court of Honour of the trade union and of the Slovenian Association of Journalists. It is believed that awareness regarding this issue is being raised and there are increasingly fewer violations. Any satisfaction in this regard, however, may be short-lived. In the Ombudsman’s opinion, this is demonstrated by an extremely serious interference with the rights of the child as presented in detail under case No. 31: a child who witnessed the violent death of his father was abused in an insensitive manner by the avid and sensational reporting of the event. The Ombudsman is satisfied that the decision made by the Journalist’s Court of Honour approved of her opinion; this, however cannot be enough since this could not wipe out any injury caused to the child. The Ombudsman will continue to prosecute such occurrences with great vigour and it is expected that other responsible institutions will act in the same way.

It is assessed by the Ombudsman that the media are not a proper means for seeking answers to open issues concerning family relations, particularly in cases of family violence. The inequality of the weapons of the parties involved may always be debated in such cases: Centres for Social Work, the Police and the state prosecution service, and in certain cases also schools, kindergartens, health care institutions, cannot and must not publish all of the data available in order to present their actions as being correct since in this manner they might damage the individual parties involved. The Ombudsman is aware that the right of the public to information is thus being challenged but the Ombudsman stands firmly behind the standpoint that the rights of children involved in such proceedings has a priority over any other rights. The Journalist’s Court of Honour agreed with the Ombudsman in several cases in which a procedure had been initiated by the Ombudsman; unfortunately, this brings about no special consequences since editors-in-chief and journalists often pay no regard to the decision. Nevertheless, in this manner the awareness of the rights of children and victims of violence is thus being disseminated.

Foster care

The Ministry of Labour, Family and Social Affairs engaged the Ombudsman in the preparation of a new law concerning the implementation of foster care activity and took into account the Ombudsman’s recommendations and proposals published in the Annual Report for 2008.

It was assessed that for the comprehensive regulation of all relations in the field of foster care, the Marriage and Family Relations Act should be amended accordingly. In particular, the status of a foster parent in relation to a child and his/her parents is still not defined in full. That is why the law should have stated a clear and unambiguous definition of the status of a foster parent with all of his/her rights and obligations. Foster parents, in fact, take the role of parents and implement their parental rights (until that right is defined as such) which is why their rights and obligations must be adapted to that fact. This is particularly important for various reasons when taking a child into protective custody or care is required and foster care is needed as a result. In a procedure before the Centre for Social Work a child is taken away from parents and placed into protective custody but there are no judicial proceedings and parental rights are not limited.

The rights of a foster parent which would have been determined by the law would be a legal basis for responsible authorities making decisions on the rights of the child and in which the applicant in the proceedings is a foster parent. A question is often raised in practice, namely: whether a foster parent is a child's guardian and what his/her rights are in addition to obligations as governed by Article 25 of the Act Concerning the Pursuit of Foster Care ("ZIRD").

The Ombudsman also proposed an amendment to the law by virtue of a provision that permits for the pursuit of foster care activity cannot be obtained by a person involved in criminal proceedings or who has been convicted of a criminal offence by a final court decision which, by its nature, demonstrates a doubt about the ability to work and care properly for children. It has been determined, as a matter of fact, that there are no sufficient safety mechanisms included in the law for such cases which may have a significant impact on a child's safety and development. It was also proposed by the Ombudsman that consideration be given to whether similar safety mechanisms can also be introduced for cases when a family member of a foster parent, living in a common household, has been convicted of a criminal offence

Additional consideration was proposed in regard to the adequacy of the minimum level of annual training of foster parents being prescribed by the law, particularly with the frequent and significant changes of legislation governing various fields of a child's life.

The law adopted in December 2012 takes the Ombudsman's comments and proposal mentioned above into account in a proper way.

2.15.3 Rights of children in kindergartens and schools

In 2012, no initiatives complaining about under- capacities of kindergartens were received. Several complaints in the field of kindergartens referred to the transfers of pre-school teachers and their assistants among departments, of which parents disapproved. After the examination of initiatives it turned out that procedures of the management in these cases were not contrary to regulations but communication problems occurred between parents and the responsible persons of the kindergarten. In cases of changes of staff during the year, the Ombudsman recommends to principals that they inform parents of such transfers in good time and explain the reasons why such measures have been taken. The Ombudsman also recommends them not to have other employees (pre-school teachers or their assistants) take the duty of communicating the news to parents but to manage the communication activities with parents on their own.

Increasing norms in kindergartens without expert basis

The Ombudsman received a letter from concerned parents who opposed the increasing of standards in kindergartens since they would supposedly decrease the quality of work in public pre-school institutions and thus put the rights of children at risk.

The Ombudsman also followed with concern the discussion on the modification of standards and norms in upbringing and education which were not founded on expert arguments but on a wish to enforce additional austerity measures in the field of public finance. It was assessed that austerity measures in the field of public finance must not decrease the standards achieved in upbringing and education, particularly if these changes are not founded on expert arguments. That is why it was proposed that the responsible ministry re-examine all the proposed modifications which result in decreasing the level achieved and in cooperation with the interested parties (the teaching profession, parents, employees) find potential solutions which will have measurable financial impacts without any consequences for the quality of upbringing and education.

In a public statement regarding this issue, the Ombudsman also stressed that a swift modification of legislation, the limitation of public debate, an arrogant attitude towards those who think differently and railroading individual proposals surely do not contribute to the strengthening of the principles of a state governed by the rule of law and a welfare state. The Ombudsman drew attention to the results of an international comparison concerning the knowledge of children which proves that the functioning of the entire sector of upbringing and education is satisfactory.

The Ombudsman dealt with several initiatives in which parents of children from primary schools highlighted the problem of the removal of some element of school meals (most often, the lunch) because parents could not pay for it owing to the poor financial situation of the family. The Ombudsman took a stand in this regard that, as a matter of principle, the Ombudsman opposes those measures that schools introduce against children who are neither guilty nor responsible for the routine settling of parents' financial liabilities with the school. That is why, in the Ombudsman's opinion, a decision to prohibit an individual child from having school meals is unacceptable and it actually represents one of the forms of violence against the child.

Individual initiatives were also handled in which parents expressed to the Ombudsman their disagreement with the pre-schooling of a child at another school. After examining the parents' complaints and obtaining answers from the Inspectorate of Education of the Republic of Slovenia it was determined that schools take this measure only in exceptional cases and when educational problems of an individual pupil were so great that the changing of the school was professionally founded. Considering the fact that the measure is permitted by the Primary School Act, no violations of regulations were determined by the Ombudsman.

Children with special needs

The number of initiatives handled in comparison to 2011, when 15 initiatives were dealt with, increased slightly. The Ombudsman handled 22 complaints.

According to the content of individual initiatives, problems were detected in regard to the health care provided to children suffering from autism. Parents would like medical tests and examinations to be carried out abroad but to be financed by our health-care system. This, however is a professional issue about which the medical profession must decide therefore this does not fall under the responsibility of the Ombudsman.

More initiatives were again handled in regard to granting of the right for an assistant for a sick child since there was no suitable legal basis for this in 2012. The application of the new Placement of Children with Special Needs Act which would enable the recognizing of an assistant for a seriously sick child was, as a matter of fact, postponed first to the end of 2012 and later to September 2013. The Ombudsman believes that the postponing of the commencement of the implementation of an adopted and applicable law is inadmissible and causes numerous absurd situations since the rights laid down by the applicable law cannot be enforced by children.

The Ombudsman was informed of problems of deaf children and young people who cannot enforce their right to education with the use of sign language. The basis of its application is actually provided by the new Placement of Children with Special Needs Act ("ZUOPP") when its application will commence. The Slovenian Sign Language Act does not actually provide a basis for the enforcement of the right to education of deaf children and young people according to the double-language system using also sign language. That is why the Ombudsman has made an assessment in this regard that the earliest commencement of the application of ZUOPP is urgent since the right to an interpreter and the right to use sign

language will be given to children, pupils and secondary-school students which will be stated in the decision on the child's placement. The Ombudsman believes that this is important not only for children, pupils and secondary-school children in the three schools for the deaf in Slovenia, but also for those taking part in educational programmes in regular primary and secondary schools.

School for children with special needs located in a facility over 100 years old

Parents of children with special needs informed the Ombudsman about inappropriate premises conditions and equipment in the Ljudevita Pivka Primary School in Ptuj which are not suitable for carrying out the upbringing and educational activities of children. The school premises are more than 100 years old which is why potential investment for their adaptation would not make sense. The Ministry responsible for education, included the construction of a new school in its investment activities programme but only for 2016. An additional problem is linked to the fact that the school is of a regional status and covers the needs of 17 municipalities which do not wish to participate in the provision of the necessary funds.

The Ombudsman believes that by means of its measures, the state must ensure that the school premises do not put the lives and health of children at risk, nor the lives or health of employees in public institutions. If within the framework of the statutorily determined responsibilities, municipalities do not wish to, or are not capable of fulfilling their obligations, the observance of the minimum standards and equal accessibility to education for the group of children which is particularly vulnerable should be provided by the state within the scope of the financing of municipalities.

Violence in schools

In 2012, the Ombudsman received slightly fewer initiatives presenting the issues of violence in schools (11) as compared to 2011 (13). One half of the initiatives described cases of violence of teachers or pre-school teachers against pupils or children; other cases cited peer violence. In all cases the problems were dealt with by the Inspectorate of Education and Sport of the Republic of Slovenia which took relevant actions.

The Ombudsman's work in the field of violence in schools was presented at the final conference of the project: Facing Family Violence at System Level, which was organised by the secondary-school students' organisation of Slovenia and the Education, Science and Culture Trade Union of Slovenia ("SVIZ"). Secondary-school children carried out a special survey concerning the violence in schools and the data that as many as 24% of secondary-school students consider that the teachers' disregard of violence is particularly interesting. At the conference it was collectively determined that teachers and education counsellors who avoid contacts and conversations with secondary-school children most surely have made a mistake in choosing their profession which is why it is even more important that SVIZ takes part in this project.

The Ombudsman is aware that the tightened social situation which is not yet showing any improvement represents a great change so that attempts to solve problems with violence will become even more frequent. Since it is impossible to solve the problem of violence only by punishing the perpetrators, the Ombudsman supports all activities which may prevent the violence and also support the NO!Violence Project. It is also proposed to consider spreading the project into primary schools across the entire country and thus to enable all young people in Slovenia to recognize violence. But when violence occurs, victims of violence must be protected within the shortest possible time and everybody involved in the violent event must be directed into settling (the same) problem without any violence.

Pupils and secondary-school students in school must be included in procedures concerning the prevention and identification of violence since their surveys with data tell the Ombudsman a completely different story to that otherwise heard from representatives of institutions. Violence against teachers and technical assistants must obviously be treated in the same manner; owing to their profession and duties they are not obliged to broaden their tolerance for violence; in other words: schools also have the right to expect to receive non-violent children (and their parents).

Issue concerning young people in an educational institution

Several young people under the age of 18 at an educational institution ("the Institute") addressed the Ombudsman. They stated that they suffer violence that nobody appreciates them, that they are punished for each and every exposure of alleged irregularities. Problems with the lack of food were also mentioned. Representatives of the Ombudsman visited the Institute several times and several interviews were carried out with various persons.

After the examination of all the available data it was assessed that it was not possible that users were exposed to physical violence which was allegedly the most serious reproach of the initiative. At the same time, it was assessed that the responsible persons in the institution are aware of circumstances which could have been improved with the aim to provide a higher level of the protection of users' rights. It is believed that the greatest problem is inappropriate communication between educators/employees and users. The users are adolescent boys with problematic behaviour. Employees at the Institute try to get close to them in various manners but users may feel that in a negative way, and even as psychological violence. Competition may occur in relation to users and mainly male educators which causes problems. Some educators have slightly less experience which may lead to a certain deviation from an optimum relationship in a very demanding process of work with young people.

The Ombudsman also drew attention to the need for mechanisms which might help young people in overcoming their problems and anguish which are to be expected in their work. It is extremely demanding work where constantly adapting to the present situation is necessary and there are no recipes for the successful solving of problems. The constant search for balance between what is an urgent intervention with the rights of a minor against the aim to ensure his/her upbringing and protection and any inadmissible intervention with the rights of young people is demanding and not all solutions are provided for within the legal order or in the discipline as a whole.

The extensive report on the Ombudsman's findings together with potential measures for improvement was submitted to the Institute. The Institute accepted the Ombudsman's role as a form of assistance and took action in accordance with the Ombudsman's recommendations. Thus, more attention should be given to communication with young people and to motivate them for their full inclusion into various processes in the institution. The employees were provided with external supervision, the Institute's Council was informed about the findings, some organisational solutions were adopted which should assist in solving the identified problems with food, some equipment were purchased. The Ombudsman's intervention is assessed as successful, particularly as a result of the clarification of individual situations and the adopted measures of the Institute. The Ombudsman's attention will, however, also be needed in the future since it concerns work with a very demanding group of young people with a lot of hard challenges which must be properly addressed by the employees with their knowledge and experience.

An additional problem which was noticed refers to the arrangement of the supervisory system controlling the functioning of this and similar institutions. The Inspectorate of Education and Sport of the Republic of Slovenia is responsible for the supervision of the work of the

Institute. The said Inspectorate is responsible for supervising the implementation of activities in kindergartens and schools. The content of their supervision is defined in detail in the provisions of the School Inspection Act. But, in the Ombudsman's opinion, the content of work in the Institute and similar institutions is significantly different from the work in schools and pre-school facilities. That is why, in such cases, it is probably only possible to carry out a supervision that deals with explicitly formal issues and it is hard to notice any issues present in terms of any meaningful problems. It seems to the Ombudsman that, in terms of contents of programmes, the process in the educational institution may be compared to certain institutions functioning in the field of social assistance. It is not the wish of the Ombudsman to make an assessment that it would make sense to transfer the responsibility of the supervision over the functioning of an educational institution upon another inspection, but it is definitely believed that it is reasonable to consider whether the Inspectorate of Education and Sport is adequately trained for handling problems in terms of their content which may occur in educational institutions; these are problems which, in the Ombudsman's opinion, are often subject to the very specific characteristics of young persons having problems in their growing up or with personnel who are not always capable of finding proper responses to these young people.

2.15.4 Child labour

The Ombudsman received several initiatives relating to the issue of child labour. The initiatives highlighted cases of children selling greeting cards, tickets for a school concert and similar. The Ombudsman met questions concerning child labour in the form of their artistic performance on boats outside Slovenian territory, taking place during the night time. These questions were mainly related to the admissibility of such labour and any potential accountability for the failure of such labour (for example, if somebody steals the money being raised in this manner from the child) was mentioned.

Separate initiatives and letters did not fulfil al the requirements for the process to be initiated as determined by the law. However, they pointed out a broader issue concerning child labour which may become greater in a tight economic situation. That is why the Ombudsman dealt with this issue at the broader level of implementing the rights of the child and was particularly interested in the appropriateness of the regulatory framework regarding this field.

As a word of introduction, it has to be emphasized that applicable regulations do not prohibit any activity of child labour even though it is connected with money, which is why several criteria and all relevant circumstances have to be taken into consideration when assessing the permissibility of such labour.

The Republic of Slovenia guarantees special protection to children from economic, social, physical, mental or other exploitation and abuse (Article 56, Paragraph 2 of the Constitution of the Republic of Slovenia). The Constitution also prohibits forced labour (Article 49, Paragraph 4). The Republic of Slovenia has fulfilled its obligation arising from Article 32 of the UN Convention on the Rights of the Child since individual elements of protection have been incorporated into the legislation, especially in the field of labour, criminal law and family relations.

The Marriage and Family Relations Act lays down the content of family relations and rights and duties of parents but it does not specifically prohibit the economic exploitation of children or the forcing of them to do hard labour. In such cases, a general power of attorney of Centres for Social Work may be used, specifically, that they are obliged to take all actions required for the upbringing and protection of a child and protection of a child's rights. In an extreme case, the Centre may even take a child away from its parents (Articles 119 and 120). When doing so, the Centre is not bound to consider any parents' offence or a criminal action previously committed in relation to the child's upbringing and protection and determined by way of a final decision.

The provision of Article 112 also protects a child from economic exploitation. It states: "A minor who has reached fifteen years of age and is employed may have power to dispose of his own personal income. He is obliged to contribute to his subsistence and education.

The Criminal Code defines two criminal offences relating to prohibited child labour which are very rare in practice (Article 192: Neglect and Maltreatment of Child, and Article 132: Criminal Coercion).

The Employment Relationship Act stipulates special protection and special rights to persons reaching the age of 15 years while an employment contract with a person younger than that is void (Article 19).

The law explicitly prohibits work by children younger than 15 years of age. In any case, children are prohibited from carrying out work at night between eight in the evening and six in the morning. A child younger than 15 years of age may, exceptionally, in return for payment, participate in making movies, the preparation and performance of artistic and scenographic activities as well as other performances of a cultural, artistic, sports or of an advertising nature. A child reaching 13 years of age may perform easier forms of labour for not more than 30 days in a calendar year during school holidays in other activities in a manner and scope and under the condition that the labour to be performed does not put the child's safety, health, moral integrity, education and development at any risk. The type of such easier form of labour is determined by virtue of an implementing regulation.

From the above mentioned statutory provisions it is concluded that child labour is quite precisely defined but that not all activity can be determined as labour. In the cases mentioned earlier concerning the sale of greeting cards and tickets, it is not possible to regard these activities within the meaning of the above mentioned regulations. With such activities, it would also be necessary to know what attitude a child has had towards the sale of tickets or greeting cards, what was the content of the concert's programme or greeting cards, who the proceeds of sale were dedicated to, what is the opinion of a child's parents and so on. The level of a child's maturity is also important. The Ombudsman believes that, in such cases, it is not possible to transfer the responsibility onto a child for any potential unpredicted problems but a child may be treated in regard to the child's age and maturity as responsible for proper care in relation to the handling of money. Such activity may even be beneficial for a child since the child may learn how to handle money and how to participate in a larger project aiming at providing a broader benefit for the community. However, with any such activity, a child needs to be empowered to exercise proper expression and also to refuse his/her participation. The main guideline in any judgement regarding the appropriateness of certain actions, in addition to an objective judgement, is that the standpoint of the child also needs to be obtained. If a certain activity particularly brings enjoyment to a child, if the child has a feeling of belonging to the project, obtains new knowledge and other benefits, such activity should be allowed to the child, whereas, if by participating in a certain activity, a child is abused for the attainment of the goals of a third person, such activities should be prevented.

In the above mentioned work of a child on a boat (outside the territory of the Republic of Slovenia), it may be a case of work where the compliance with applicable regulations should be debated, in the Ombudsman's assessment. The activity is not being carried out on the territory of the Republic of Slovenia which is why Slovenian regulations do not apply (the Labour Inspectorate is not a responsible authority in this case) but the appropriateness of parents' care for a child may be judged according to Slovenian regulations and, if necessary, action might be taken to protect a child and his interests.

The Ombudsman can make a general assessment that the Republic of Slovenia has an appropriate regulation at the normative level preventing the economic exploitation of children but the Ombudsman is also aware of the fact that such action within the family is very hard to identify and to punish.

The Ombudsman was not warned of any child labour at home which, however, does not mean that there is no such labour in practice. It is a generally known fact that a lot of such labour is carried out in agricultural activities. The agricultural activities are worth mentioning also due to an increased risk of injuries at work. In relation to children, such injuries have occurred in the past and it will not be possible to fully avoid them in the future, but one needs to be aware of the fact that such labour does take place and that it needs to be suitably monitored.

2.15.5 Protection of children from sexual exploitation and sexual abuse

Within the scope of the CRONSEE network, the issues regarding the protection of children from sexual exploitation and sexual abuse was discussed and the regulation in Slovenia was presented. In comparison to other network members, this field is arranged relatively well at regulatory level, but, as usual, complications begin in implementing the adopted commitments.

As a general finding, it needs to be emphasized that the topic concerning sexual abuse of children is still of current interest but the topic is not discussed enough since society does not deal with individual phenomena with sufficient seriousness, and, as a matter of fact, everybody lacks sufficient knowledge. The viewpoint of the Commission for Medical Ethics may be mentioned in this context; the Commission is a supreme ethical authority in the field of health care which highlights a dilemma about how a doctor should react when during his work he discovers evidence of sexual intercourse of children younger than 15 years of age (which is a criminal offence) The Commission took the stand that a doctor must not violate his/her obligation to remain silent since “a doctor cannot be included in the repressive system as this would put his duties at risk”. This viewpoint arises from the confidential relationship between a doctor and a patient, but it does not take into account the principle of the best interests of a child.

However, for state authorities, presenting the state to the outside world, the external form is, apparently, more important than the content: the Council of Europe Convention on Protection of Children from Sexual Exploitation and Sexual abuse was signed by the Republic of Slovenia in 2007 (immediately after its adoption) but it has not yet been ratified. According to some unofficial data, the Act on Police Tasks and Authorities needs to be modified before this. Since the time of signing of the Convention, this Act was modified in 2009 and yet no one responsible has remembered that the Act must be amended in the part which would enable the ratification of the convention.

2.15.6 Health care of children

Several proposals were received requesting the arrangement of health care of children since the applicable regulation allows for the fact that some children do not have access to all of the rights that belong to them.

The issue of the provision of health care to children whose parents have not paid the mandatory contributions was dealt with in 2010 and was reported in detail in the Ombudsman’s Annual Report for 2010.

On the basis of the Ombudsman’s warning, in October 2011, the Health Care and Health Insurance Act (Official Gazette of the Republic of Slovenia, No. 87/11) was amended. The Act has granted rights arising from the compulsory health insurance for family members even though contributions have not been paid which is why the Ombudsman is not familiar with the legal basis that might justify a potential refusal of the health care treatment of a child. The initiators were invited to submit actual data which, however, were not received.

The Ombudsman reiterates the position that, in the light of an actual implementation of Article 24 of the UN Convention on the Rights of the Child, children should become an independent category of insurance holders which would have compulsory health insurance regardless of individual circumstances which otherwise have an influence on the scope of rights.

SUMMARY OF PROPOSALS AND RECOMMENDATIONS

- As fast as possible, the Government of the Republic of Slovenia should develop a proposal of the Family Code which would unambiguously prohibit the physical punishment of children.
- The Ministry of Culture should examine the legislation in regard to the protection of children from abuses of their personal data and propose suitable amendments.
- Within the system of financing of municipalities, the state should provide for the respect of minimum standards and equal access to education for children with special needs coming from several municipalities.
- As soon as possible the Government of the Republic of Slovenia, in cooperation with trade unions, should prepare all regulatory basis which will provide for the implementation of rights of workers to strike in a manner that will not disproportionately affect the rights of other persons.
- The responsible ministries, each in its own field of work, should determine actual and legal obstacles for the ratification of international treaties concerning the rights of the child and prepare everything necessary for the treaties to be ratified as quickly as possible.

2.15 PROTECTION OF CHILDREN’S RIGHTS

29. Participation in parents' decision-making in resolving questions of a child's residence.

A primary school informed the Ombudsman of the situation of a child of parents who do not live together any longer. For two days per week, a child has certain contacts with his father but is entrusted into the care and upbringing of his mother. The mother does not wish for the child to visit day care in school or to have meals in school. The father wishes to enable the child to take part in day care at school as well as having meals in school on days when the child is to be with his father.

The Marriage and Family Relations Act stipulates that one of the parents is entrusted with the care and upbringing of a child, when parents do not live together. This parent independently decides on questions concerning a child's daily life while the other parent has the right to take part in decision-making of all questions essential for a child's development. It is obviously understandable that even during the time when a child has contacts with the other parent, this parent must decide on certain issues concerning a child's daily life since, during this time, a child must eat, be dressed and must take part in various activities and similar.

In this case, the Ombudsman has submitted an opinion in terms of principle: if a child has certain contacts with the father on a certain day, then the father independently implements the parental rights during that time and thus also makes decisions whether a child will be in day care at school and what the child will eat. The mother may obviously state actual reasons why anything out of the above might be contrary to the child's interests and if these arguments were justified, the father's decision could have been disregarded. It is therefore believed that the mere fact that a mother disagrees with the child staying in day care at school and having meals at school should not be of any relevance. This may, however, be changed if material arguments were stated for such an opposition. The costs of services agreed upon for the child by the father must, however, be borne by the father and not the mother, and they should be calculated separately.

If summarised, the father has the right to make a decision as to whether the child will have meals at school and stay in day care at school during the time when the child has contacts with the father, although these are issues belonging to the scope of decision-making on questions of the child's daily life of which decisions are otherwise made by the mother. This right is, however, not an absolute right since it may be restricted as a result of arguments that may be contrary to that fact but which are not known to the Ombudsman in this particular case. In any case, only the mother's opposition cannot be such an argument.

Many initiatives received by the Ombudsman point to great problems of parents in making decisions on the most basic questions regarding a child's life. The consequences of such poor cooperation are mainly carried by the child. They also cause problems to other parties, mainly kindergartens, schools, health care operators and others who are not adequately prepared in their obligation to protect the best interests of a child in cases when parents have issues with the provision of such best interests.

In the case in question, the school thanked the Ombudsman for the position taken and it is believed that everything turned out for the good of the child. **11.0-64/2012**

30. Publication of a child's profile on Facebook

An initiator, a mother of an eight-year old child, addressed the Ombudsman with a question about how she may protect a child whose father opened the child's profile on Facebook. The mother disagrees with this act. These parents do not live together and the child's care and upbringing has been entrusted to the mother. The initiator was advised of the possibility of addressing the social network administrator. If that option did not work, the initiator might try to reach an agreement with the child's father on withdrawing the profile with the assistance of the Centre for Social Work. Judicial methods would also be possible as a last resort.

It was also assessed that the opening of an internet profile with photographs and other personal data of an eight-year old child may represent an act of greater significance for a child. In this case, the application of the provision of Article 113 of the Marriage and Family Relations Act might apply. Among other matters, this provision stipulates that parents exercise parental rights in consensus and in accordance with the child's best interests. When parents do not live together and do not both have the care and upbringing of a child, they both decide on questions with a significant influence on a child's development in consensus and in accordance with the child's best interests. The questions concerning a child's daily life are decided by that parent who has been entrusted with a child's care and upbringing. If, with the assistance of a Centre for Social Work, parents do not make an agreement concerning questions which have a significant influence on a child's development, this is decided by the court in non-contentious proceedings, upon application by one or both parents.

The court must substantiate what is the content of the legal norm in actual cases. The Court may make a judgement whether such a decision about the opening of a web profile represents something about which a consensus must be reached by both parents or whether this may be determined only by that parent who has been entrusted with the child's care and upbringing or maybe the decision is such that it may be adopted only by one parent. In the Ombudsman's opinion such a decision at that age of the child (with an average maturity) should have been adopted with the consensus of both parents (with an assumption that both parents are willing to implement their parental care) since it may represent long-lasting consequences for a child.

The initiative was not directed against the work of authorities which is why its justification cannot be assessed. Nevertheless the question seems important for the provision of the best interests and safety of children. **11.0-1/2012**

31. TV abused a child for sensationalistic reporting on a tragic event

The Human Rights Ombudsman of the Republic of Slovenia was warned of a television programme on Kanal A Television which presented a death of an individual who had been brutally beaten up at a petrol station in Kočevje. The programme also presented the victim's under-aged son who had witnessed his father's murder. In front of the camera, the minor gave a report of the horrendous event and described individual brutal details of the event. The report carried the name and surname of the minor as well as his place of residence.

While taking into consideration the provisions of Articles 2, 16 and 19 of the UN Convention on the Rights of the Child in particular, all abuses of the rights of the child by the media, of which the Ombudsman's Office is informed , are consistently reported to the Journalist's Court of Honour (JCH). Since, for now, no right to immediate assistance by an adequately qualified advocate in such a similar situation is provided for a child by the legal order, it is deemed urgent that the Ombudsman should use all available methods for their protection. It is believed that the case concerning the publication of the above mentioned event is important, particularly considering the broader aspect and in regard to the general legal certainty of the personal rights of the child. In spite of now already numerous public warnings by the Ombudsman (published on the web site and in Annual Reports) and unambiguous warnings made by JCH several times concerning the inadmissibility of any sensationalist disclosure of the privacy of the child in family tragedies in the media, the trend of having such and similar violations occur continues. The Ombudsman's intervention should thus not be understood only as a warning about excesses but mainly as a warning that the clearly set boundaries which are determined by the Code of Professional Ethics of Journalists ("the Code") are persistently and knowingly crossed and that this must not become a general practice.

The ethical and moral conduct of journalists is an important means for preventing violations of human rights on the part of the media. The Ombudsman has determined in the annual reports that the efficiency of legal remedies and other actions against the conduct of the media is often questionable for the injured party, particularly from the aspect of possibilities for eliminating the consequences of violations. This does not lift any burden of responsibility from the injured parties to take timely legal remedies in case of any violations. In accordance with Article 6 of the Media Act, the media activities are, among other matters, also founded on the inviolability and protection of human personality and dignity and it also stipulates that the creation of the programme contents must comply with professional codes. The media activity is also founded on the personal responsibility and the accountability of journalists and other authors of programmes andeditors for the consequences of their work.

The programme disclosed the personal data of the child: his photograph, full name and the name of the deceased father were given, together with some detailed circumstances regarding his tragic death and about the environment in which the child lives. It can be concluded from the above mentioned that, without question, the publication of these data represents an interference with the privacy of the child. In this manner the provision of the Code was violated which highlights the special care that must be shown by journalists and editors for the protection of the child's best interests, referred to in item 19. The violation was even more severe since the child's statement was obtained soon after the tragic event of which the child was the witness and the child additionally revealed certain details of a rough altercation that his father had with someone else. The child would deserve to receive respect mainly for his right to privacy in a particularly difficult moment.

No public interest can be found for the disclosure of details from the narrowest personal sphere of the child. Kanal A television was even requested in advance to suitably protect the privacy of the child when publishing the report but such a request was obviously knowingly disregarded. The emission n the TV also violated the provision of Article 18 of the Code, specifically by publishing the recording, and the personal data and details of the murder attended by the victim's under-aged son. Without doubt this story witnesses that a great misfortune and family tragedy hit the child. In the Ombudsman's opinion, the publication of the child's personal data and their repeated appearance on his photographs does not demonstrate the necessary tact in collecting information, reporting and publication of photographs and in transmitting statements about children and young people, of persons being hit by an accident or a family tragedy as required by Article 19 of the Code. It is particularly tactless that the child revealed to the journalist (and the public) brutal details of the event which surely had caused him extreme distress which is worsened to a very large degree when being re-lived in front of the camera.

The Journalist's Court of Honour has warned journalists and editors in many cases about Article 19 which imposes a special obligation upon journalists when a child who has been involved in an accident or family tragedy is involved: particularly in cases relating to the suspicion of sexual abuse, violence or abduction of children, a journalist must consider all circumstances and interests of the parties involved with all due care and decide on the publication of the story only in cases when this is in accordance with the child's best interests and in the public interest. The Ombudsman submitted a report to the JCH which agreed with the Ombudsman's statements. The Journalist's Court of Honour determined that the reporting was thoughtless and sensationalist and that it represented an abuse of the child. It was also concluded by JNC that the journalist and the editor-in-chief violated the provisions of Articles 17, 18 and 19 of the Code. **11.0-14/2012**

2.16 OPCAT - NATIONAL PREVENTIVE MECHANISM

Report of the Human Rights Ombudsman of the Republic of Slovenia on the Implementation of the tasks of the National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the year 2012 is available on the Ombudsman's website www.varuh-rs.si and in a special publication in English.

Information on the
Ombudsman’s work

3. INFORMATION ON THE OMBUDSMAN'S WORK

3.1 LEGAL BASIS FOR THE OMBUDSMAN'S OPERATION

The basis for the establishment of the Human Rights Ombudsman is stipulated in Article 159 of the Constitution of the Republic of Slovenia and the Human Rights Ombudsman Act ("ZVarCP"). On this basis, the Human Rights Ombudsman of the Republic of Slovenia was established and formally started to operate on 1 January 1995. The Ombudsman has been established with the aim of protecting human rights and fundamental freedoms in relation to state authorities, local government authorities and holders of public powers (Article 1 of ZvarCP). Its function is to ensure the proper and correct treatment of individuals by authorities. In performing this function the Ombudsman acts in accordance with the provisions of the Constitution and international legal documents on human rights and fundamental freedoms. When interventions take place, the Ombudsman may also invoke the principles of fairness and good management (Article 3 ZvarCP).

Under the Act Ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Ombudsman has also been carrying out tasks set out by the National Preventive Mechanism ("the NPM"). In this role, the Ombudsman cooperates with non-governmental organizations selected through public calls to tender. In agreement with the Ombudsman, these tasks can also be performed by selected non-governmental organizations registered in the Republic of Slovenia and organisations that have gained the status of humanitarian organisations in the Republic of Slovenia and which are dealing with the protection of human rights and fundamental freedoms.

In performing this function, the Ombudsman is autonomous and independent, reporting to the National Assembly on the work with regular annual or special reports. Upon the proposal made by the Ombudsman, the National Assembly determines the funds for the Ombudsman's work.

State authorities, local government authorities and holders of public powers must, at the Ombudsman's request, provide all pertinent data and information from their fields of their responsibility regardless of the level of confidentiality, and enable the implementation of the Ombudsman's investigation. The procedure before the Ombudsman is confidential, informal and, for parties, free-of-charge. The principle of confidentiality of the procedure is a very important principle. In the Ombudsman's annual reports, the issue concerning the confidential nature of procedures before the Ombudsman in relation to the Access to Information of a Public Character Act has been presented several times. The Ombudsman constitutes an additional extrajudicial means for protection of rights of individuals. Individual acts are not issued in the forms of orders, judgments, decisions or decrees, but in forms that highlight the authority in the implementation of powers. The Ombudsman's task is to determine and prevent violations of human rights and other irregularities and eliminate their consequences. In Article 10, Paragraph 2 of ZvarCP, it is stated that the Ombudsman's organisation and method of work is regulated by Rules of Procedure and other general legal documents. The Rules of Procedure are adopted by the Ombudsman upon being advised by the competent working body of the National Assembly of the Republic of Slovenia, that is a Commission of the National Assembly for Petitions, Human Rights and Equal opportunities.

The legal framework for the operation of the Ombudsman is also based on other acts: the Law on the Constitutional Court, the Patient Rights Act, the Defence Act, the Consumer Protection Act, the Environmental Protection Act, the Personal Data Protection Act, the Criminal Proceedings Act, the Enforcement of Penal Section Act, the Lawyers Act, the Tax Procedure Act, the Classified Information Act, the Integrity and Prevention of Corruption Act and the Equal Opportunities for Woman and Men Act.

The Law on the Constitutional Court needs to be mentioned in particular since its Article 23(a), among other matters, also states that the Ombudsman (upon request) can initiate a procedure for the review of the constitutionality or legality of regulations or general legal document issued for the exercise of public authority if the Ombudsman deems that such a regulation or general act issued for the exercise of public authority inadmissibly interferes with human rights or fundamental freedoms. In 2012, the Ombudsman submitted to the Constitutional Court five challenges to the constitutionality of Acts. Article 50, Paragraph 2 of the mentioned Act gives the Ombudsman the power (under the conditions defined by law) to lodge a constitutional appeal with the Constitutional Court concerning a particular issue being dealt with. In year 2012 no such appeal was lodged.

3.2 RELATIONS WITH THE OMBUDSMAN'S KEY PUBLIC GROUPS

3.2.1 Initiators

The Ombudsman mainly carries out its task by resolving initiatives. No official form or assistance by an attorney-at-law is required to lodge an initiative. However, an initiative needs to be lodged in written form, signed by the initiator and personal information about the initiator must be included. The circumstances, facts and evidence upon which an initiative is based have to be stated in an initiative in order to initiate the procedure. It is considered that an individual must first try to solve the matter with the authority which an initiator believes has violated his or her rights. The Ombudsman must conduct the procedure in an impartial manner, and obtain the standpoint of all parties affected or involved.

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. Regulations on protection of confidentiality of data bind the Ombudsman and Ombudsman Deputies, as well as officials employed at the Office.

The Ombudsman may initiate procedures in individual cases also on the Ombudsman's own initiative. The Ombudsman also deals with broader issues which are important for the protection of human rights, fundamental freedoms and legal certainty in the Republic of Slovenia. In 2012, 47 initiatives were opened on the Ombudsman's own initiative (1.48 percent of the total). The Ombudsman dealt with 22 broader issues (0.69 percent of the total). If a procedure is initiated on the Ombudsman's own initiative or if the initiative is lodged by a person on behalf of an affected individual, the consent of the affected party is essential for commencing the procedure.

Initiatives aimed at handling the alleged violations are also accepted when operating outside the Ombudsman's Office, usually taking place at the registered office of a selected municipality. Initiatives may also be received upon other types of visits carried out by the Ombudsman in relation to the implementation of the Ombudsman's responsibilities, also under the NPM aiming at the protection of persons deprived of liberty.

Individuals may obtain information on conditions on lodging initiatives and about their (already lodged) initiatives by calling the following free-toll telephone number: +386 080 15 30. More information may be obtained on the Ombudsman's web site (www.varuh-rs.si).

The Ombudsman does not handle cases undergoing judicial or other forms of legal proceedings, unless it is a matter of undue delay in the proceedings or an obvious abuse of power. From the point of view of the protection of human rights and fundamental freedoms, the Ombudsman can submit to any authority the Ombudsman's concerns about a case being handled, regardless of the type or phase of procedure taking place before such authority.

The Ombudsman has no authority in relation to the private sector (e.g. business entities). Hence, most often, the Ombudsman advises 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 with the employer and, upon finding any 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 is aware that it is most important for an initiator to obtain as fast solution as possible to his or her problem. In some instances, when a procedure is too lengthy without any justified reasons, the Ombudsman intervenes with the relevant authority in order to accelerate 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 the priority of the case.

The Ombudsman will propose a solution of the problem in an amicable manner to any given authority, if this is agreed by an initiator. If irregularities can no longer be eliminated, it is proposed that the authority must apologize to the initiator for the mistake made.

In certain cases, however, the Ombudsman will not handle a case and will refuse its consideration. When the Ombudsman decides to refuse an initiative or does not commence its consideration, the initiator is, as a rule, informed, and arguments for the case rejection are explained and an initiator is referred to any other relevant institution responsible for solving the issue. The decision of the Ombudsman on not accepting an initiation for its further consideration or on refusing it is final. It has to be emphasized that the Ombudsman replies to all letters and all initiatives received, unless an initiative is anonymous or insulting.

At the Ombudsman's Office, everybody strives to communicate with everyone in a correct and respectful manner. However, considering the numerous cases of distress that are encountered by employees at the Ombudsman's Office, it may happen, albeit very rarely, that unintentionally or by mistake, somebody is offended by the Office's communication.

In the Annual Report for 2007, case no. 155 was published on page 233 which was entitled: Criticism of Work of the Ombudsman. This case referred to an event in 2006 when an employee at the Ombudsman's Office made an inappropriate comment when refusing an individual's complaint that a local TV programme had offended religious feelings of Christians. The Ombudsman's employees commit themselves to try to solve the misunderstanding with mediation or in a similar manner.

Since the mediation was not successful and the initiator insisted on the implementation of the commitment of the Ombudsman's employees, in November 2012, it was decided in consensus with the initiator that the issue would be finally settled in the next Annual Report by publicly publishing an apology. **"The Ombudsman thus apologises to Drago Vogrinčič from the Cankova Municipality for all discomfort which injured his honour and dignity and was caused by an improper communication when submitting his complaint to the Ombudsman in 2006.**

The handling of the abovementioned case showed how easy it is possible to offend an individual or a group of people in regard to sensitive areas, understandings and comprehension of human rights by acting improperly, and how careful one must be with the perceptions and feelings of an individual in cases of violation or irregularity.

3.2.2 Operation outside the Ombudsman's Office

The Ombudsman is aware that it is not convenient for many inhabitants of Slovenia to come to Ljubljana, the seat of the Ombudsman, to talk to the Ombudsman or the Ombudsman's colleagues in person. Because of this, the Ombudsman continued the already established practice of operation outside the Ombudsman's Office. During such meetings, the Ombudsman encountered hundreds of stories alleging violations of human rights, committed by local or state authorities or holders of public office. Over six years, in cooperation with local authorities, the Ombudsman visited 62 towns, some of these more than once.

	Number of operations outside the Ombudsman's Office	Number of interviews with initiators	New open initiatives after the operations
2007	10	140	59
2008	9	120	57
2009	10	156	73
2010	11	94	35
2011	11	165	72
2012	11	126	58
Total	**62**	**801**	**354**

In the capacity of the Human Rights Ombudsman, Zdenka Čebašek - Travnik, PhD, would like to thank all the Mayors that made it possible for the Ombudsman's team to meet with people in their local communities and thus enabled them direct contact with the Ombudsman. Each operation outside the Ombudsman's Office is carefully planned and divided into three parts: first a short interview between the Ombudsman, her colleagues and a Mayor takes place; the central parts of the operation are personal interviews with initiators (at least half an hour is dedicated to each and every one of the initiators);and the concluding part is a press conference for the local media.

In 2012, 11 operations outside the Ombudsman's Office were held in the following places: in Gornja Radgona, Kamnik, Murska Sobota, Sevnica, Sežana, Slovenska Bistrica, Škofja Loka, Trbovlje, Trebnje, Velenje and Vrhnika. During these operations, in total 126 interviews with initiators were carried out and 58 new cases were opened for further handling.

WHEN	WHERE	WHAT
11 January 2012	Vrhnika	The Ombudsman and her colleagues met with the Mayor of Vrhnika, Stojan Jaklin, and with the Director of the municipal administration, Vesna Kranjc. After the meeting, interviews with seven initiators were carried out. Four new initiatives were opened and one that had already been closed reopened. The Mayor advised the Ombudsman of the difficult situation in the enterprise sector of the municipality, including the company Industrija usnja Vrhnika. There is little skilled trade in the municipality, since there is no craft zone. He also pointed out that owing to the Natura 2000, which has spread onto the northern part of the highway, the organisation of pieces of land had become more difficult. The Ombudsman warned the Mayor of the difficulties concerning the difficult access to the municipal building for people with disabilities, and the Mayor presented plans for improving accessibility for citizens.
15 February 2012	Trebnje	The Ombudsman and her colleagues met with the Mayor of Trebnje, Alojzij Kastelic, and talked to seven initiators after the meeting. Six new initiatives were opened, one was already under consideration. The Mayor said that there were no major economic problems in the municipality, and for that reason the unemployment rate amounted only to 9%. There were some bankruptcies in the municipality (Prevent and TOM), but a good social program is in place in the municipalities. The Mayor also presented a case of good practice concerning the cooperation with the Centre for Social Work where social issues are handled in teams, but he also regretted the lack of available apartments. The Mayor also presented a plan for dealing with issues relating to the Roma population in the town of Hudenje, where 350 Roma people live.
14 March 2012	Velenje	The Ombudsman and her colleagues met with the Mayor of Velenje, Bojan Kontič, and the Director of the municipal administration, Andreja Katič. After the meeting, the Ombudsman talked to seven initiators. One new initiative was opened and four that had already been closed were reopened. The main topic was the housing issue. The Ombudsman found that both the Mayor and the Director of the municipal administration are well aware of municipality-wide issues and that they are truly leading the municipality in a way that is friendly to people living there. At a press conference, the Ombudsman praised the practice of the municipality of allotting approximately 20.000 euros per year for free legal aid, thus making possible the handling of approximately thousand cases per year. In the Ombudsman's opinion, it would make sense to solve this issue in a systemic way. Such a method of providing free legal aid, as a matter of fact, saves a lot of work for other institutions to which people would otherwise turn.
11 April 2012	Slovenska Bistrica	The Ombudsman and her colleagues met with the Mayor, Dr Ivan Žagar. The Ombudsman talked to nine people from Bistrica municipality and neighbouring municipalities. Their problems were related to social issues. From the interview with the Mayor, the Ombudsman concluded that there are no significant issues in the Municipality but that the unemployment rate is 13 percent, which is an indication of peoples' social distress and their problems. According to assurances made by Dr Žagar, the most vulnerable groups of inhabitants: children, the elderly and people with special needs, are quite well taken care of. At a press conference, the Ombudsman stated that there were no complaints about the work of the municipality, which also pleased the Mayor.
18 May 2012	Murska Sobota	There were 51 initiators who had applied for the meeting with the Ombudsman and her colleagues in Murska Sobota. The Ombudsman talked to 16 initiators, and met the others on 4 June 2012. She also met the Mayor of Murska Sobota, Anton Štuhec and the Director of municipal administration, Bojan Petrijan. At a press conference, she stated that initiators talked mostly about numerous social issues. She ensured that she would propose to the Minister of Labour, Family and Social Affairs, Andrej Vizjak, that they visit Prekmurje together and listen to people in distress. As a case of good practice, the Ombudsman highlighted the project: House of Fruits of Society, which is the only institution with an organised programme of intergenerational cooperation in the municipality. In the Roma community of Püšča, the Roma children and non-Roma children attend the kindergarten together, which, in the Ombudsman's opinion, is one of the best models for the integration of Roma children into society leading to the subsequent integration of adults. As a third example of good practice she pointed out the PIP Institute (Law Information Aid), assisting people not only Murska Sobota but from neighbouring municipalities in legal issues.
4 June 2012	Murska Sobota	During the repeated operation in Murska Sobota, the Ombudsman and an expanded team of the Ombudsman's colleagues talked to 35 people. She did not meet with the Mayor, but the Ombudsman's findings were also presented to the press on this occasion.
13 June 2012	Kamnik	The Ombudsman and her colleagues met with the Mayor of Kamnik, Marjan Šarec, and talked to seven initiators after the meeting. Two new initiatives were opened and one which had already been closed reopened. Three initiatives are already in the process of being solved. At a press conference the Ombudsman stated that the issues covered at interviews mostly related to lengthy time of court cases, and some issues concerned employment relations and the environment. There is still a substantial lack of free places in kindergartens. She also pointed out that Kamnik is a rather pleasant town for people with disabilities.
11 July 2012	Trbovlje	The Ombudsman met with Mayor of Trbovlje, Vili Treven, and the Deputy Mayor, Jasna Gabrič. The Ombudsman talked to eight initiators after that. Two new initiatives were opened. At a press conference organised after the operation, the Ombudsman said that the main topic of interviews was social distress of people since the registered unemployment rate is 19%, being the highest in Slovenia. She also mentioned that the representatives of the Association of Societies of People Mobilised into the German Army expressed their wish to the Ombudsman for Slovenia to lodge an application with Germany for compensation by way of damages.
12 September 2012	Sežana	First, the Ombudsman met with the Mayor of Sežana, Davorin Terčon, and the management of the municipality, and in the continuation of the operation talked to ten individuals. The initiatives mostly referred to individual problems individuals had with the courts and administration authorities. The Ombudsman also accepted complaints regarding the Fiscal Balance Act. At a press conference, she highlighted two well organised fields regarding the provision of social housing and children's day care which are quite critical in most Slovenian municipalities. Special attention was dedicated to the issue of filling up the Karst sinkholes without the required permissions, expressing her concern that these acts remain unpunished.
10 October 2012	Gornja Radgona	During the operation in Gornja Radgona, the Ombudsman and the Ombudsman Deputy, Ivan Šelih, and Ombudsman's Advisers accepted twelve initiators for interviews. After the interviews, the Ombudsman presented the content of these interviews at a short press conference. Among other things, the Ombudsman stated that she met with Deputy Mayor, Vinko Rous and the Director of municipal administration, Dragan Kujundžič. She concluded that Gornja Radgona is a people-friendly municipality. But she nevertheless made a warning concerning two irregularities: the municipal building is not adapted for people with mobility issues (the elderly, people with disabilities), and she also noted the lack of free legal counselling provided for the citizens.
7 November 2012	Sevnica	During the operation in Sevnica, she and her colleagues talked to 16 initiators. She met with the Mayor of Sevnica, Srečko Ocvirk. After the operation at a press conference, she said that the interviews with the initiators from the area revealed an unequal access to the courts.
12 December 2012	Škofja Loka	During the first operation in Škofja Loka, the Ombudsman talked to four initiators, and she also met with the Mayor, Miha Jošet, MSc, and the Director of municipal administration, Špela Justin. The Ombudsman was interested in how the most vulnerable groups of inhabitants are taken care of (children, people with special needs, the elderly and the people with disabilities), and whether any access to free legal aid is provided, and how housing issues are dealt with by the Municipality. The issue concerning potential environmental polluters was also discussed with the Mayor.

3.2.3 Cooperation with non-governmental organisations

The Ombudsman, Zdenka Čebašek - Travnik, PhD, continued to cooperate actively with the non-governmental organisations ("NGOs") which are a special kind of voice of citizens. These organisations are the first to respond to changes in social circumstances and people's needs. They perceive individual or systemic forms of violations of human rights and strive for their elimination. The Ombudsman organized meetings with NGOs in order to directly exchange information about their achievements and particularly about problems concerning the enforcing of human rights, democracy and the rule of law. NGOs warned that the number of violations of the Resolution on Legislative Regulation adopted in November 2009 and the Government's Rules of Procedures are increasing, whereby both documents impose on ministries the requirement to prepare the proposals for regulations in cooperation with the public. In 2012, regulations were prepared under time pressure, disrespecting the prescribed time periods and without the required cooperation with experts, with the targeted public as well as with the general public. All this reduces the legal certainty and the efficiency of social systems and undermines the trust in the rule of law. The possibility of cooperation in the process of drafting the legislation would have to be given especially to those to be affected by regulations. The Government violated this provision, as claimed by the Centre for Information Service, Cooperation and Development of NGOs ("CNVOS"), in more than 80% of all the published proposals of regulations. For this reason, on 4 October 2012, CNVOS organised a protest public reading of the Resolution on Legislative Regulation in front of the Government's building which was also attended by the Ombudsman, Zdenka Čebašek - Travnik, PhD. The Ombudsman initiated the protest in a symbolic way, by reading the introductory note to the Resolution.

In 2012, **eight meetings with NGOs from the area of environment protection** were organised by the Ombudsman. They were prepared and led by the Deputy Ombudsman, Kornelija Marzel, MSc, and the Ombudsman's advisers, Matina Ocepek, MSc and Jožica Matjašič.

- The 17th Ombudsman's meeting with representatives from the Chemical Office of the Republic of Slovenia and representatives from civil society operating in the area of environment and spatial planning (26 January 2012), which was the first meeting in 2012.
- The 18th Ombudsman's meeting with representatives operating in the area of environment and spatial planning (21 February 2012).
- The 19th Ombudsman's meeting with representatives from the Inspectorate of RS for Agriculture and the Environment and representatives of civil society from the area of environment and spatial planning (12 April 2012).
- The 20th Ombudsman's meeting with the acting chief Inspector of the Inspectorate of RS for Traffic, Energy and Spatial Planning and representatives of civil society from the area of environment and spatial planning (22 May 2012).
- The 21st Ombudsman's meeting with Dejan Židan, MSc, the President of the parliamentary Committee for Agriculture, Forestry, Food and the Environment, and representatives of civil society from the area of environment and spatial planning (28. 6. 2012).
- The 22nd Ombudsman's meeting with representatives of civil society from the area of environment and spatial planning as well as representatives of the Ministry of Agriculture and the Environment on the topic concerning the regulation of the area of smell emissions (4 October 2012).
- The 23rd. Ombudsman's meeting with representatives of civil society from the area of environment and spatial planning as well as representatives of the Ministry of Justice and Public Administration, who presented the work planned for the Office for NGOs functioning within that ministry (8 November 2012).
- The 24th Ombudsman's meeting with representatives of civil society from the area of environment and spatial planning and the Director of Construction, Survey and Mapping and Housing Inspection (6 December 2012).

Meeting with NGOs organised by the Ombudsman in 2012

Meeting with NGOs from the field of children and young people

The Human Rights Ombudsman, Zdenka Čebašek - Travnik, PhD, met with representatives from some NGOs operating for the welfare of children and young people. The participants highlighted issues concerning the position of children of immigrants, asylum seekers and problems associated with their integration into society as well as schooling and the provision of their health care. As they pointed out, these children are usually enrolled in schools with special programmes (more than the average population) because of their lack of or poor command of the Slovenian language. The state should systematically monitor these occurrences of unacceptable discrimination and adopt measures so as to include these children in the system of regular schooling, obviously while providing for additional forms of assistance. They found that there is increasingly more peer violence and family violence, which is not coped with effectively enough by the state. Poverty is growing in the society, especially in families with children. They warned about the Programme for Children and Young People 2006 – 2016, the adopted Indicators for their Monitoring and the Action Plan. They were interested in the future of the program, what the results are (according to the indicators for the programme's monitoring), and what kind of measures will be adopted by the Government to update the program and its future implementation. The state should give more attention to the systemic regulation concerning issues of financing NGOs in general, especially those concerned with the work for children and young people. These NGOs, with their voluntary work, alone contribute significantly to lessen the consequences of the economic and financial crisis.

Meeting with NGOs from the field of culture

On 28 May 2012, the Ombudsman met with representatives of the NGOs, institutes, societies and individuals who are active in the area of culture. The Ombudsman was informed of the most frequent problems faced with by those working in culture. The most critical issues were reduction of funds and (lack of) timeliness in calls to tender aiming at the provision of funds for functioning and implementation of projects. Another problem concerned the lack of taking into account proposals and opinions submitted by civil society in regard to individual questions or during the drafting of regulations. In terms of formality, civil society is included in discussions but its proposals are mostly ignored. The Ombudsman would be able to intervene with the responsible ministries or local communities in matters which concern alleged violation of human rights. The cooperation with representatives of civil society from the field of culture will be continued.

Cooperation with NGOs regarding the implementation of the control function

On the basis of a public call to tender, the Human Rights Ombudsman of the Republic of Slovenia invited humanitarian NGOs to cooperate in the implementation of powers and duties under the National Preventive Mechanisms in accordance with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Five organisations submitted their applications to the public call to tender and all of them were chosen: the Legal-informational centre for NGOs (PIC), the Slovenian Red Cross, the Slovenian Federation of Pensioners' Organisations, the Primus Institute and Novi Paradoks – the Slovenian Society for Quality of Life. On 13 January 2012, the annual work meeting with NGOs cooperating in the implementation of the NPM program was organised by the Ombudsman (in the Ombudsman's Office).

Other meetings

NGOs have frequently invited the Ombudsman, Zdenka Čebašek - Travnik, PhD, to their meetings, conferences and other events. The invitation to attend the panel discussion concerning the development of the non-governmental sector in Prekmurje was especially taken up. During the discussion cases of good practice were highlighted (House of Fruits of Society and Ozara). On 12 May 2012, in Ljubljana, **the Association of Slovenian Cancer Patients** organised the 20th jubilee pan-Slovenian meeting of women suffering from breast cancer with expert discussion, cultural programme and with opportunity to socialize. The event was also attended by the Ombudsman. On 24 October 2012, **the United Nations Association of Slovenia organised** a celebration of United Nations Day (the honourable speaker was the President of the Constitutional Court, Dr Ernest Petrič), attended by the Ombudsman, Zdenka Čebašek - Travnik, PhD, and the Secretary-General, Bojana Kvas. On 30 November 2012, **the Slovenian Primož Trubar Protestant Society**, in cooperation with the Evangelical Church of the Augsburg Creed in Slovenia, organised a celebration of the Reformation Day, attended also by the Ombudsman. On 8 March 2012, the Ombudsman was invited by the President of the **Ljubljana Law Society** to lecture in Ljubljana on her work and the role of the Human Rights Ombudsman in society. In the debate professionalism and the ethics of legal work were discussed. On 26 September 2012, at the Faculty of Law, **the Society for Constitutional Law of Slovenia** organised a round-table discussion on the state of human rights in Slovenia in the past, present and future. The development of standards regarding the protection of human rights and their current status in Slovenia were discussed by all former Human Rights Ombudsmen, namely: Prof Ljubo Bavcon, honorary professor, a former President of the Council for Protection of Human Rights, Ivan Bizjak, the first Human Rights Ombudsman in the period 1994-2000, Matjaž Hanžek, Human Rights Ombudsman between 2001-2007, and Zdenka Čebašek - Travnik, PhD. The introductory speech to the debate was given by the Dean of the Faculty of Law, Prof Peter Grilc, and the debate was hosted and moderated by Ciril Ribičič, the President of the Society for Constitutional Law of Slovenia. In her contribution, the Ombudsman addressed the unexploited potential for the improvement of the protection of human rights today, especially in terms of cooperation between the Ombudsman, the Government and the Parliament. “This circle is virtually never exploited, even though mechanisms have been established through which this could work,” she warned. She especially highlighted the Ombudsman’s recommendations, which might be viewed by the Government and the Parliament as a proposition for improvements, instead of becoming the reason for mutual skirmishing in Parliament.

3.2.4 State authorities, local community authorities and holders of public powers

While handling individual initiatives and general issues in the area of the protection of human rights and fundamental freedoms, on the basis of statutory powers granted, the Ombudsman communicated with state authorities, local community authorities and holders of public powers on a daily basis. Most often explanations and additional information were requested in order to bring additional clarity regarding violations alleged in initiatives. At the closure of the handling of each individual case, the Ombudsman submitted to the authorities an opinion on the case handled. The Ombudsman regularly submitted reports from visits to institutions together with findings and recommendations for the elimination of violations or the inefficiency of responsible authorities. The Ombudsman summed up common conclusions into findings and recommendations, published in this Report at the end of the general text of each area discussed. The Ombudsman rarely used public warnings giving a priority to conversation or written communication in which open issues relating to the respect for human rights are generally solved in a more suitable manner. For that reason, the Ombudsman, Zdenka Čebašek - Travnik, PhD, and her colleagues regularly met with the ministers and representatives of state and local authorities in whose work violations of rights, inefficiency and unresponsiveness were encountered. These were working meetings organised by the Ombudsman at the Ombudsman’s Office or taking place in the offices of the mentioned state and local authorities (during the operations outside the office). More details of these meetings and communication with state and local community authorities are found in descriptions of individual cases and findings made by the Ombudsman presented in individual thematic sections (in Chapter 2 of this Report) and in tables regarding the Ombudsman’s activity. The Ombudsman reports every year to the National Assembly of the Republic of Slovenia on the work carried out, the work of institutions and on findings with regard to the level of respect for human rights and fundamental freedoms and legal certainty of citizens in the Republic of Slovenia. The Ombudsman handed the Report for 2011 to the President of the National Assembly, Dr Gregor Virant, on 28 June 2012, and to the President of the Republic, Dr Danilo Türk on 5 July 2012. The Prime Minister, Janez Janša, received the report by post due to his lack of time. In 2012, the Ombudsman also took part in a government session in which the Ombudsman’s Report for 2011 was dealt with.

The Ombudsman’s Report is discussed by individual working bodies and by the National Council of the Republic of Slovenia prior to the parliamentary plenary session. Due to complications with the adoption of the Ombudsman’s recommendations at the sessions of the Commission for Petition, Human Rights and Equal Opportunities, the first reading of the Annual Report in the National Assembly was held only on 30 January 2013.

Individual findings from the Report are also discussed at various conferences, congresses, panels, meetings and other events organised by state or local authorities, research and scientific institutions and civil society organisations. More about this is presented in the table-form reviews of the Ombudsman’s activities.

Ministry of Foreign Affairs

The Ombudsman had several conversations with the Minister of Foreign Affairs, Karl Erjavec. They met on 22 June 2012 in the premises of the Ministry of Foreign Affairs due to the insulting statements made by Mr Šter on POP TV. On 13 September 2012, in the Ombudsman’s Office, there was a working meeting with the Minister and his colleagues where the operation of the diplomatic missions and consular posts was discussed as well as labour law relations at the Ministry of Foreign Affairs, the cooperation with OSCE, the reasons for cancelling the Inter-sectoral Commission for Human Rights and for the Council of Europe. The Ombudsman specifically invited the Minister to intensify the procedures of ratification of international conventions acceded to by the Republic of Slovenia but not yet ratified. The cooperation with the Subcommittee on Prevention of Torture (OPCAT) was also discussed, as well as the cooperation with the European Fundamental Rights Agency (FRA) and the establishment of a Nation Institute or Centre for Human Rights.

In June, the news media reported that the Ombudsman should be that high state authority which supposedly strives to accelerate administrative procedures on behalf of a businessman suspected of a criminal activity concerning trafficking in human people (involving dancers from the Dominican Republic). By inquiring at the Ministry of Foreign Affairs, the Ombudsman did not strive for faster administrative procedures but was interested in the reasons for a relatively long-lasting procedure which should be verified by the Ombudsman in accordance with the law. Also in this case, the Ombudsman only performed the duties imposed by the law. The Ombudsman expressed to the Minister her protest in regard to the opinion of an official of the Ministry of Foreign Affairs concerning the abuse of the Ombudsman’s official position, in writing and in a conversation in person.

Ministry of Labour, Family and Social Affairs

On 5 June 2012, the Human Rights Ombudsman, Zdenka Čebašek - Travnik, PhD, received the Minister for Labour, Family and Social Affairs, Andrej Vizjak, MSc, and his colleagues at a working meeting. The topics that were discussed were: the new social legislation (information system, the lengthy procedures concerning decision-making), the Equalisation of Opportunities for Persons with Disabilities Act, the urgent modifications of the Mental Health Act, the Advocate of Children's Rights, the Advocate of the Principle of Equality, the issues concerning special social care institutions, the lengthy appeal procedures concerning social welfare payments, the updating of the list of physical disabilities, the organisation of graveyards of the victims of the post-WWII massacres, the signing and ratification of some of the Council of Europe Conventions (the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Convention on Children's Right to Contact), the envisaged modifications of the labour law legislation and unemployment.

On 10 July 2012, the Ombudsman visited Prekmurje together with the Minister of Labour, Family and Social Affairs, Andrej Vizjak, MSc. At the Murska Sobota Centre for Social Work they were informed of the problems associated with the implementation of the new social legislation, social conditions in the region and problems with the shortage of residential accommodation. They were also informed of the Roma House/Romano kher Project, aiming at enabling the successful entrance into the labour market of the Roma population.

Ministry of Agriculture and the Environment (Ministry of Infrastructure and Spatial Planning (the Environment))

On 7 June 2012, on their website, the Ministry of Agriculture and the Environment published a draft of the Act Amending the Environment Protection Act as well as a draft of the Act amending the Waters Act. The Ministry communicated that opinions and comments on draft regulation would be accepted up until 11 June 2012. The Ombudsman submitted to the Minister the opinion that a four-day time period for submitting comments on the draft regulation which could have an important impact on the environment is directly in conflict with the Environmental Protection Act and the Aarhus Convention.

On 13 July 2012, the Ombudsman met with the Minister of Agriculture and the Environment, Franc Bogovič. At the meeting, the Ombudsman informed the Minister about the publishing of The Human Rights Ombudsman's Report for 2011, in which some substantive issues concerning the area of agriculture and the environment are dealt with. Viewpoints concerning the implementation of the Waters Act were also exchanged, particularly in respect to the procedure and the dynamics of the issuing of permits in connection with water use and land adjacent to water, waste management and pollution of the environment and the envisaged measures of the Ministry. Attention was also dedicated to environment pollution (of the Mežica Valley and other areas), the functioning of the inspection services, the regulation of noxious smell emissions and the establishment of a system of obtaining authorisation for the implementation of permanent measuring, of monitoring and financing of the measuring.

Ministry of Defence

On 15 June 2012, the Human Rights Ombudsman, Zdenka Čebašek - Travnik, PhD, and her colleagues visited the Ministry of Defence where she was received by the Minister of Defence, Aleš Hojs, and his colleagues. The main topics of the conversation were mostly initiatives and issues concerning labour law matters under the responsibility of the Ministry dealt with by the Human Rights Ombudsman, and broader topics concerning the area of the protection of human rights and the human dignity of members of the Defence Forces.

Ministry of Health

On 11 May 2012, the Human Rights Ombudsman, Zdenka Čebašek - Travnik, PhD, and her colleagues received the Minister for Health, Tomaž Gantar, and the Director of Directorate of Health Care, Barbara Jamnik, at an introductory meeting. The topics discussed were: the preparation of the new health legislation, the awarding of concessions until the enforcement of the new Health Services Act, the amendments of the Mental Health Act, the paedo-psychiatric treatment of children, the use of special protection measures outside psychiatric institutions and social care institutions (there is a lack of appropriate legislation in this case), the construction of the Accident & Emergency Service building and the renovation of the Department of Haematology within the University Medical Centre Ljubljana, the functioning of the Department for Forensic Psychiatry at the Departments of Psychiatry (University Medical Centre Maribor), expert and administrative control (supervision) in health care, amendments to the Patient Rights Act, open issues concerning the Complementary and Alternative Medicine Act, the monitoring of the health condition of the population in environmentally endangered areas, the provision of funds for health care in retirement homes and other sectoral matters.

On 18 January 2012, the Ombudsman together with the Deputy Ombudsman, Tone Dolčič, and colleagues met with the representatives for patient rights and the Ombudsman of Patient Rights in the Ombudsman's Office.

The participants of the meeting noted that the recognizability of the representatives and the Ombudsman is growing and that both institutes are well accepted among the users. However, a series of problems were encountered and pointed out to the Ministry of Health, the Medical Chamber of Slovenia, maintainers of health care services and others. The conversation was concluded with an agreement on cooperation between the Ombudsman and the representatives of patient rights and the Ombudsman of Patient Rights in developing proposals for more efficient representation and enforcement of patient rights.

Ministry of Education, Science, Culture and Sport

The Ombudsman informed the Government of the Republic of Slovenia and the responsible bodies of the National Assembly of the Republic of Slovenia of the Ombudsman's opinion concerning the changes of standards and norms in upbringing and education, which have not been founded on expert arguments but only on a wish to enforce additional savings measures in the area of public finances. The Ombudsman expressed the opinion that savings measures in the area of public finances must not decrease the achieved standards in upbringing and education, particularly if these changes are not appropriately substantiated based on expert arguments. Very fast amendments to legislation, limitations of the public debate, an arrogant attitude towards people with different opinions and haggling about individual proposals do not contribute to the strengthening of the principles of the rule of law and the welfare state, and this was stressed by the Ombudsman in a letter.

Ministry of the Interior

On 20 June 2012, the Human Rights Ombudsman, Zdenka Čebašek - Travnik, PhD, met with Dr Vinko Gorenak at the Ministry of the Interior. Together with their colleagues, the Ombudsman and the Minister reviewed some initiatives dealt with by the Ombudsman and referring to the area of the Ministry of the Interior: the decreased amount of the monthly benefit for asylum-seekers, financial assistance for people in search of international protection, the arrangement of the status of "The Erased", the preparation of Police legislation, the resolution of the national program for the prevention and repression of criminality, the Police as the law enforcement authority and HR issues of the Police.

Ministry of Justice and Public Administration

On 23 November 2012, within the framework of regular ministerial meetings, the Human Rights Ombudsman, Zdenka Čebašek - Travnik, PhD, met with the Minister of Justice and Public Administration, Dr Senko Pličanič, and his colleagues for the first time. Some issues concerning the organisation and regulation of the public administration and judiciary were discussed. Attention was paid to the issue concerning the serving of a prison sentence and the provision of educational activities and work for prisoners, the weak implementation of alternative forms of serving a sentence, a need for organising and regulating the functioning of the Department of Forensic Psychiatry within the University Medical Centre Maribor and the reasons for the planning of the functioning of the Institute for Forensic Psychiatry. The legal vacuum in the functioning of the Unit for Forensic Psychiatry within the University Medical Centre Maribor which would occur with the merger of the penal and health care institution, would, according to the Minister's assurances, be filled by the end of the year with the amendments to the Enforcement of Criminal Sanctions Act. The necessity for the adoption of further measures for ensuring the protection of the right to trial without unnecessary delay was determined. The (lack of) functioning of the inspection services was discussed and it was concluded that measures for more efficient performance of inspection services would urgently need to be adopted. The agreement was reached that the efforts of some municipalities to provide new forms of free legal aid urgently need to be supported and measures for increasing the efficiency of the current statutory system concerning the provision of free legal aid need to be considered.

Round table discussion and reception on 10th December, the Human Rights Day

On Human Rights Day, on 10th December, the Human Rights Ombudsman of the Republic of Slovenia ("the Ombudsman") hosted a **round table discussion about the Advocate – Child's Voice Project** at the Faculty of Law in Ljubljana. The round table was a kind of concluding part of a public debate on the special report on the project, opened by the Ombudsman on the Day of Children's Rights on 20th November, when the adoption of the Convention on Children's Rights is celebrated. This was also an opportunity for the Ombudsman to present the special report to the wider public and to encourage expert and political debates about the Convention's future. The following persons presented their experiences and thoughts: Martina Jenkole, the Head of the Advocate – Child's Voice Project at the Ombudsman's Office, Dr Zoran Pavlovčič, Deputy Head of the Project, Majda Struc, a representative of coordinators and Advocates, Vlasta Nüssdorfer, a representative of NGOs operating within the project, Dr Darja Zaviršek, a representative of the Faculty of Social Work, a partner institution in the project, Dr Mateja Končina – Peternel, a representative of the Supreme Court of the Republic of Slovenia, and Lila Ovsenjak, a representative of the Murska Sobota Centre for Social Work. The round table was moderated by the Deputy Ombudsman, Tone Dolčič.

In the evening of the same day, the Human Rights Ombudsman, Zdenka Čebašek - Travnik, PhD, organised a **traditional reception for** the highest representatives of the authority, ambassadors, representatives of local communities, civil society and religious communities and universities. The honourable speaker was the President of the Constitutional Court, Dr Ernest Petrič.

3.2.5 The media

The Ombudsman strives to maintain good relations with the media, as by good cooperation with the media the Ombudsman may contribute to a higher level of respect for human rights and fundamental freedoms in society. On many occasions, the media reveals violations of human rights of individuals or groups of people and is therefore a very important source of information, while at the same time they inform the public of the Ombudsman's findings, standpoints and recommendations. The media has a very important role in shaping public opinion, which should be even more inclined to respect domestic and fundamental international standards for the protection of human rights. The Ombudsman protects individuals from unacceptable interventions of authorities with their fundamental rights. However, the Ombudsman cannot intervene in cases where rights are violated by entities under private law, a group to which the media also belong. They can also be violators of human rights.

The Ombudsman is aware of the fact that the use of modern means of communication (especially the internet) is becoming an increasingly important communication method. However, at the same time, the Ombudsman has found out that some social groups (members of ethnic groups, the elderly and others) have no access to the media. That is why the traditional media (newspapers and TV stations) are more important and so is cooperation with them. For that reason, the Ombudsman organizes an informal meeting once a year (always in January) with journalists and editors of the media houses, entitled Lunch with the Media.

The Ombudsman takes great care to reply to media initiatives and questions in a manner which is expertly argued, correct and swift and of good quality. The Ombudsman publicly responds when it is assessed that this is necessary from the point of view of the Ombudsman's role and authorities. As a matter of principle, the Ombudsman responds to questions concerning individual cases that have been dealt with, only after having obtained the relevant information from the responsible authorities.

In 2012, the Ombudsman received approximately 240 questions from journalists which is approximately 80 more than in the previous year.

In 2012, the media expressed the most interest in connection with the issues concerning **hate speech**: the statements by the poet Svetlana Makarovič, threats against the President of the Slovenian Democratic Party, Janez Janša, cheering at a football match, hate speech on the web sites: 24kul.si and iskreni.net. In the autumn, questions about the alleged hostility during protests were posed. In April, a lot of media attention was given to a planned lecture by the "cured homosexual" Luca Di Tolveo in the Postojna Youth Centre, and, in the same month, to the event Carinthian Heimatdienst in Celje. The Ombudsman opened a discussion with public experts in regard to the punishing of hate speech as an offence. More can be read about this in the Chapter on Constitutional Rights.

Compared to previous years, the number of questions from journalists on the subject of Roma themes was reduced. The Ombudsman received questions in connection with intolerance due to the moving of a Roma family, questions about the publishing of a special Ombudsman's report on living conditions of Roma people and on the expulsion of two representatives of Roma people from the Dolenjska region from the Roma Community Council.

A greater sensitivity on the part of the media was noticed regarding questions about **children's rights**, in connection with an alleged abuse of children for political purposes either by publishing children's personal details and revealing their identities in the procedures before the state authorities or in other circumstances. A topic attracting attention was the use of photographs of children for pre-election purposes. The Ombudsman also answered questions in regard to children with special needs, about problems of contacts with children, about child maintenance, about the keeping of an unaccompanied minor in the Centre for Aliens, about pornography in the must-read literary texts in elementary school syllabuses, on a report of boarders in the Slivnica Juvenile Institute and other areas pertinent to the protection of children's rights. The Ombudsman and Deputy Ombudsman, Tone Dolčič, participated in many talk programmes on radio and TV, dedicated to the protection of children's rights. In 2012, many questions from the media referred to the referendum on the Family Code.

In 2012, there were fewer question concerning poverty and social distress. However, the Ombudsman received more questions in connection with the new **social legislation and its consequences**. In the second half of the year, the Ombudsman lodged two challenges to the constitutionality of the Fiscal Balance Act (ZUJF), thus receiving a lot of media attention. The media attention and the Ombudsman's responses were dedicated to the severe social distress due to the increasing number of evictions. In terms of the number of questions received, the case of the Vaskrsič family especially stood out. Over the last few years, increased media attention in regard to questions of **ill-treatment and bullying** at the work place has been noticed.

In 2012, the Ombudsman and Deputy Ombudsmen also answered questions on violations of rights in the following fields or issues: in football, abuse of archival material in case of poet, writer and translator Veno Taufer, problems when enrolling into the nursing care study programme, equality between men and women, pollution in the Celje and Mežica valleys, direct execution of notarial deeds and possibilities of appeal, established violations of human rights concerning deaf people, people with hearing impairment and deaf and blind people, threats to academic freedom at the Faculty of Humanistic Studies at the University of Primorska, the alleged intervention of the Ombudsman at the Ministry of Foreign Affairs regarding a work permit of a female from the Dominican Republic (a case of human trafficking), the amendments of the International Protection Act, damages due to Slovenians mobilised into the German army, extremist organisations in Slovenia and the lack of appointment of an alternate member of the municipality council in Ilirska Bistrica. After the Ombudsman's meeting with the Minister of Justice, questions about statistics of the judiciary arrived. Questions on the conditions in Slovenian prisons have become a regular question almost every year. The Ombudsman was also invited to comment on a decision by the Roman-Catholic Church intending to "deploy" Archbishop Uran to Rome.

Considering the end of the term of office of the Ombudsman, Zdenka Čebašek - Travnik, PhD, more interest was expected in the procedures for the election of a new Ombudsman, however, the media was interested in the Ombudsman's personal plans after the end of the mandate. In June, the FRA agency published a tender for an independent member and an alternate member for the Board of Directors of the FRA agency for the period from August 2012 to July 2017. The tender was published on the website of the Ministry of Foreign Affairs.

On the Ombudsman's website, **cases considered by the Ombudsman** are published on a weekly basis with the aim of informing the public about the Ombudsman's findings in regard to alleged violations of human rights and on possible methods and solutions in cases which may be similar to their own. Cases also received more attention from the expert public. In 2012, exceptional attention was paid by the expert public, the media and laymen to the case of a circumcision of a child for non-medical purposes. Some attention was also given to cases regarding disciplinary procedure against an attorney-at-law, the use of mobile phones in schools and the opening of a Facebook profile for a child.

In 2012, the Ombudsman held **20 press conferences**; 11 of these were held during operations outside the main office, five at the Ombudsman's Office in Ljubljana and four after the conclusion of meetings with ministers. At the Ombudsman's Office, the Ombudsman presented the functioning of the National Preventive Mechanism, the main points of the Ombudsman's Annual Report for 2011, the challenge to constitutionality of Article 143 of the Fiscal Balance Act. The last conference was dedicated to the threats to the Ombudsman and information on the future activities of the Ombudsman before the expiry of the term of office. Also in 2012, it was noticed that in public, the right to a healthy living environment is still not understood as a fundamental human right, which is why the Ombudsman paid more attention to this problem and held a press conference on the topic. In 2012, the Ombudsman gave nine extensive interviews to the media houses.

3.2.6 Publishing activities

The seventeenth regular Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2011 was published in May 2012. On 28 June 2012, the Ombudsman, Zdenka Čebašek - Travnik, PhD, handed the report to the President of the National Assembly, Dr Gregor Virant. Owing to the reduction of funds for the Ombudsman's operation and a general orientation towards saving in society, only 700 copies of the Report were printed and not 1,400 copies as in 2011. The extensive report, comprising 430 pages and constituting a unique contemporary document, was forwarded to the Deputies of the National Assembly, Ministers, the main institutions of the country and to all the public libraries in Slovenia. Many institutions were informed that an electronic version of the Report is accessible on the Ombudsman's website: www.varuh-rs.si

A summary (in English) of the Annual Report for 2011 was printed in 300 copies and not 700 copies as in the year before. It was forwarded to state authorities, to all Representations of the Republic of Slovenia abroad, to Permanent Representations of the Republic of Slovenia to international organisations, Embassies of foreign countries in Slovenia, to all Ombudsmen in Europe and to selected Ombudsmen around the world.

The Ombudsman's fourth report on the implementation of the duties and powers of the National Preventive Mechanism (NPM) under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was developed in Slovenian and in English. The report, a table overview of the NPM's activities, the convention and the protocols and Ombudsman's documents were designed and published jointly in English and Slovenian. Two important documents were added: the UN General Assembly Resolution: Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (2011) and General Report CPT 2010-2011 (abstract from page 39 to page 50): Solitary Confinement of Prisoners.

The Ombudsman's Newsletter Number 17 – Enforcement of employment rights. In November 2012, an electronic publication was published with browsing possibilities and made available to the public on the Ombudsman's website: www.varuh-rs.si. Nine articles on the subject discussed, a selection of initiatives dealt with by the Ombudsman and information connected with the articles (in the special column Good to Know) were published in the newsletter.

A flyer was produced to promote the newsletter, distributed on various different occasions thus drawing attention to issues connected to the enforcing of employment rights and published in a special, new electronic form of newsletter.

All the abovementioned publications are available on the Ombudsman's website (www.varuh-rs.si) where it is possible to download them for free and print them.

3.3 INTERNATIONAL COOPERATION

Cooperation with the United Nations (UN)

From 31 January to 6 February 2012

Within the framework of regular visits, the delegation of the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") made its fourth visit to Slovenia. On the first day, a consultation was held between the delegation and Aleš Zalar, the Minister of Justice, and representatives of other Ministries. The Ombudsman, Zdenka Čebašek - Travnik, PhD, Deputy Ombudsman, Ivan Šelih, and the Head of the NPM (National Preventive Mechanism under the Optional Protocol to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment), participated at the meeting. At the Ombudsman's Office, the CPT's delegation held interviews with the Ombudsman and Ombudsman's representatives of the NPM and representatives of NGOs; the following persons also took part in these conversations: Ivan Šelih, Deputy Ombudsman, Jure Markič, MSc, Robert Gačnik, Andreja Srebotnik, Miha Horvat, Advisers to the Ombudsman, Srečko Brumen, Slavica Smrtnik, Sonja Škrabec Štefančič, Novi pradoks, Vladimira Klun Žerjav, a nurse, Stanka Radojčič, the Commission for Mental Health and a representative of persons active in the field of mental health. The CPT delegation consisted of the following persons: Latif Hüsejnov (Azerbaijan), the President of the CPT and the Head of the delegation, Marija Definis Gojanović (Croatia), Stefan Krakowski (Sweden), Jörgen Worsaae Rasmussen (Denmark) and Antonius van Kalmthout (the Netherlands). The concluding conversation took place at the Ministry of Justice on 6 February.

27 November 2012

The Advisers to the Ombudsman, Mojca Valjavec and Barbara Kranjc, participated in a concluding meeting of the Participatory Assessment 2012 Project (AGDM) in Ljubljana, where results of the project were presented. Every year, the UNHCR, in cooperation with its main partners, carries out an extensive project with the aim of better assessing the situation of refugees entitled to humanitarian protection and persons without citizenship, on the basis of a structured dialogue with persons of different ages and coming from different social environments. In 2012, the targeted group were asylum seekers and the main question was whether services which are dedicated to them and designed by UNHCR, NVO and various governments are suitable and what treatment is provided by those institutions for these persons.

27 November 2012

The Ombudsman's Adviser, Mojca Valjavec, participated at the workshop: Advanced SGBV Training »Working with Communities from an Age, Gender and Diversity (AGD) Perspective – Partnerships & Integration«, aiming at improving the knowledge of participants in their work against violence based on gender. The United Nations Refugee Agency (UNHCR)

4 December 2012

The Ombudsman, Zdenka Čebašek - Travnik, PhD, and Deputy Ombudsman, Jernej Rovšek, received Gottfried Koefner, a regional representative of the UNHCR for Central Europe, his deputy Caroline Van Buren and William Ejalu. The cooperation with the Ombudsman was evaluated as having been good and some cooperation on the project was especially complimented. Some problems were pointed out, also established by the Ombudsman, and they were interested in the regularization of the status of "The Erased" following the ECHR judgment.

Cooperation with the Council of Europe

From 20 to 21 March 2012

The Deputy Ombudsman, Ivan Šelih, participated at the 8th thematic workshop on National Preventive Mechanisms (NPM Project 8th Thematic NPM Workshop) taking place in Geneva (Switzerland) where the greatest attention was given to migration processes, deportations and preventive monitoring. The conference was organised by the Council of Europe and the European Commission in cooperation with the Swiss NPM, specifically, within the common project Setting up an active network of National Preventive Mechanisms against torture, an activity of the Peer-to-Peer Network.

21 March 2012

The Ombudsman, Zdenka Čebašek - Travnik, PhD, met with the Council of Europe Commissioner for Human Rights, Thomas Hammarberg in the offices of the President of the Republic of Slovenia, Dr Danilo Türk. Mr Hammarberg's successor, Nils Muižnieks, also took part in the meeting. Representatives of civil society participated during the conversation concerning current issues in regard to human rights in Slovenia and Europe.

From 31 May

The Ombudsman, Zdenka Čebašek - Travnik, PhD, participated in a seminar by the European Commission against Racism and Intolerance (ECRI), taking place at the seat of the Council of Europe in Strasbourg. The seminar was organised for independent national bodies, fighting against racism and intolerance. The main theme of the seminar was the organisation and efficiency of individual specialised bodies in their fight against racism and discrimination, with the integration of different organisations for the protection of human rights in individual countries being the issue at the forefront of the discussion. Cases from France were presented where the merger of the organisation had been made within the scope of the Ombudsman's organisation, and from Great Britain where a joint commission for equality and human rights had been established.

From 12 to 13 June 2012

The Ombudsman's Adviser, Robert Gačnik, attended the 9th concluding thematic workshop for National Preventive Mechanisms: European NPM Project 9th Thematic NPM Workshop on »Irregular migrants, Frontex and the NPMs«. In terms of content, the work was based on debates from the 8th workshop on deportations by aircraft, while this time also including deportations on land, and interception and deportations by sea. The workshop was also an opportunity for an exchange of views and experiences between the NPM representatives and Frontex, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

11 December 2012

The Ombudsman's Adviser, Mojca Valjavec, took part in an international seminar in Belgrade in regard to the Ombudsman's role in the control of permanently displaced persons, which was organised by the Council of Europe.

13 December 2012

The Deputy Ombudsman, Jernej Rovšek, met with participants from the region (the Balkan and neighbouring countries) and EU countries in Budva (Montenegro). At the conference, the challenge of self-regulation in the traditional and new media was discussed. In addition, the accountability and authority of bodies within the scope of the support provided for the freedom of speech, experiences of the media bodies in other countries (South Caucasus, Moldova, Russia, Tajikistan, Ukraine) were discussed, and the issues in regard to the media being viewed from the aspect of the public and private interest, challenges to occupational standards in the region and possibilities for regional cooperation in the region of Southeast Europe. The conference was organised by the Council of Europe (the Media Department) in cooperation with the Media council of Montenegro.

13 December 2012

The Deputy Ombudsmen, Kornelija Marzel, MSc, and Tone Dolčič, received the GRETA Committee (Davor Derenčinovič, Alexandra Malangone, and David Dolidze). The visit of the group of experts in the field of action against human trafficking (GRETA) was dedicated to the first phase of evaluating the implementation of the Council of Europe Convention on Action against Human Trafficking. The authorities that had been granted and the main areas of work of the Human Rights Ombudsman were presented, together with the main issues which the Ombudsman deals with in regard to foreigners and asylum seekers.

Cooperation with OSCE

3 April 2012 — The Ombudsman, Zdenka Čebašek - Travnik, PhD, and the Deputy Ombudsman, Jernej Povšek, participated at the international conference on the Cooperation of the National Parliaments and Independent Regulatory Bodies in Southeast Europe, taking place in the National Assembly of Serbia in Belgrade. Within the framework of the panel group composed of Ombudsmen from individual countries who hold different authorities, the Ombudsman presented experiences from Slovenia and talked about the Ombudsman's Annual Report as a tool to be used by Members of Parliament for their monitoring of the executive branch of power. The conference was organised by the Serbian parliament and the European Movement Serbia, in cooperation with the OSCE (the Organisation for Security and Co-operation in Europe).

17 October 2012 — In Warsaw (Poland), Zdenka Čebašek - Travnik, PhD, participated at a round table discussion on how to improve and make more concrete the cooperation between international or national players, functioning in the area of human rights (National Human Rights Institutions (NHRIs), the United Nations (UN), the European Agency for Fundamental Rights, Ombudsmen and OSCE Office for Democratic Institutions and human rights (ODHIR) from the region).

14 November 2012 — The Deputy Ombudsman, Ivan Šelih, participated at the 4th East-European Conference on National Preventive Mechanisms in Odessa (Ukraine) where approximately 40 participants took part in a debate concerning the future functioning of the recently established mechanism in Ukraine. The conference was organised by OSCE and Ukraine's Ombudsman.

3 December 2012 — The Deputy Ombudsman, Kornelija Marzel, MSc, met with representatives of NHRI, the National Human Rights Institutions in Europe, in Sarajevo (BiH) where a Regional Expert Workshop concerning National Human Rights Institutions for the protection of human rights and gender equality was held. The strategies for protection and promotion as well as cooperation with civil society were discussed. The workshop was organised by the Organization for Security and Co-operation in Europe (OSCE).

Cooperation with the European Ombudsman and FRA

From 18. to 20 April 2012 — The Ombudsman, Zdenka Čebašek - Travnik, PhD, and the Deputy Ombudsman, Kornelija Marzel, MSc, participated at two events taking place at the main office of FRA, the European Union Agency for Fundamental Rights in Vienna:

On 18 April 2012, they actively participated at the annual meeting between the FRA and National Human Rights Institutions (NHRI), on 19 and on 20 April, they participated at the 5th annual meeting of the Fundamental Rights Platform, FRP.

At the meeting with the NHRI, the main attention was dedicated to the mutual cooperation and coordination between the FRA, NHRI and Ombudsmen. The participants raised questions concerning the increased number of National Human Rights Institutions, among other matters. The topics discussed were: the integration of Roma people, the common European asylum policy, border management, the issue concerning the disability of people and access to efficient and independent judiciary institutions. As the Head of the first group, discussing the issue concerning the integration of Roma people in society, cases of good practice in Slovenia were presented by the Ombudsman. Within the framework of the FRA, more attention was dedicated to the role of civil society organisations for the protection of fundamental rights and freedoms, to the future cooperation between the NHRI and organisations for the protection of the principle of equality (Equality bodies, EB).

24 June 2012 — The Deputy Ombudsman, Jernej Rovšek, participated at the 8th Liaison Seminar of the European Network of Ombudsmen in Strasbourg (France) where the following topics were discussed: the possibilities of the European Citizens' Initiative, introduced by the Treaty of Lisbon, the functioning of the Committee on Petitions of the European Parliament, the handling of appeals, the organisation and reorganisation of the Ombudsman's work, the role of the Ombudsman network, challenges of human rights in the time of crisis, the establishment of a Human Rights Centre within the Ombudsman's structure and the Ombudsman's role in the protection of people who have been detained. The seminar was organised by the European Ombudsman.

23 October 2012 — The Human Rights Ombudsman, Zdenka Čebašek - Travnik, PhD, had a meeting with the director of the European Union Agency for Fundamental Rights (FRA), Morten Kjaerum (during his visit to Slovenia) discussing the importance of the functioning of the FRA for the development of national strategies for the protection of human rights. The cooperation between the Ombudsman and the FRA was evaluated as successful and very useful. They were both of the opinion that the functioning of an independent National Institution for Human Rights (NIHR) in Slovenia is urgent; its establishment has been continually championed by the Ombudsman in relation to the authorities, emphasizing the importance of such an institution. The Ombudsman also proposed that the FRA establish subsidiaries in Member States which would simultaneously function as independent National Institutions for Human Rights.

6 December 2012 — The Deputy Ombudsman, Jernej Rovšek, participated at the annual conference of the EU Agency for Fundamental Rights (FRA) taking place in the offices of the European Parliament in Brussels. The topics concerning the accessibility of rights and legal certainty in times of increased public savings and austerity measures were discussed.

19 December 2012 — The Ombudsman, Zdenka Čebašek - Travnik, PhD, participated in the award-giving ceremony of the Sakharov prize for the freedom of thought at the premises of the Information Office of the European Parliament. This year the Sakharov prize was awarded by the European Parliament to an Iranian human rights activists, an attorney-at-law, Nasrin Sotudeh, and a movie director, Džafar Panahi.

Cooperation between national Ombudsmen and international conferences

18 February 2012 — The Ombudsman, Zdenka Čebašek - Travnik, PhD, met with the Ombudsman of Serbia, Sašo Janković in Kamnik. The current issues regarding the protection of human rights in both countries were discussed.

From 23 to 29 February 2012 — The Ombudsman, Zdenka Čebašek - Travnik, PhD, participated at events (workshop and round table discussions) held within the framework of regional cooperation in Tashkent (Uzbekistan) organised by the Human Rights Ombudsman of the Republic of Slovenia and the Ombudsman of Uzbekistan. The following topics were presented by the Ombudsman: models and practices of the operation of Ombudsmen, the operation of the Ombudsman in Slovenia, especially the mandate for investigations of violations claimed by initiators and the impacts of recommendations to authorities.

5 April 2012 — Upon the invitation of the Serbian Ombudsman, Saša Janković, the Ombudsman, Zdenka Čebašek - Travnik, PhD, participated at a working meeting, attended also by the Ombudsman of Bosnia and Herzegovina, Ljubomir Sandić. The differences and similarities between Ombudsmen were discussed, in particular regarding their powers over the work of the courts, circumcision of children for religion purposes, and providing for the anonymity of procedures before the Ombudsman, among other issues.

16 and 17 May 2012 — The Deputy Ombudsman, Tone Dolčič, and the Ombudsman's Adviser, Lan Vošnjak, participated at a themed meeting of the Network of Ombudsmen for Children in South-East Europe, in Podgorica (Montenegro). The topic discussed at the meeting was the protection of children against sexual exploitation and abuses. The meeting was organised by the Ombudsman from Montenegro (the President of the Network for 2012) in cooperation with the Save the Children organisation.

17 June 2012 — The Deputy Ombudsman, Tone Dolčič, participated at an international conference in Baku (Azerbaijan), organised by the Ombudsman of Azerbaijan upon the 10th anniversary of the functioning of the institution. The role of the Slovenian Ombudsman as the National Preventive Mechanism was presented, with a special emphasis given to persons in detention.

25 July 2012 — The Deputy Ombudsman, Ivan Šelih, participated at a conference to celebrate the 5th anniversary of the establishment of the National Preventive Mechanism of the Republic of Moldova, in Chişinău (Moldova). The standards and mechanisms for the active prevention of torture and legal framework of the institute's functioning were discussed at the conference.

19 November 2012 — The Ombudsman, Zdenka Čebašek - Travnik, PhD, met with the Ombudsman of Serbia Sašo Janković, in Kamnik. The current issues regarding the protection of human rights in both countries were discussed.

22 November 2012 — The Ombudsman, Zdenka Čebašek - Travnik, PhD, and her colleagues (the Deputy Ombudsman, Ivan Šelih, and the Ombudsman's Advisers, Robert Gačnik, Andreja Srebotnik and Jure Markič, MSc) received representatives of the National Preventive Mechanism of Croatia functioning within the Croatian Ombudsman structure. The six person delegation of experts was led by the Deputy Ombudsman, Željko Thür. Experiences concerning the functioning of both preventive mechanisms (NPM) were exchanged.

Cooperation between IOI, EOI and AOM

11 June 2012 — The Deputy Ombudsman, Tone Dolčič, participated at the 6th meeting of Ombudsmen from the Mediterranean countries organised in Paris by AOM (Association of Mediterranean Ombudsmen). The meeting, held in the premises of the Arab World Institute, was attended by representatives of the majority of Mediterranean countries and some European institutions (the Council of Europe, the European Ombudsman, the Venice Commission). The role of the Ombudsman in regard to public administration, the respect of Ombudsmen's recommendations, the possibilities of bringing the Ombudsman's work closer to people and the work of Ombudsmen in regard to migrants were discussed.

Cooperation with other international, intergovernmental and nongovernmental organisations and universities

10 May 2012 — By presenting the functioning of the Human Rights Ombudsman of the Republic of Slovenia, the Deputy Ombudsman, Jernej Rovšek, participated at a discussion held during the study visit of members of the Commission for the Control of the Security and Intelligence Services of the Kosovo Parliament. The meeting was organised by the Geneva Centre for Democratic Control of Armed Forces (DCAF) in Ljubljana.

25 May 2012 — The Ombudsman participated at the conference on the challenges and opportunities of institutions for the protection of human rights/Ombudsmen for better efficiency in the area of the armed forces, which was organised by the Centre for Security, Development and the Rule of Law (DCAF).

5 December 2012 — The Ombudsman, Zdenka Čebašek - Travnik, PhD, participated at an international DCAF workshop: Bringing Together the Watchdogs. At the conference, the control of the intelligence agencies of the Western Balkans was evaluated and the strengthening of control was discussed in order for these agencies, to remain efficient in protecting their countries' citizens, while observing democratic standards, and providing national security and human rights. The workshop took place in Ljubljana.

Cooperation with embassies of other countries and representations of the Republic of Slovenia

16 April 2012 — Upon the invitation of the Ambassador of Finland, the Ombudsman, Zdenka Čebašek - Travnik, PhD, participated in a meeting on current issues regarding the protection of human rights and freedoms in Slovenia. The meeting was also attended by the members of a delegation of the Finnish parliament and some well known Slovenian lawyers. The discussion was intended to discuss the current issues regarding the protection of human rights and fundamental freedoms in Slovenia.

17 January 2012 — The Deputy Ombudsman, Kornelija Marzel, participated at the 20th anniversary celebration of the establishment of diplomatic relations between Slovenia and Austria, organised by the Austrian embassy in Slovenia. The translation of a book by Martin Eichtinger and Helmut Wohnout on a former Austrian minister of Foreign Affairs, Alois Mock, was presented at the event.

26 January 2012 — The Deputy Ombudsman, Kornelija Marzel, participated at the reception held by the Indian Ambassador to Slovenia, His Excellence, Jayakar Jerome, on the National Independence day of India.

3.4 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 sum of 2,030,000.00 euros was allotted in the budget by the National Assembly of the Republic of Slovenia for the operation of the institution in 2012. The funds were divided into three sub-programmes, specifically:

- **Protection of human rights and fundamental freedoms**;
- **Implementation of tasks and authority under the NPM** (National Preventive Mechanism, NPM);
- **Office of the Children's Advocate** (this is also the title of the budget item; these are funds intended for a pilot project called Advocate – Child's Voice Project, which has taken place since 2007).

In 2012, the Ombudsman's Office had at its disposal some appropriations from the previous budget period and from 2012:

- from the disposal of assets: **4,635.00 euros**;
- received from compensation/damages: **8,150.00 euros**.

The total of transferred appropriations amounted to **12,785.00 euros.**

At the end of 2011, the Ombudsman concluded an agreement with the Council of Europe to organise the Third Annual Meeting of Heads and Contact Persons of National Preventive Mechanisms, Committee and Sub-Committee for the Prevention of Torture, and the Fifth Annual Meeting of Contact Persons of national structures for the protection of human rights (NHRI). 27.580,00 euros of grants were received from the Council of Europe for the implementation of these events. The NPM and NHRI events took place between 5 and 7 December 2011 in Brdo pri Kranju. The invoices for services performed and work carried out with regard to the conference became due at the beginning of 2012. As a result, the donated funds were used in January 2012, in the sum of 23,412.00 euros, and the residual balance in the sum of 4,168.00 were paid back to the Council of Europe.

For salaries of employees at the Human Rights Ombudsman's Office, additional financial funds were provided by the Ministry of Finance in December 2012, specifically, in the sum of 40,500.00 euros (34,000.00 euros for the sub-program Protection of human rights and 6,500.00 euros for the sub-program Implementation of tasks and authorities under the NPM). The reason for the deficit in the Ombudsman's salary payment items was the newly adopted legislation in the field of salaries and employment, as derived from the Fiscal Balance Act adopted in May 2012.

Hence, in 2012, there was a total amount of 2,083,285.00 euros made available for the Ombudsman.

Due to the budgetary restrictions and austerity measures adopted by the Slovenian Government in 2012, the Ombudsman strictly limited the training of employees and carefully and very restrictively used the financial funds categorised under the budget item "material costs". The Ombudsman decreased expenditure on rent, for publishing, student work and other services. Due to the abovementioned state of affairs, as of the end of the year, the Ombudsman used fewer financial funds than had been allotted (with the exception of the budgetary item with funds for the salaries of employees), specifically, in the total amount of 2,037,407.00 euros. At the end of the year, the Ombudsman returned to the budget 33,093.00 euros. The funds in the sum of 12,785.00 euros (from the selling of assets 4,635.00 euros and 8,150.00 euros from received compensation/damages) were transferred to the 2013 budget.

The table FINANCE OF THE OMBUDSMAN IN 2012 shows a detailed distribution of funds and expenditures with regard to individual Ombudsman sub-programmes

	Allocated funds (AB) in EUR	Applciable budget (AB) in EUR	Used funds in EUR	Funds in regard to AB in EUR
Human Rights Ombudsman of RS	**2.030.000**	**2.083.285**	**2.037.407**	**45.878**
SUB-PROGRAMMES				
Protection of human rights and fundamental freedoms	**1.847.139**	**1.881.139**	**1.850.025**	**31.114**
Wages	1.389.240	1.438.240	1.428.329	9.911
Material costs	419.454	404.454	384.685	19.769
Investments	15.033	15.033	13.599	1.434
NPM and NHRS conference	23.412	23.412	23.412	0
Implementation of duties and authority under NPM	**119.597**	**126.097**	**124.288**	**1.809**
Wages	101.278	107.778	107.452	326
Costs of material	9.697	9.697	8.974	723
Cooperation with NGOs	8.622	8.662	7.862	760
Office of Advocates of Children	**63.264**	**63.264**	**63.094**	**170**
Increased workload and contributions	10.264	10.606	10.592	14
Costs of material	53.000	52.658	52.502	156
Earmarked funds	**0**	**12.785**	**0**	**12.785**
Funds from compensation	0	8.150	0	8.150
Funds from the sale of state assets	0	4.635	0	4.635

3.5 EMPLOYEES

As of 31 December 2012, there were 40 persons employed at the Office of the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman). There were 6 high officials (the Ombudsman, 4 Deputy Ombudsmen and the Secretary-General), 23 officials, 9 employed in expert-technical services, and 2 public employees in temporary employment. 29 employees hold a University degree (2 of them PhDs, five Masters of Science), 7 hold a vocational higher education degree (2 a specialisation degree), 1 employee holds a higher education degree and 3 a secondary education diploma. During the year, 3 public sector employees retired, and their tasks were divided among other employees. In comparison to previous years, the number of employees was reduced.

There are 21 employees in the expert service, 19 of them as officials and 2 public sector employees, employed in official work positions as temporary employment. The expert service of the Ombudsman carries out expert tasks for the Ombudsman and Deputy Ombudsmen in individual fields of authority of the Ombudsman: classifying initiatives, tending to the progress of the administration of initiatives and dealing with initiatives, developing opinions, proposals and recommendations, carrying out investigations and producing reports on findings in relation to initiatives and submitting information to the initiators with regard to their initiatives.

3.6 STATISTICS

This subchapter presents statistical data regarding cases being handled by the Human Rights Ombudsman of RS (Ombudsman) in the period from 1 January to 31 December 2012.

1. **Open cases in 2012:** open cases are initiatives that reached the Ombudsman's address.

2. **Cases being handled in 2012:** in addition to open cases in 2012, cases also include:

- *transferred cases* – unfinished cases from 2011 which were dealt with in 2012

- *reopened cases* – cases for which the handling procedure before the Ombudsman was concluded as of 31 December 2011 but their consideration continued in 2012 as a result of substantial new 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 2011 but only among cases handled in 2012.

3. **Closed cases:** all cases being handled in 2012 and concluded by 31 December 2012 are taken into account.

Open cases

In 2012, the Ombudsman received 655 more initiatives than in the year before. From 1 January to 31 December 2012, 3,167 cases were opened (in 2011, 2.512). Most cases were received directly from initiators, mostly in written form (2,717 or 85.8%). When operating outside the main office 58 initiatives were received, 3 submitted over the telephone, 11 by means of official notes and 7 initiatives as cases referred from other state authorities. The Ombudsman opened 69 cases on her own initiative (2.2 percent of all initiatives). The Ombudsman also received 267 initiatives as courtesy copies and 35 anonymous initiatives.

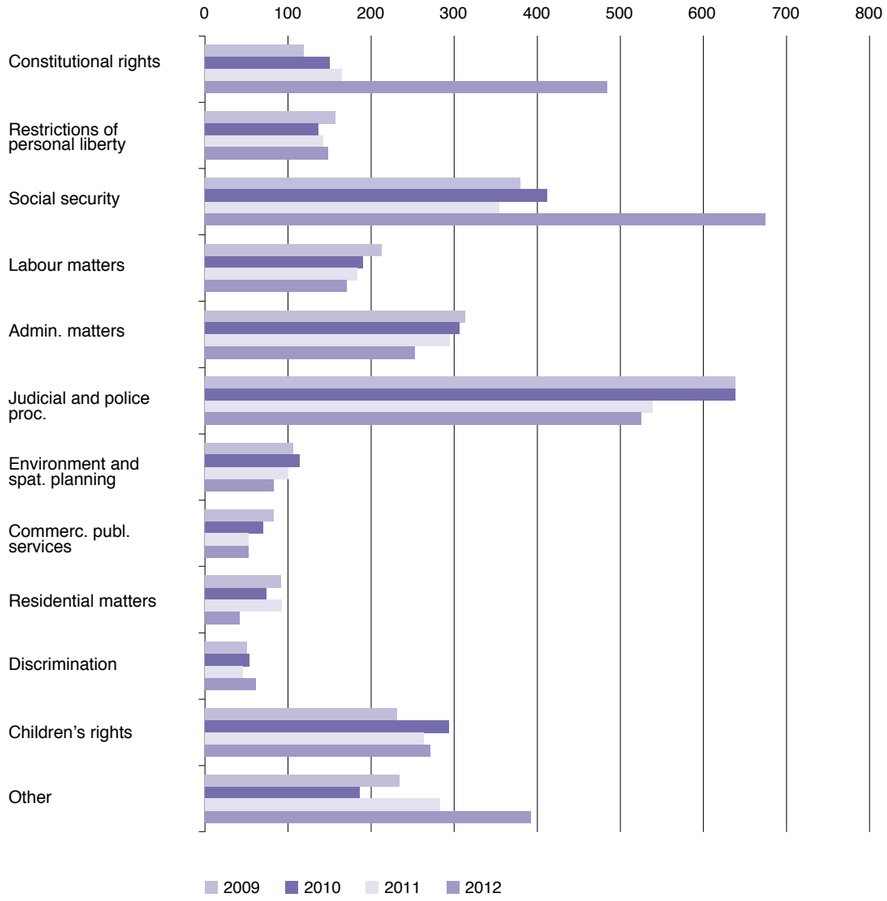
Table 3.6.1: The number of open cases before the Human Rights Ombudsman of the Republic of Slovenia for the period between 2009–2012, by individual areas of work

AREA OF WORK	OPEN CASES								Index (12/11)
	2009		2010		2011		2012		
	Number	Share	Number	Share	Number	Share	Number	Share	
1. Constitutional rights	119	4.5 %	150	5.7 %	165	6.6 %	482	15.2 %	292.1
2. Restrictions of personal liberty	159	6.1 %	137	5.2 %	144	5.7 %	153	4.8 %	106.3
3. Social security	373	14.2 %	409	15.6 %	352	14.0 %	669	21.1 %	190.1
4. Labour law	213	8.1 %	191	7.3 %	187	7.4 %	175	5.5 %	93.6
5. Administrative matters	311	11.9 %	309	11.8 %	292	11.6 %	258	8.1 %	88.4
6. Judicial proceedings and police procedures	639	24.4 %	638	24.4 %	544	21.7 %	523	16.5 %	96.1
7. Environment and spatial planning	104	4.0 %	113	4.3 %	99	3.9 %	80	2.5 %	80.8
8. Public utility services	80	3.0 %	66	2.5 %	52	2.1 %	51	1.6 %	98.1
9. Housing matters	92	3.5 %	74	2.8 %	93	3.7 %	44	1.4 %	47.3
10. Discrimination	52	2.0 %	54	2.1 %	49	2.0 %	65	2.1 %	132.7
11. Children's rights	236	9.0 %	293	11.2 %	261	10.4 %	272	8.6 %	104.2
12. Other	245	9.3 %	186	7.1 %	274	10.9 %	395	12.5 %	144.2
TOTAL	**2.623**	**100.0 %**	**2.620**	**100.0 %**	**2.512**	**100.0 %**	**3.167**	**100.0 %**	**126.1**

In contrast with previous years, when initiatives from the field of Judicial proceedings and police procedures dominated the initiatives, the greatest number of cases opened in 2012 concerned Social security (699 or 21.1%). This category was followed by: Judicial proceedings and police procedures (523 or 16.5 %) and Constitutional rights (482 or 15.2% of all open cases).

It is clearly shown in the table 3.6.1 and figure 3.6.1 that the number of open cases in 2012 increased in comparison to 2011 in the areas of Constitutional rights (from 165 to 482 or for 192.1%) and Social security (from 352 to 699 or for 90.1%). A detailed explanation of reasons for the dramatic increase in these fields is given in the second Chapter of this report. The greatest decrease in number of open cases in 2012 as compared to 2011 is noticed in the areas of Housing matters (by 52.7%) and Environment and spatial planning (by 19.2%).

Figure 3.6.1: Comparison between the number of open cases by individual areas of the work of the Human Rights Ombudsman of the Republic of Slovenia in the period from 2009-2012



Open cases by region

The Table 3.6.2 provides an overview of open cases according to statistical regions and administrative units. Also in 2012, the same basis concerning the geographical division of the Republic of Slovenia (Ivan Gams: Geografske značilnosti Slovenije (Geographical Characteristics of Slovenia), Ljubljana, Mladinska knjiga, 1992) was used in the classification of open cases according to regions and administrative units. As a criterion for division of cases by individual administrative units, the permanent residence of an initiator was taken into account, or, in cases of a person serving a prison sentence or a person being treated in a mental institution, the place of their temporary residence (the prison or mental institution).

Among 3.167 cases opened in 2012, there were also 39 cases regarding citizens of other countries (mostly from Bosnia and Herzegovina, Serbia and Montenegro). 104 anonymous initiatives or general cases were added to this category. A general case is opened only if broader issues are concerned, and it is not only the handling of an individual problem. The handling of general cases may be initiated upon the Ombudsman's initiative or on the basis of one or more content-related cases which are an indication of broader issues. Similar to 2011, also this year, the number of initiatives received by e-mail needs to be pointed out: in 2012, 783 initiatives were received while in 2011, 425 were received, which signifies a rise in initiatives by 84.2%.

The greatest number of cases opened in 2012 came from the Central Slovenia Region (802 or 25.3% of all cases), of this number, 598 cases originated from Ljubljana Administrative Unit; 313 cases or 9.9% from the Drava Region, of this number, there were 201 from the Maribor Administrative Unit and 228 cases from the Savinja Region or 7.2% of all open cases. According to percentages, the greatest uptake of cases in 2012, as compared to 2011, is noticed in the Inner Carniola–Karst region: from 31 to 54 cases (a 74.2 % increase), in the Gorizia region: from 71 to 101 cases (a 42.3 % increase) and in the Mura Region: from 120 to 170 cases (41.7% increase). A decrease of the uptake of cases in 2012 as compared to 2011 is noticed only in the Lower Carniola Region: from 149 to 134 (10.1% decrease).

The table 3.6.2 shows data on the number of cases per 1000 inhabitants by individual administrative units and regions. The data from the Statistical Office of the Republic of Slovenia published at their data portal SI- STAT was taken as a source of information regarding the numbers of inhabitants in administrative units, more specifically, from the table: Inhabitants by five-year age groups and gender, administrative units, Slovenia, Biannual Report, 1 July 2012. The greatest number of cases per 1000 inhabitants was opened in the Mura and the Ljubljana regions (if the Lower Carniola Region is excluded: 1.21 cases, mostly due to the Dob pri Mirni Prison in the Trebnje Administrative Unit, where cases concerning prisoners are included). In the Mura region, the Murska Sobota Administrative Unit stands out with 1.43 cases per 1000 inhabitants in which 1.9 cases per 1000 inhabitants were opened by the Ombudsman; in the Central Slovenia Region (1.41 cases per 1000 inhabitants), the Ljubljana Administrative Unit stands out with 1.72 cases per 1000 inhabitants. The least cases per 1000 inhabitants were opened in Carinthia Region (0.53 cases), the Lower Sava Region (0.79 cases) and in the Upper Carniola Region (0.81 cases).

Comparing the uptake of cases according to Administrative Units, in addition to the above mentioned Administrative Units of Trebnje, Murska Sobota and Ljubljana, it can be determined that, in 2012, the greatest number of cases per thousand inhabitants were opened in Piran Administrative Unit (1.59), Postojna Administrative Unit (1.57) and Ljutomer Administrative Unit (1.49), while the least originated from the Metlika Administrative Unit (0.36) and Tolmin Administrative Unit (0.37).

Figure 3.6.2: The uptake of cases handled by the Human Rights Ombudsman of the Republic of Slovenia in 2012, by statistical regions and type of uptake when the case cannot be defined according to region.

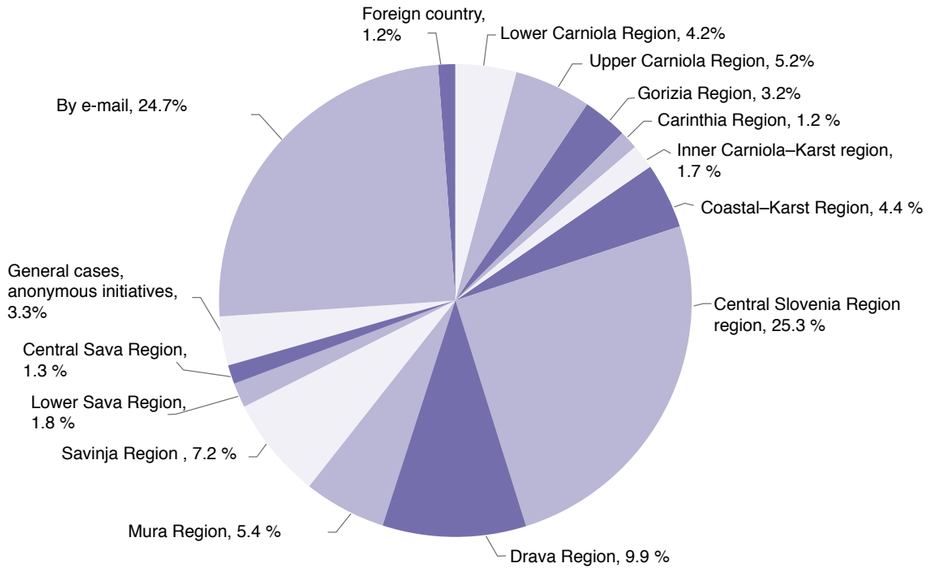


Table 3.6.2: The uptake of cases handled by the Human Rights Ombudsman of the Republic of Slovenia in 2012, by statistical regions and type of uptake when the case cannot be defined by region

REGION	2011	2012	Index (12/11)	Number of cases 1000 inhabitants
Lower Carniola Region	**149**	134	89.9	**1.21**
Črnomelj	22	19	86.4	**1.02**
Metlika	7	3	42.9	**0.36**
Novo mesto	59	48	81.4	**0.75**
Trebnje	61	64	104.9	**3.14**
Upper Carniola Region	**144**	**165**	**114.6**	**0.81**
Jesenice	23	20	87	**0.64**
Kranj	61	69	113.1	**0.86**
Radovljica	32	28	87.5	**0.8**
Škofja Loka	15	31	206.7	**0.74**
Tržič	13	17	130.8	**1.12**
Gorizia Region	**71**	**101**	**142.3**	**0.85**
Ajdovščina	14	21	150	**0.86**
Idrija	9	18	200	**1.07**
Nova Gorica	38	55	144.7	**0.93**
Tolmin	10	7	70	**0.37**
Carinthia Region	**33**	**38**	**115.2**	**0.53**
Dravograd	4	7	175	**0.77**
Radlje ob Dravi	9	7	77.8	**0.43**
Ravne na Koroškem	14	11	78.6	**0.43**
Slovenj Gradec	6	13	216.7	**0.6**
Inner Carniola–Karst Region	**31**	**54**	**174.2**	**1.03**
Cerknica	9	11	122.2	**0.65**
Ilirska Bistrica	6	9	150	**0.65**
Postojna	16	34	212.5	**1.57**
Coastal–Karst Region	**140**	**140**	**100**	**1.26**
Izola	21	17	81	**1.07**
Koper	80	67	83.8	**1.26**
Piran	18	28	155.6	**1.59**
Sežana	21	28	133.3	**1.13**
Central Slovenia Region	**716**	**802**	**112**	**1.41**
Domžale	36	65	180.6	**1.16**
Grosuplje	27	38	140.7	**0.98**
Kamnik	10	28	280	**0.8**
Kočevje	7	14	200	**0.8**
Litija	16	17	106.3	**0.83**
Ljubljana	587	598	101.9	**1.72**
Logatec	7	10	142.9	**0.74**
Ribnica	7	9	128.6	**0.67**
Vrhnika	19	23	121.1	**0.96**
Drava Region	**276**	**313**	**113.4**	**0.97**
Lenart	7	9	128.6	**0.47**
Maribor	175	201	114.9	**1.36**
Ormož	10	12	120	**0.71**
Pesnica	16	4	25	**0.21**
Ptuj	45	51	113.3	**0.74**
Ruše	5	10	200	**0.67**
Slovenska Bistrica	18	26	144.4	**0.73**
Mura Region	**120**	**170**	**141.7**	**1.43**
Gornja Radgona	10	20	200	**0.99**
Lendava	12	15	125	**0.63**
Ljutomer	15	27	180	**1.49**
Murska Sobota	83	108	130.1	**1.9**
Savinja Region	**167**	**228**	**136.5**	**0.88**
Celje	63	92	146	**1.45**
Laško	20	19	95	**1.06**
Mozirje	7	15	214.3	**0.92**
Slovenske Konjice	11	13	118.2	**0.56**
Šentjur pri Celju	14	18	128.6	**0.9**
Šmarje pri Jelšah	11	17	154.5	**0.53**
Velenje	21	24	114.3	**0.54**
Žalec	20	30	150	**0.71**
Lower Sava Region	**43**	**56**	**130.2**	**0.79**
Brežice	22	21	95.5	**0.86**
Krško	10	18	180	**0.64**
Sevnica	11	17	154.5	**0.94**
Central Sava Region	**39**	**40**	**102.6**	**0.91**
Hrastnik	8	10	125	**1.01**
Trbovlje	9	18	200	**1.06**
Zagorje ob Savi	22	12	54.5	**0.71**
Foreign countries	**41**	**39**	**95.1**	**/**
General cases. anonymous initiatives	117	104	88.9	**/**
By e-mail	425	783	184.2	**/**
TOTAL	**2.512**	**3.167**	**126.1**	
SLOVENIA				**1.28**

Cases handled

Table 3.6.3: Number of cases handled by the Human Rights Ombudsman of the Republic of Slovenia in 2012

AREA OF WORK	CASES CONSIDERED				Share by areas of work
	Open cases in 2012	Transfer of cases from 2011	Reopened cases in 2012	Total cases handled	
1. Constitutional rights	482	19	3	504	13.54 %
2. Restrictions of liberty	153	43	5	201	5.40 %
3. Social security	669	46	5	720	19.34 %
4. Labour law	175	26	4	205	5.51 %
5. Administrative matters	258	88	12	358	9.62 %
6. Judicial proceed and police procedures	523	131	13	667	17.92 %
7. Environment and spatial planning	80	37	3	120	3.22 %
8. Public utility services	51	5	9	65	1.75 %
9. Housing matters	44	12	0	56	1.50 %
10. Discrimination	65	7	2	74	1.99 %
11. Children's rights	272	36	10	318	8.54 %
12. Other	395	35	4	434	11.66 %
TOTAL	**3.167**	**485**	**70**	**3.722**	**100.00 %**

It is clear from the table that **3.722 cases were handled in 2012** , of this number, 3.167 cases were opened in 2012 (85.1%), 485 cases were transferred into handling from 2011 (13%), and there were 70 cases reopened in 2012 (1.9%). Table 3.6.4. indicates that there were **21% more cases under consideration** in 2012 as compared to 2011.

The greatest number of cases dealt with in 2012 related to Social security (720 cases or 19.3%), Judicial proceedings and police procedures (667 or 17.9%) and Constitutional rights (504 cases or 13.5%). Compared to 2011, the number of cases under consideration mostly increased in the area of Constitutional rights (from 183 to 504 cases or a 175.4% increase), and Social security (from 418 to 720 or a 72.2% increase), whereas it decreased in the area of Housing Matters (from 109 to 56 or a 48.6% decrease).

Table 3.6.4: Comparison between the number of open cases handled before the Human Rights Ombudsman of the Republic of Slovenia by individual area of work in the period from 2009 to 2012

AREA OF WORK	CASES CONSIDERED								Index (12/11)
	2009		2010		2011		2012		
	No.	Share	No.	Share	No.	Share	No.	Share	
1. Constitutional rights	155	4.9 %	173	5.6 %	183	5.9 %	504	13.5 %	275.4
2. Restrictions of personal liberty	187	5.9 %	163	5.3 %	187	6.1 %	201	5.4 %	107.5
3. Social security	443	14.1 %	449	14.6 %	418	13.6 %	720	19.3 %	172.2
4. Labour Law	253	8.0 %	225	7.3 %	238	7.7 %	205	5.5 %	86.1
5. Administrative matters	387	12.3 %	385	12.5 %	379	12.3 %	358	9.6 %	94.5
6. Judicial proceedings and police procedures	751	23.8 %	758	24.6 %	701	22.8 %	667	17.9 %	95.1
7. Environment and spatial planning	133	4.2 %	146	4.7 %	132	4.3 %	120	3.2 %	90.9
8. Public utility services	100	3.2 %	80	2.6 %	60	1.9 %	65	1.7 %	108.3
9. Housing matters	106	3.4 %	85	2.8 %	109	3.5 %	56	1.5 %	51.4
10. Discrimination	69	2.2 %	67	2.2 %	61	2.0 %	74	2.0 %	121.3
11. Children's rights	288	9.1 %	337	10.9 %	314	10.2 %	318	8.5 %	101.3
12. Other	279	8.9 %	214	6.9 %	295	9.6 %	434	11.7 %	147.1
TOTAL	**3.151**	**100.0 %**	**3.082**	**100.0 %**	**3.077**	**100.0 %**	**3.722**	**100.0 %**	**121.0**

Cases according to the state of their handling

1. **Closed cases:** the handling of these cases was concluded by 31 December 2012.
2. **Solved cases:** these are cases which were under consideration as at 31 December 2012.

In 2012, there were 3.722 cases under consideration, of this number, **3.004 cases or 80.7 %** of all cases handled in 2012 were closed on 31 December 2012. 718 cases remained under consideration (19.3 %).

Table 3.6.5: Comparison with regard to the number of cases considered by the Human Rights Ombudsman of the Republic of Slovenia according to the status of consideration of cases in the period from 2009 to 2012 (at end of calendar year)

STATUS OF CONSIDERATION OF CASES	2009 (status as of 31.12.2009)		2010 (status as of 31.12.2010)		2011 (status as of 31.12.2011)		2012 (status as of 31.12.2012)		Index (12/11)
	No.	Share	No.	Share	No.	Share	No.	Share	
Concluded	2.775	88.1 %	2.590	84.0 %	2.592	84.2 %	3.004	80.7 %	115.9
Being processed	376	11.9 %	492	16.0 %	485	15.8 %	718	19.3 %	148.0
TOTAL	**3.151**	**100.0 %**	**3.082**	**100.0 %**	**3.077**	**100.0 %**	**3.722**	**100.0 %**	**121.0**

Detailed overview regarding the handling of cases by areas of work is clearly demonstrated in Table 3.6.6.

In the field of **(1) Constitutional rights**, there were 504 cases handled in 2012 (175.4% more than in 2011 and 13.5% of all cases being considered). According to the number of cases handled, the topics that stood out also in 2012 are: the ethics of public statements with 372 cases (112 in 2011) and freedom of conscience with 64 cases (only 3 in 2011).

In 2012, the number of cases in the area of **(2) Restrictions of personal liberty** increased by 7.5% as compared to 2011 (from 187 to 201). While the number of cases decreased in regard to juvenile centres (from 4 to 1) and psychiatric patients (from 23 to 20), the number of cases concerning prisoners increased (from 123 to 134). In 2012, the majority of cases handled by the Ombudsman related to the topic **(3) Social security**. In this area, the number of cases considered increased by 72.2% in 2012 as compared to 2011 (from 418 cases to 720). The largest proportion of these cases (with 292 cases handled) is held by cases in relation to pension insurance (40.6%) and social benefits and financial relief (114 cases or 15.8%). The sub-area relating to health insurance recorded an uptake which decreased by 37.8%. The decrease in the number of considered cases in comparison to the previous period was noticed in the sub-area of work relating to violence – in all such cases (from 17 to 6) and social security (from 20 to 15).

In the area of work **(4) Labour law**, the number of cases handled in 2012 (205) compared to 2011 (238) decreased by 13.9%. A small increase is noticed in the sub-area of work covering scholarships where 11.1% more initiatives were received (18 in 2011, and 20 in 2012). In comparison to the previous period, the decrease in the uptake of cases was noticed in the sub-area of work concerning public employees (from 85 to 61), unemployment (from 31 to 29) and employment relations (from 93 to 90).

Similarly, in the area of work **(5) Administrative matters**, the number of cases decreased in 2012 (358 cases) in comparison to 2011 (379 cases). A decrease in the number of cases is also noticed in area concerning citizenship (from 19 to 12) and in social activities (from 80 to 63), whereas an increase has been recorded in cases referring to foreigners.

The area of work **(6) Judicial proceedings and police procedures** comprised cases that were the second largest area of cases handled in 2012. In 2012, the Ombudsman dealt with 667 cases or 4.1% fewer than in 2011 (701). This area of work includes 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. Successive annual index trends regarding the numbers of cases under consideration in this area in 2012, as compared to 2011 (95.1) and the previous period (2011/2010 - 92.5) show a small decrease in cases handled. While a decrease in handled cases is noticed in the majority of sub-areas of work, a slight increase is noticed in police procedures (from 100 to 106) and criminal proceedings (from 71 to 73).

The area of work **(7) Environment and spatial planning** saw a decrease by 9.1 % in the number of cases under consideration in 2012 as compared to 2011 (from 132 to 120). The number of cases handled decreased in both sub-areas of work: the development of physical space (from 47 to 39) and spatial management (from 41 to 26).

The number of cases handled in 2012 as compared to 2011 relating to the area of work **(8) Public utility services** increased by 8.3 % (from 60 to 65). While an increase may be observed in cases referring to communications (from 4 to 11), the number of cases handled has not significantly changed in other sub-areas of work.

The biggest decrease in cases handled as compared to the previous period is observed in the area of work **(9) Housing matters**. The number of cases handled in 2012 as compared to 2011 decreased by as much as 48.6% (from 109 to 56). The decrease in number of cases handled is also noticed in regard to housing relationships (from 50 to 23) and housing business (from 47 to 23).

The number of cases handled in the area of work **(10) Discrimination** increased by 21.3% (from 61 to 74) in 2012 as compared to 2011. In the sub-area relating to national and ethnic minorities a slight decrease is noticed (28 in 2011 and 20 in 2012), while an increase in the caseload has been recorded in the sub-area relating to other issues (from 21 to 49).

In the area of work **(11) Children's rights**, the number of cases handled in 2012 with 381 cases as compared to 2011 with 314 cases did not change significantly. This area of work includes the sub-area of Advocacy of Children where a small decrease was noticed (from 75 to 72). The number of initiatives handled in the sub-area concerning violence against children outside the family increased from 7 to 11 cases. Similarly, the number of cases handled in the sub-area concerning child maintenance, child benefit and managing of child's assets increased (from 21 to 35) as well as in the sub-area of work concerning children with special needs (from 21 to 28). A decrease, specifically, as much as a 50% decrease, was noticed in the sub-areas relating to foster care, custodianship and institutional care (from 22 to 11).

Under the heading of the area of work **(12) Other** are grouped those cases which cannot be classified under any of the other defined areas. In 2012, the Ombudsman dealt with 434 of such cases, which is 47.1% more than in previous year or 11.7% of all cases considered.

Table 3.6.6: Review of cases before the Human Rights Ombudsman of the Republic of Slovenia in 2012 by the areas of work of the Ombudsman's Office

AREA/SUB-AREA OF THE OMBUDSMAN'S WORK	CASES CONSIDERED 2011	CASES CONSIDERED 2012	Index (12/11)
1 Constitutional rights	**183**	**504**	**275.4**
1.1 Freedom of conscience	3	64	2.133.3
1.2 Public speech ethics	112	372	332.1
1.3 Assembly and association	6	5	83.3
1.4 Security services	0	1	-
1.5 Voting rights	13	10	76.9
1.6 Protection of personal data	39	49	125.6
1.7 Access to public information	7	1	14.3
1.8 Other	3	2	66.7
2 Restrictions of personal liberty	**187**	**201**	**107.5**
2.1 Detainees	26	25	96.2
2.2 Prisoners	123	134	108.9
2.3 Psychiatric patients	23	20	87.0
2.4 Persons in social care institutions	8	8	100.0
2.5 Juvenile homes	4	1	25.0
2.6 Illegal aliens and asylum seekers	2	4	200.0
2.7 Persons in police detention	0	0	-
2.8 Other	1	9	900.0
3 Social security	**418**	**720**	**172.2**
3.1 Pension insurance	40	292	730.0
3.2 Disability insurance	48	58	120.8
3.3 Health insurance.	82	51	62.2
3.4 Health care	59	66	111.9
3.5 Social benefits and reliefs	54	114	211.1
3.6 Social services	20	15	75.0
3.7 Institutional care	26	31	119.2
3.8 Poverty – general	13	27	207.7
3.9 Violence – anywhere	17	6	35.3
3.10 Other	59	60	101.7
4 Labour law	**238**	**205**	**86.1**
4.1 Employment relations	93	90	96.8
4.2 Unemployment	31	29	93.5
4.3 Workers in state authorities	85	61	71.8
4.4 Scholarships	18	20	111.1
4.5 Other	11	5	45.5
5 Administrative matters	**379**	**358**	**94.5**
5.1 Citizenship	19	12	63.2
5.3 Denationalisation	11	9	81.8
5.4 Property law	32	41	128.1
5.5 Taxes	40	36	90.0
5.6 Customs	1	2	200.0
5.7 Administrative procedures	130	112	86.2
5.8 Social activities	80	63	78.8
5.9 Other	24	20	83.3
6 Judicial and police procedures	**701**	**667**	**95.1**
6.1 Police procedures	100	106	106.0
6.2 Pre-litigation procedures	25	23	92.0
6.3 Criminal procedures	71	73	102.8
6.4 Civil procedures and relations	275	267	97.1
6.5 Proc. before labour and social courts	22	17	77.3
6.6 Misdemeanour procedures	96	94	97.9
6.7 Administrative judicial procedures	9	9	100.0
6.8 Attorneyship and notariat	26	17	65.4
6.9 Other	77	61	79.2
7 Environment and spatial planning	**132**	**120**	**90.9**
7.1 Interventions in the environment	47	39	83.0
7.2 Spatial planning	41	26	63.4
7.3 Other	44	55	125.0
8 Commercial public services	**60**	**65**	**108.3**
8.1 Public utility sector	23	21	91.3
8.2 Communication	4	11	275.0
8.3 Energy	8	8	100.0
8.4 Traffic	19	18	94.7
8.5 Concessions	4	6	150.0
8.6 Other	2	1	50.0
9 Housing matters	**109**	**56**	**51.4**
9.1 Housing relations	50	23	46.0
9.2 Housing services	47	31	66.0
9.3 Other	12	2	16.7
10 Discrimination	**61**	**74**	**121.3**
10.1 National and ethnic minorities	28	20	71.4
10.2 Equal opportunities by gender	3	1	33.3
10.3 Equal opportunities in employment	9	4	44.4
10.4 Other	21	49	233.3
11 Children's rights	**314**	**318**	**101.3**
11.1 Contacts with parents	32	28	87.5
11.2 Child support, child allowances, child's property management	21	35	166.7
11.3 Foster care, guardianship, institutional care	22	11	50.0
11.4 Children with special needs	21	28	133.3
11.5 Children of minorities and threatened groups	1	0	0.0
11.6 Family violence against children	10	11	110.0
11.7 Violence against children outside the family	7	11	157.1
11.8 Child advocacy	75	72	96.0
11.9 Other	125	122	97.6
12 Other	**295**	**434**	**147.1**
12.1 Legislative initiatives	22	39	177.3
12.2 Remedy of injustice	2	29	1.450.0
12.3 Personal problems	28	25	89.3
12.4 Explanations	198	274	138.4
12.5 For information	21	33	157.1
12.6 Anonymous applications	23	34	147.8
12.7 Ombudsman	1	0	0.0
TOTAL	**3.077**	**3.722**	**121.0**

Closed cases

In 2012, there were **3.004 closed cases**, which is a **15.9% increase of cases closed** as compared to 2011. **According to the comparison of the number of these cases (3.004) as compared to the number of open cases in 2012 (3.167), it has been established** that there were 5.2% fewer cases closed than opened.

Table 3.6.7: Comparison of the number of closed cases handled and categorised by areas of work of the Ombudsman in the period from 2009 to 2012

AREA OF WORK OF THE OMBUDSMAN	2009	2010	2011	2012	Share (12/11)
1. Constitutional rights	136	156	164	492	16.38 %
2. Restrictions of personal liberty	166	128	144	166	5.53 %
3. Social security	415	388	372	433	14.41 %
4. Labour Law	230	179	212	163	5.43 %
5. Administrative matters	321	308	291	301	10.02 %
6. Judicial proceed. and police procedures	657	623	570	552	18.38 %
7. Environment and spatial planning	101	116	95	100	3.33 %
8. Public utility services	91	76	55	61	2.03 %
9. Housing matters	100	71	97	50	1.66 %
10. Discrimination	56	56	54	54	1.80 %
11. Children's rights	249	295	278	248	8.26 %
12. Other	253	194	260	384	12.78 %
TOTAL	**2.775**	**2.590**	**2.592**	**3.004**	**100.00 %**

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 non-stated in the initiative, point to violations and irregularities, and not to 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. An initiator is submitted pieces of information, explanations and advice to enforce the rights in an open procedure. This group includes the unaccepted initiatives (late, anonymous, insulting) and cancellations of procedure as a result of uncooperative attitude by an initiator or due to the withdrawal of an initiative.

Lack of authority 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 his/her rights.

Table 3.6.8: Classification of closed cases according to justificatio

SUBSTANTIATION OF CASES	CLOSED CASES				Index (12/11)
	2011		2012		
	Number	Share	Number	Share	
1. Justified cases	438	16.9 %	408	13.6 %	93.2
2. Partially justified cases	233	9.0 %	200	6.7 %	85.8
3. No-justified cases	380	14.7 %	333	11.1 %	87.6
4. No conditions for handling the case	1.223	47.2 %	1.413	47.0 %	115.5
5. Lack of authority of the Ombudsman	318	12.3 %	650	21.6 %	204.4
TOTAL	**2.592**	**100.0 %**	**3.004**	**100.0 %**	**115.9**

The proportion of justified and partially justified cases in 2012 (20.3%) slightly decreased as compared to 2011 (25.5%). **However, the proportion of justified cases is relatively high in comparison to similar institutions abroad.**

Closed cases by sectors

Table 3.6.9 includes a presentation of the classification of cases concluded in 2012 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 area.

It is evident from the table that the highest number of concluded cases in 2012 referred to:

- labour, family and social affairs (744 cases or 24.77%),
- judiciary (638 cases or 21.24%),
- environmental and spatial planning (231 cases or 7.69%), and
- internal affairs (209 cases or 6.96%).

The number of open cases in 2012, as compared to 2011, and in relation to the proportion in percentages, has increased the most in the field of foreign affairs (by 100%) and transport (by 31.8%), while it decreased in the area of governmental services (by 70%) and in the area of defence (by 54.5%).

Table 3.6.9: Closed cases handled before the Human Rights Ombudsman of the Republic of Slovenia in the period from 2009 to 2012 by areas of work of state authorities

AREA OF WORK OF STATE AUTHORITIES	CLOSED CASES								Index (12/11)
	2009		2010		2011		2012		
	Number	Share	Number	Share	Number	Share	Number	Share	
1. Labour, family and social affairs	690	24.86 %	692	26.72 %	697	26.89 %	744	24.77 %	106.74
2. Finance	60	2.16 %	50	1.93 %	25	0.96 %	30	1.00 %	120.00
3. Economy	48	1.73 %	31	1.20 %	28	1.08 %	35	1.17 %	125.00
4. Public administration	68	2.45 %	41	1.58 %	45	1.74 %	26	0.87 %	57.78
5. Agriculture, forestry and food	16	0.58 %	21	0.81 %	9	0.35 %	8	0,27 %	88.89
6. Culture	37	1.33 %	28	1.08 %	26	1.00 %	25	0.83 %	96.15
7. Internal Affairs	224	8.07 %	211	8.15 %	196	7.56 %	209	6.96 %	106.63
8. Defence	9	0.32 %	5	0.19 %	11	0.42 %	5	0.17 %	45.45
9. Environment and spatial planning	315	11.35 %	272	10.50 %	295	11.38 %	231	7.69 %	78.31
10. Justice	764	27.53 %	673	25.98 %	650	25.08 %	638	21.24 %	98.15
11. Transport	19	0.68 %	27	1.04 %	22	0.85 %	29	0.97 %	131.82
12. Education and Sport	112	4.04 %	100	3.86 %	118	4.55 %	118	3.93 %	100.00
13. Higher education, science and technology	18	0.65 %	23	0.89 %	27	1.04 %	23	0.77 %	85.19
14. Health	161	5.8 %	146	5,64 %	165	6.37 %	126	4.19 %	76.36
15. Foreign affairs	12	0.43 %	4	0.15 %	3	0.12 %	6	0.20 %	200.00
16. Government services	11	0.4 %	11	0.42 %	10	0.39 %	3	0.10 %	30.00
17. Local self-government	23	0.83 %	13	0.50 %	10	0.39 %	37	1.23 %	370.00
18. Other	188	6.77 %	242	9.34 %	255	9.84 %	711	23.67 %	278.82
TOTAL	**2.775**	**100 %**	**2.590**	**100 %**	**2.592**	**100 %**	**3.004**	**100 %**	**115.90**

Table 3.6.10 includes a review of justified and partially justified cases by individual areas of work of state authorities. As mentioned in the annual reports of the previous years, this review was prepared upon the request of Members of Parliament in order to establish which areas recorded the greatest number of violations in 2012.

If a focus is firstly given to areas in which 100 or more initiatives have been classified, it can be determined that the proportion of justified cases is largest in the field of education (53.4%), followed by health (35.7%), internal affairs (23.9%) and environment and spatial planning (20.3%). More on violations in individual fields is discussed in the body of the Report.

Table 3.6.10: The analysis of closed cases according to their justification, for 2012

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	744	183	24.6 %
2. Finance	30	4	13.3 %
3. Economy	35	5	14.3 %
4. Public administration	26	9	34.6 %
5. Agriculture, forestry and food	8	2	25.0 %
6. Culture	25	8	32.0 %
7. Internal affairs	209	50	23.9 %
8. Defence	5	2	40.0 %
9. Environment and spatial planning	231	63	27.3 %
10. Justice	638	85	13.3 %
11. Transport	29	6	20.7 %
12. Education and sport	118	63	53.4 %
13. Higher education, science and technology	23	14	60.9 %
14. Health	126	45	35.7 %
15. Foreign affairs	6	1	16.7 %
16. Government services	3	3	100.0 %
17. Local self-government	37	13	35.1 %
18. Other	711	52	7.3 %
TOTAL	**3.004**	**608**	

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