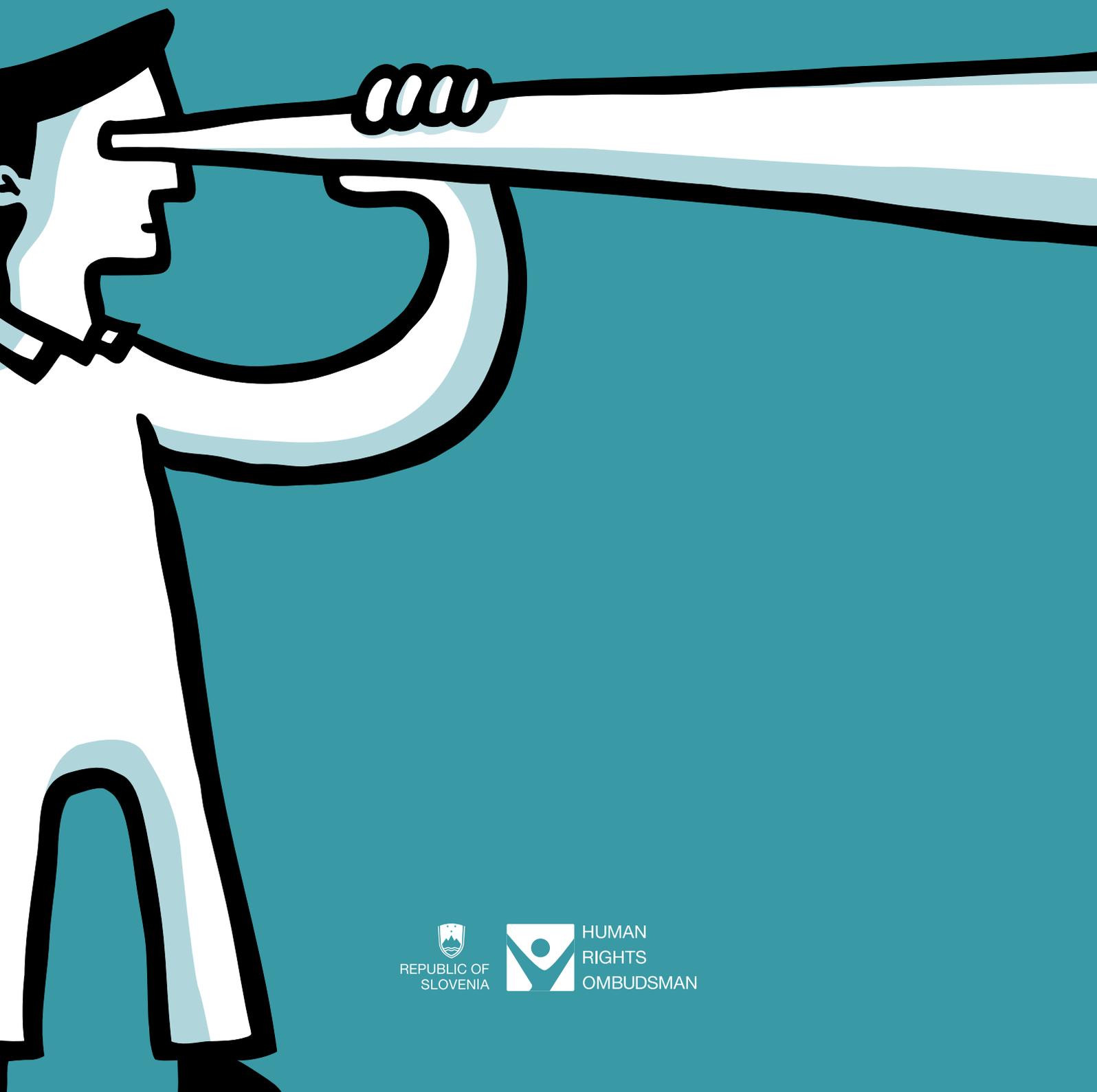


ANNUAL REPORT
OF THE HUMAN RIGHTS OMBUDSMAN
OF THE REPUBLIC OF SLOVENIA
FOR 2014

ABRIDGED VERSION





**Annual Report
of the Human Rights Ombudsman
of the Republic of Slovenia
for 2014**

Abridged Version

Ljubljana, September 2015

NATIONAL ASSEMBLY OF THE REPUBLIC OF SLOVENIA
Mr Milan Brglez, President

Šubičeva 4
1102 Ljubljana

Mr President,

In accordance with Article 43 of the Human Rights Ombudsman Act I am sending you the Twentieth Regular Report referring to the work of the Human Rights Ombudsman of the Republic of Slovenia in 2014.

I would like to present personally in accordance with Article 44 of the Human Rights Ombudsman Act, at the session of the National Assembly, the Summary report and findings concerning the level of respect for human rights and fundamental freedoms and the legal protection of citizens in the Republic of Slovenia.

Yours respectfully,

Vlasta Nussdorfer
Human Rights Ombudsman



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1

THE OMBUDSMAN'S FINDINGS, OPINIONS AND PROPOSALS

Human rights and fundamental freedoms
are the birthright of all human beings;
their protection and promotion
is the first responsibility of Governments.

Vienna Declaration

Adopted by the World Conference on Human Rights
in Vienna on 25 June 1993



Vlasta Nussdorfer, Human Rights Ombudsman

Dear Reader,

this is the 20th annual report of the Ombudsman of Human Rights of the Republic of Slovenia (the Ombudsman) for 2014. The report includes our findings on the degree of compliance of human rights and fundamental freedoms in the Republic of Slovenia on the basis of the analysis of complaints, discussions and issues which the complainants encountered in their relations with all branches of power. We mention examples of poor governance and the inefficient implementation of power and forms of work and other activities according to the thematic areas of the Ombudsman's work. Many topics are addressed as broader issues also on our initiative, particularly if we find systemic irregularities.

The discussion of the Ombudsman's report by the Government of the Republic of Slovenia, the National Council of the Republic of Slovenia, the Commission for Petitions, Human Rights and Equal Opportunities, at the plenary session of the National Assembly of the Republic of Slovenia and the adoption of the Ombudsman's recommendations undoubtedly point to the readiness and responsibility of the executive and legislative powers towards citizens, which continuously highlights errors, deficiencies, inconsistencies, inefficiencies and poor governance.

Since the beginning of my term in February 2013, I have constantly wondered about the efficiency of the Ombudsman, and how to improve it, with regard to the fact that we establish deficiencies in the functioning of the state at the systemic level, particularly due to the inconsistency of legislation, its hasty passage or amendment, and the lengthy duration of numerous very diverse procedures. We dedicate special attention to fields affecting anyone who seeks our assistance, advice, or asks a question and presents us with a problem requiring a response from the competent national or local authorities and particularly solutions and the elimination of violations. These solutions should be such that citizens no longer encounter the same or similar problems and issues. Unfortunately, this is not the case.

We find that the fundamental principles of the rule of law are frequently violated. Acts are not always adopted in a transparent or democratic manner, but most frequently even without the much needed participation of the interested public, hastily and thoughtlessly. Thus decisions which are sometimes insufficiently clear, predictable and weighted – also in view of the protection of human rights – reduce citizens' legal security.

Slovenia is a state governed by the rule of law, but we acknowledge the fact that trust in legal security is significantly lower than the citizens of the autonomous and independent Slovenia deserve and which we are able to ensure by means of thousands of acts, lawyers and public servants of all professions and positions.

Public authorities must therefore do all they can to restore citizens' trust in the work of institutions and judicial authorities. These must function quickly, efficiently, independently and qualitatively. Judicial decisions must be swift and enforceable. A belated and unenforceable right is contrary to the fundamental principles of the efficient rule of law. Injustices committed by the state in the past must be remedied and citizens must receive our apologies.

I thus appeal: let us do more to ensure that justice and equality before the law and all other constitutional rights are guaranteed to each and every citizen of our country. The length of judicial proceedings must be reduced. I commend the reduction in the backlog of court cases; however, we cannot and must not be content yet. We must develop effective monitoring and systems to assess the quality of the courts' work and further develop alternative forms of dispute settlement. As the third independent branch of power, the judiciary is constantly under the scrutiny of the expert public. It adopts decisions while assessing all the legal remedies lodged, both ordinary and extraordinary, whose suitability is evaluated by the highest guardian of legality, the Constitutional Court of the Republic of Slovenia, and in certain cases even by the European Court of Human Rights. In 2014, the latter established that Slovenia had violated at least one human right in as many as 29 cases; most frequently, the right to an effective legal remedy (19 times) followed by: the prohibition of torture or inhuman or degrading treatment or punishment (13 times); the right to trial without undue delay (7 times); the right to a fair trial (5 times) and the right to liberty and security (4 times).

Slovenia is a social state; nevertheless, 2014 will be remembered in the Ombudsman's office for the people who wrote, visited and highlighted that the country is unfriendly to many people who would like to work, but have lost their job and cannot find another. Some have even worked for no pay. They have to live on social transfers, while losing their dignity. Social transfers affect their future, since they burden their property and their descendants. They are forced to turn to humanitarian organisations to survive on a low income. They wait in long queues to receive medical assistance. There are disabled people with many unrecognised rights. Many people fail to 'see' children or adults with special needs and that their recognised rights are being violated. The procedures before local and state authorities in which they take part are too long and complicated, which is why people without suitable, high-quality and free legal aid cannot cope with them. The inspection services and supervisory mechanisms are neither effective nor fast. Some people live in unhealthy environments. They will soon lose the roof over their heads because they are unable to cover their subsistence costs. The state and its institutions are frequently too slow, unfriendly and cold. Its response is lukewarm; it fails to 'see and hear' some unfortunate people. This concerns human beings and their dignity in all stages of life. It concerns vulnerable groups of people who frequently become lost in the cruel reality and labyrinth of regulations. Let us enable them decent lives Today, so that they will not live in despair, despondency, pessimism, addiction of all kinds, and even without water, electricity and social assistance.

So is the statement that Slovenia is a social state accurate? Can we, after the acknowledgement of the above facts and violation of human rights disclosed by the Ombudsman and frequently also by civil society and the media, still speak of a social state?

The representatives of the fourth branch of power, the media, ask me about the relationship of authority with the Ombudsman: how successful we are with recommendations and the scope of their realisation. I ascertain that cases in which the authorities would not receive or acknowledge our findings and recommendations are exceptionally rare; however, their realisation in practice is more problematic. Solutions are either too slow or simply not applied, although all our recommendations in 2013 (as many as 150) were unanimously supported by the National Assembly. By making false promises? I hope and believe that this was not the case, and that a quite long and strenuous path sometimes leads from words of recognition to concrete actions. It is even more difficult when problems and violations of human rights refer to the work of several ministries, and joint efforts and coordination are needed to reach a desired objective. Then, work frequently comes to a standstill, communication breaks down and solutions cannot be found. This is unfortunate. Sometimes also because of frequent changes of government and ministers, their resignations and replacement. In the two years of my term, I have met ministers of two governments. We thus recommend that the coordination of line ministries and services be improved when seeking solutions to problems related to the establishment of human rights and freedoms, so that citizens no longer receive dull and bureaucratic replies saying that they should address someone else due to their lack of jurisdiction. And in the end, no one is responsible, which is utterly unacceptable under the rule of law.

Frequently, numerous letters intended for the highest state representatives were sent to us only as courtesy copies, while we carefully read and tried to understand them and help, although we were frequently driven to despair.

We resolved complaints not only at our office and through modern means of communication, but also in the field, where we conducted 13 external sessions. I received many complainants at our office, and our experts also provided their assistance. We completed the European project, "Evening with the Ombudsman". We were also very active internationally.

The established practice of informing the public through press conferences continued, and this is certainly one of the fastest ways of forwarding our findings and pointing out issues which can sometimes be resolved by improving communication, faster and more professional work, and not least by "means of logic and some common sense".

Our website also provides answers to many questions, e.g. how to contact the Ombudsman; what the Ombudsman offers; how to submit complaints and ways of resolving them, and also includes an array of events and completed cases which inform us and whose findings serve as a warning for all decision-makers. Our cooperation with the media was very active, since we responded daily to all questions arising from current events and many distressing situations.

The Ombudsman's meetings with non-governmental organisations from all fields of work helped to raise our awareness on the issues they had detected and major joint efforts to improve the work of national and local institutions and their representatives.

Ministers and other representatives from different institutions visited us and we presented the errors, issues and backlogs we had established and detected. We also always pointed out topical issues relating to the enforcement of human rights in their respective fields.

Unfortunately, this Annual Report, which is divided into the substantive fields of the life and work of the citizens and includes general information about the Ombudsman's work, the implementation of duties and powers of the National Preventive Mechanism is no shorter than the previous Report.

We were pleased with all the commendations we received about the new design of the Report and we further improved it. Every chapter begins with a review of the complaints that were discussed, resolved and substantiated. The Report includes findings and recommendations, but also new and already repeated recommendations, frequently concerning cases of bad practice and lack of respect for fundamental freedoms and human rights.

There is a lot of negative news in Slovenia, so we decided to highlight positive findings in our Report as well, which certain state authorities deserve due to their good work. We hope there will be more such findings in the future.

To further supplement the presentation of our activities, we also prepared a review of individual substantive fields; they comprise all the work of the Ombudsman, her Deputies, Secretary-General, Director of the expert service, expert workers, public relations, publications, international cooperation and other employees of the Ombudsman. Every employee is important for our work, the success of the institution and assistance to citizens; every employee is like a small piece in the entire mosaic.

In 2014, the Human Rights Ombudsman received 3,081 complaints, while 9,982 phone calls were made to the toll-free telephone number. We received 17,871 different electronic and other messages and conducted 13 external sessions at which we heard 206 complainants. I met 123 complainants for a personal interview and we held 21 press conferences (at the Ombudsman's office and during external sessions). I received 11 ministers and participated at meetings with 49 heads of different institutions. We also attended 380 different events. So it is not surprising that the Annual Report consists of 416 pages and includes 114 recommendations to improve the work of the state and all its institutions for the benefit of all citizens and the consistent observance of their rights and fundamental freedoms.

The publication of the Annual Report or its presentation is a suitable moment for me, as the head of the institution, to thank all the employees and all those who wrote, contacted, visited or received us so we were

able to complete the work of one year and record these recommendations. We hope that they are realised to the greatest extent possible just as we hoped and expected in the past. The realisation of our recommendations will make life better in Slovenia, improve respect for diversity, improve social and economic conditions, contribute to a healthy lifestyle and also access to rights which must be guaranteed to every individual. Only then will we be able to say that practice follows good theory and that Slovenia is still a social state governed by the rule of law in the spirit of Article 2 of the Constitution of the Republic of Slovenia.

Our assessments, positions and recommendations are completely clear and supported with arguments; we believe in them and thus pass them on to you to learn about them and contribute to their realisation. I particularly emphasise that with the decision published in the Official Gazette of the Republic of Slovenia, no. 85 on 28 November 2014 (page 9512) the National Assembly of the Republic of Slovenia recommended that all institutions and officials at all levels observe the recommendations of the Human Rights Ombudsman of the Republic of Slovenia contained in the regular Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2013. How much the recommendations of the National Assembly really count and how seriously state and local authorities observe them in their work can be assessed by the reader.

As the Ombudsman, I am disappointed that out of a total of 154 recommendations, 93 remain unrealised. We thus decided that in addition to this year's recommendations we would again publish all of those from last year (some even date back to previous years) and briefly and comprehensibly outline the level of their realisation: unrealised, partly realised (progress) and realised. I also intend to dedicate close attention to analysing realisation in the future. In my six-year term, I will be able to minutely monitor the work of the responsible authorities. In the next report, we will also include state institutions and local authorities which fail to respond or do nothing or not enough to eliminate established violations of human rights or realise the Ombudsman's recommendations.

It will not be possible to do such challenging work individually; we can only do this together. With serious intentions and hard work and also the awareness that this simply must be done. For the citizens of this country, who expect, demand and, last but not least, deserve it.

"It's about people," we wrote twenty years ago.

An assessment of the situation in individual fields is provided below.

Constitutional rights

The Ombudsman annually clearly and openly condemns all cases of incitement of intolerance and hatred irrespective of where they occur, who is involved and to whom the spoken or written words are addressed. The Ombudsman responds to the most excess events which particularly affect vulnerable groups of people defined as such by Slovenian legalisation and who are protected by international standards in the field of human rights.

Critical public discourse is necessary in terms of broad freedom of speech and unconditional respect for different views while observing fundamental human rights and freedoms of other people.

We are pleased to be a partner and supporter of the independent liaison body, Responding to Hate Speech, with which we hope to define acceptable public speech based the public response.

The modern Internet is frequently a medium for settling arguments between individuals and groups, which fosters discord, hatred and intolerance, and affects the reputation and good name of individuals, while the offenders hide safely behind pseudonyms and remain anonymous. Where are the boundaries; how can we find and punish these offenders? European case law is already narrowing the limits of admissibility and broadening the understanding of responsibility, to which we adhere.

We also commend the improved responsibility of almost all media when reporting on sensitive topics, particularly those involving children, witnesses and victims of crime. The progress is obvious.

Discrimination

Unfortunately, the unequal treatment of people is a phenomenon known particularly to members of vulnerable groups, including Roma. For many years, we have noted that the Government has failed to muster enough political will and determination to change the situation of the Roma community more radically, particularly regarding their living conditions, so that state authorities could utilise their options to take action in arranging Roma settlements at the local level. We still anticipate urgent amendments to the Roma Community Act relating to the inappropriate composition of the Roma Community Council and a new national strategy for the 2015- 2020 period. We expect the new national programme to include more concrete and binding objectives and to ensure measures if they are not attained.

We still lack an independent advocate of the principle of equality or a national institution for human rights with full authorisation which would function on the basis of the universally adopted Paris Principles. A national institution for human rights with A status is in the interests of the country and its reputation, particularly relating to Slovenia's candidacy for membership of the UN Human Rights Council in the 2016-2018 period.

Furthermore, the Ombudsman's recommendation on the equalisation of opportunities for the disabled has not been fully realised, although repeated several times and despite the fact that certain executive acts have already been adopted. The fact that discrimination in arranging the transport of disabled students who cannot use public transport between their places of residence and education has not been eliminated is particularly worrying, and we have also established new violations in the transport of persons with mental disorders. The lack of response by the Ministry of Labour, Family, Social Affairs and Equal Opportunities deserves criticism, including the lack of cooperation between several ministries, which is frequently necessary.

The Ombudsman monitors the field of discrimination through individual complaints it receives, which point to examples of bad practice, failure to understand difference and the slow decision-making of institutions. We dedicate a lot of attention to issues found in this field, also through amendments to legislation, particularly in the recent example, when the latest amendments to the Marriage and Family Relations Act equalised same sex relationships with heterosexual ones, causing quite a controversy and activating certain groups to start collecting signatures for a referendum and stirring up intolerance.

We must be aware that human rights are not the property of one or another group, but of all of us, and only knowledge and tolerance can assure equal treatment, regardless of differences.

Restriction of personal liberty

Do we sufficiently and always respect human rights, personality and dignity during deprivation of liberty? We are in fact bound to this by the Constitution and numerous international conventions. We are still finding overcrowding in prisons and a reduction of expert staff to reduce costs, poor and dilapidated prison capacities, lack of care for prisoners spending time usefully, who will be released at some point and should be prepared accordingly also by participating in work processes and even in the much needed self-sufficiency in Slovenian prisons. Care for the elderly and of seriously ill, consistent respect for the dignity and rights of prisoners and also prompt resolution of issues relating to the operations of the Unit for Forensic Psychiatry in Maribor, which is understaffed and has been overcrowded for too long, are also urgent matters.

The Ombudsman dedicates special attention to persons with mental disorders and those in social care institutions, i.e. their living conditions, staff behaviour, legal procedures for their accommodation, restriction of movement and relocations, use of special protection measures and complaint procedures.

We commend the Code of Ethics in health care adopted in 2014 and also the important role of representatives.

We cannot overlook care for adolescents in educational institutions, special education institutions and juvenile correctional facilities. Solutions for adolescents with emotional and behavioural disorders and special care for young psychiatric patients who should not be hospitalised with adults are urgently needed. As part of the National Preventive Mechanisms, which functions on the basis of the Optional Protocol against Torture and other Cruel,

Inhuman or Degrading Treatment or Punishment, the Ombudsman regularly visits all other places of deprivation of liberty or limitation of liberty for juvenile criminal offenders, aliens and asylum seekers. The Ombudsman also visits social care institutions, psychiatric hospitals, detention rooms at police stations or police detention centres, and promptly informs the authorities about violations of due conduct and encourages them to adopt and realise solutions consistent with respect for high standards of human rights protection in all fields of life.

Justice

In this field of the Ombudsman's work, we receive many complaints about dissatisfaction with the conduct of proceedings, their duration and also decisions, even those already finalised.

It must be repeated again that the Human Rights Ombudsman Act explicitly determines that the Ombudsman may not discuss cases which are subject to judicial or other proceedings unless undue delay or obvious abuse of power are concerned, which, however, would have to relate to an intentional act by means of which judicial proceedings are misused for unlawful objectives. Our actions must not threaten the independence of judges; our interventions do not usually intervene with proceedings, but rather with judicial administration.

We nevertheless repeat and emphasise that a judge's independence does not make him or her inviolable or exempt from responsibility, because they have to observe the umbrella act, i.e. the Constitution, and other acts. Irrespective of the reduced backlog of cases as shown by the statistics, these still present a problem. The decisions of the European Court of Human Rights also testify to this and recognise plaintiffs financial compensations, which are frequently a poor remedy for the damage caused by previous decisions or delayed trials in the past.

As per the legislation, citizens use all available legal remedies, ordinary and extraordinary, and thus usually prolong judicial proceedings themselves. A judge must be a *dominus litis* of proceedings and must ensure that in spite of all remedies, proceedings continue without undue delay. Late justice is not justice, at least not for one of the parties involved. The greater responsibility of presidents of courts under judicial administration shows an improved provision of the right to a trial within reasonable time.

We are pleased with the general improvement of the situation with regard to the duration of many judicial proceedings; however, we are not yet satisfied with decision-making at labour and social courts. High quality, fair and independent court rulings are imperative, and we thus encourage improving the efficiency of the work of judicial and supervisory bodies, including the transparency and openness of their work. Decent and informed public criticism of courts' work is permitted, but must not evolve into a situation where every individual dissatisfied with a court ruling ascribes decision-making to the bias of judges, the abuse of power or unethical conduct. Final decisions must be accepted, since with the exception of settlements, no conclusion of proceedings satisfy all parties involved. However, final decisions may also be contested by means of extraordinary legal remedies, finally also before the Constitutional Court of the Republic of Slovenia. Qualitative enforcement procedures and correct enforcement officers are also of the utmost importance.

Responsibility – disciplinary, criminal, damage – must be transparent and made public, or reproaches about how “a crow will not pick out another crow's eyes” may be heard, although permitted criticism must not exceed the dignified limits, since individuals cannot judge on the basis of information from the media and from a distance or make judgements about matters they are not familiar with or which are only known to them through indirect sources.

We are aware of the urgency of good legislation and much needed amendments and also of the successful enforcement of free legal aid for people unfamiliar with the law and without resources to obtain aid, while ensuring that although they are not paying themselves, the legal service is of high quality and as good as if they were paying.

The Ombudsman commends the decision of the Constitutional Court on the abolition of imprisonment for the non-payment of fines. The unconstitutionality of the measure was not established, but it was confirmed that certain conditions and proceedings were not compliant with the Constitution, since the guarantees they

ensured were not provided sufficiently. The Constitutional Court thus agreed with the Ombudsman, who has constantly highlighted that imprisonment for the non-payment of fines impermissibly encroaches on human rights and fundamental freedoms.

Relating to the work of the State Prosecutor, we established that no changes occurred to improve the situation of injured parties when indictments are rejected and the available deadline of eight days for the injured party and the decision on possible continuation of proceedings is definitely too short. All complaints connected with the work of state prosecutors were verified by the heads of individual state prosecutor's offices, who responded promptly and correctly. In this field, we also encountered the treatment of refugees. We believe that Article 31 of the Convention relating to the Status of Refugees must be included in the decision-making process with all due seriousness and sensitivity when dealing with aliens who are forced to leave their country in order to protect their lives and freedom and whose only route to freedom was by means of a false passport.

Similarly to previous years, the complaints of those who did not agree with services with which they were provided and pointed to incorrectly calculated costs and inappropriate conduct, lack of activity, or even non-professionalism and actions against their wishes predominated with regard to lawyers. We are pleased with the response of the Bar Association of Slovenia which discusses violations through disciplinary bodies (this should be accelerated) and we also commend their open-door day for pro bono legal advice. The cooperation is good and the Ombudsman may direct complainants who are in extremely difficult situations which indicate a violation of human rights to attorneys through the Bar Association.

The anticipated amendment to the legal regulation of the disciplinary responsibility of notaries when acting as an attorney was also not realised in the field of notary services.

Police procedures

This year, we are again pleased to determine that the Ministry of the Interior always responds to our enquiries. When violations are detected and established, the Ministry informs its police units to prevent future occurrences of similar events.

The violations detected were similar to those in previous years: the right to equality before the law, the right to the protection of a person's personality and dignity, and legal guarantees in minor offence proceedings. Each complaint discussed may serve as a good example for improving police work in future, since complainants frequently point to the lack of action, bias, incomplete establishment of actual situations, dissatisfaction upon receiving a payment order or a fine. Special attention and correct work must be directed towards domestic violence, to which the police dedicate a lot of attention; unfortunately, irregularities also occur.

We emphasised that house searches accompanied by media attention violate human rights and dignity, since any accused person is considered innocent until proven guilty with a final decision. Nevertheless, this does not mean that the media cannot carry out their important function; however, the question remains open as to how to restore rights of those who are perhaps later acquitted in criminal proceedings with a final decision and who are significantly affected by media exposure. Also, those children who share the faith of their parents are not guilty of anything.

No complaints were discussed in the field of private security or traffic warden services which would require action, but we only provided information about available complaint procedures in the case of dissatisfaction.

Administrative matters

The problem of registering residence is also prominent, since no suitable act or and systemic solutions are yet in place. Many complainants also wrote about the arbitrary conduct of municipalities, the greatest issue being the categorisation of municipal roads sited on private land, which frequently resulted in disputes between the municipality and landowners and also the immediate neighbours concerned in the matter.

The arrogant conduct of municipal services and officials is also evident in the resolution of property disputes between municipalities and individuals. As in the field of justice, decision-making within a reasonable time, effective legal protection and the explanatory duties of public authorities must also be mentioned. We criticise the formal conduct of junior officials in the administration who shift the burden of clarification and response to others or simply fail to respond. Where is the fundamental postulate of good governance?

We were also active with regard to aliens, asylum seekers and refugees and held regular meetings with representatives of non-governmental organisations active in this field. We discussed complaints and issues relating to non-refoulement in procedures of international protection, the criminal prosecution of applicants, the issue of supervision, the quality and ethics of interpreters and suitable interpreting.

One recurring topic was monitoring the solving of the erased question, although we did not record a higher number of complaints in this regard. We are still wondering about the apology by the state for the mass erasure.

We actively participated in reuniting a refugee with her younger sister – known as the 'Somalian girl' case – in which we proposed that the Constitutional Court give absolute priority treatment to the case and cited the provision of Article 3 of the Convention on the Rights of the Child. The case concluded successfully with her arrival in Slovenia. The Constitutional Court determined the unconstitutionality of Article 16.b of the International Protection Act, and deputies began a procedure to amend the Aliens Act.

The unending story of denationalisation again pointed to an unacceptable situation and we can only wonder when it will end.

Many complaints also referred to the work of the inspection services, their staff shortages, responsiveness to notifiers, the transparency of work and priorities and delayed enforcement of complainants' rights. Post-war massacres also demand a final resolution, including a decent burial for all the victims and the arrangement of the status of people who suffered property damage during the Second World War. Let us admit our mistakes and apologise for them. Does that demand really seem too exaggerated?

Environment and spatial planning

Responsibility for the environment and the siting of facilities is growing and people are demanding consistent observance of the Aarhus Convention. Many procedures are delayed due to the lack of prior information, which was also revealed by the introduction of the digital radio system (GSM-R) and the outraged response of numerous civil initiatives demanding changes of certain locations which in the opinion of complainants severely threaten and disturb the general public.

The Ombudsman was informed about pollution of the environment, particularly in the area of the Celje Basin and Zasavje, and the need for a more active approach by the relevant ministry and the Government. The public also frequently pointed to the familiar issues of odour, emissions of odours in the environment and noise pollution. High concentration levels of radon in certain schools and kindergartens are also a cause for concern and demand a swift and an interministerial approach.

We further demanded measures to eliminate backlogs in the issue of permissions for the use of water and stressed unresolved ownership issues related to land with water use. Citizens are particularly concerned by the inadequate responsiveness of inspection services and lengthy procedures. They question their transparency and emphasise the need for systemic supervision. The exceptional diligence and activity of non-governmental organisations (NGOs) in the field of the environment and spatial planning reveal public awareness of the importance of a healthy living environment. We organised eight meetings with NGOs, which were exceptionally well-attended. We continued our new practice (i.e. visits and discussions) of field sessions. Representatives of individual NGOs reported that the authorities were not listening to them and certain ministers refuse to meet them. Citizens are becoming more aware of their rights concerning the environment and rightly seek their observance. The Ombudsman believes that business interests must not be put before health.

Public utility services

The inability to pay costs of municipal services is driving poor people on the social edge to despair and deprives them of their dignity; they enter a never-ending cycle of debt. They are visited by summons servers of registered mail and ruthless bailiffs; even their water and electricity are cut off. The situation is extremely grave for many people, and relevant assistance, also consulting, and social work centres should take suitable measures; however, this task is not always implemented with sufficient care and dedication.

We wonder if 1,844,790 signatures by EU citizens will suffice to assure access to clean water for all when contending with the privatisation of water supply services. Will the right to water and access to it finally become new constitutional rights in the amended Article 70 of the Constitution of the Republic of Slovenia?

Why do we fail to respect the right to private property and further allow unlawful situations to arise due to public roads being constructed on private land?

This issue is particularly urgent, and unfortunately, a happy and, particularly, a lawful ending is not yet in sight. The Government and mayors of Slovenian municipalities should respond accordingly, since the issue must not be shifted onto citizens' shoulders due to the lack of active and systematic discussion by relevant authorities.

How we display respect for the deceased is shown by the fact that the same act on cemetery and burial activities has been in force since 1984, with only minor amendments. Amendments are thus urgent.

We have also noted the need to rearrange chimney sweeping services for several years, and managers who according to many complainants are a "breeding ground of corruption", and are completely uncontrolled and cannot be replaced.

Housing matters

The state has a step-motherly attitude to housing policy. It has still not adopted a new national housing programme. Progress is too slow. The chances of acquiring and later keeping a suitable apartment are quite poor for people from the margins of society, and threats of eviction (with the lack of residential units and subsequent homelessness) are unduly high, even for families with children. Dependence on social assistance, reaching below the dignity of people who were barely able to make a living in the past, now results in depression and other illnesses. We have had no housing strategy or national policy for this for six years. How long will this continue?

Employment relations

We received many questions on a daily basis from job seekers of all ages and professions. Employees are exposed to increasing pressure by their employers, frequent unfairness regarding payment for work performed and payment of contributions. Employers establish companies successively and avoid payments, while bullying employees, because they are able to do so in the pool of unforgiving inferiority, the lack of workers' rights and fixed-contract work. This is modern slavery, among other things also because of the slow response of supervisory and legal institutions. Workers are prepared to do many things on the basis of a promise, and they frequently hope for a miracle, even hoping for bankruptcy, which results in priority payment for many, but usually not for disadvantaged workers. I wish to particularly emphasise that the Universal Declaration of Human Rights adopted on 10 December 1948 highlighted the right for anyone who works to a fair and suitable award which affords them and their family decent subsistence. Where is fair payment for a job well done; where are labour rights; who robbed work of its dignity, and what has happened to the celebration of May Day by workers? What should be said to the young after they complete their education and cannot find work, and what can we say to the elderly whose pensions are delayed and for whom no work can be found?

Many regret the closure of the once very successful Social Accounting Service, which the authorities apparently without suitable analyses and supervisory institutions in the new social order, simply abolished. Where is the efficient supervision of the payment of wages and contributions?

Pension and disability insurance

Many ask us why is there no analysis of the realisation and effects of the Pension and Disability Insurance Act (ZPIZ-2) and whether the Government is already considering new interventions which undoubtedly require deliberate legislative solutions. Many people are still distressed by the amended pension conditions and retrospective interventions in their rights. Pensioners claimed to be in an unequal position as employees in undertaking a self-employed activity, since they would have to waive at least half of their pension. We believe that restricting the right to a pension to certain categories of pensioners raises a question of compliance with the Constitution and trust in the rule of law. We expect prompt systemic solutions by the relevant ministry and the Government.

Non-compliance with regulations in the field of disability insurance is of great concern, since suitable executive acts have not been prepared yet. The problem of occupational diseases remains topical. We cannot and must not be satisfied with solutions which intervene significantly in the rights of many people.

Health care and health insurance

The Ministry of Health has not (yet) prepared urgent amendments to health legislation, to which the absence of a minister for almost one year contributed. This is a truth which cannot be justified with dull facts. In the Ombudsman's opinion, mere formal management of the ministry is damaging, because it concerns one of the most important fields of life and the right of people to good health care which is prompt, highly professional and fully legally regulated in all aspects.

People were distressed about issues relating to heart surgery for infants, certain concessions for implementing health-care activities, conditions at the casualty department of Ljubljana University Medical Centre, the organisation of emergency centres, the acquisition of a second opinion, the implementation of the Patient Rights Act, the Act on the Procurement and Transplantation of Human Body Parts for Medical Treatment Purposes and the Complementary and Alternative Medicine Act. Questions of cross-border medical treatment, the issue of therapeutic classes of medicines, the accommodation of children at psychiatric wards together with adults and others were also raised. Long waiting periods continue, along with delayed diagnoses, different prices of services in private out-patient clinics and patients' problems during dental treatment at home and abroad. We lack suitable expert supervision of providers of health care and dental services. Patients complain about the disrespectful attitude of members of certain disability commissions. They are dissatisfied with commissions' decisions, which are frequently taken without suitable procedures (even without examining the patient); furthermore, the opinions of specialists are not observed during the decision-making process. They expressed concern about the slow response of commissions and the Medical Chamber of Slovenia. The issue of a second opinion is still topical: opinions of domestic and foreign experts vary, decisions on treatment are left to patients, and the insurance institute has no suitable grounds to cover the costs in the case of an 'incorrect' decision. We are thus still sounding a warning in the expectation of a broad discussion before the adoption of health reform, which has been anticipated; unfortunately, it is taking too long. A lot of work was done by representatives of patients' rights, who regularly inform us about their work and findings.

Social matters

Fundamental questions arising in the field of social matters may be rhetorical: how long will the situation remain at a standstill and what can the individual do, or what did or what more should the state and local authorities do for people to enable them to live from their own work and payment for it without worrying that one day due to the inability to cover basic living costs enforcement officers will knock on their door and seize their TV, the only "window to the world", a 15-year-old washing machine or even evict them?

People finding themselves in severe financial and also psychological crisis need counsellors at social work centres who take enough time for them and explain humanely and understandably what solutions are available for them, because they otherwise wander from door to door, look for emergency exits and sadly discover that there are simply no solutions for them.

The Ombudsman is worried in this substantive field about the great number of justified complaints (established violations of human rights by state authorities), overly long deadlines for decisions on social rights (fatally long for many), frequently inefficient protection of vulnerable groups of citizens in particular, and the rigid, ossified and formal conduct of many officials. The Ombudsman also established many problems in the field of institutional care.

Any kind of tolerance of violence (even the slightest) is unacceptable. Poverty is also a unique type of violence. One-fifth of the population lives at high risk of social exclusion, which is as many as 400,000 people (of all ages). Poverty cannot be denied and it cannot be abolished even by the most positive associations of good humanitarians, concerts, marathons, walks, collections of bottle caps and similar praiseworthy campaigns which frequently feature sad children who thank the unknown donors for their charity before they go to sleep. The state – and again, the state – must be the first to assume the lion's share of responsibility, and prepare and implement sufficiently effective programmes to radically reduce poverty. Charity is praiseworthy, but it is only for special 'treats' and not for survival. A too onerous and long-term burden was shifted onto humanitarians, who cannot work only on ethical drive.

Unemployment

The Constitution of the Republic of Slovenia defines the obligation of the state to create opportunities for employment and work and ensure necessary protection by law. Does it do enough to realise this constitutional commitment, particularly for the young and certain groups of socially excluded people? We are pleased with the new solutions of the line ministry for the implementation of an active employment policy, but the state should not cut funds for public works. It must encourage the inclusion of the unemployed in work. The staff of the Employment Service of Slovenia should be made more aware of the vulnerability of people who come to them with great expectations, and should respond more professionally, sympathetically and swiftly. Removal from the register of unemployed persons should not merely be a consequence of the rigid conduct of state officials, even if, and only if, it is due to the desire to reduce the alarming number of unemployed. Thus, many turn to social assistance services or even become homeless, and a great deal of effort is necessary for their transition from the street or shelter to independence. Perhaps we need a clearer national employment strategy.

Children's rights

It is said that it is frequently children who are 'punished' instead of their parents. Even the state is on the list of violators of children's rights, not having passed new family legislation, prohibited corporal punishment, transferred the entire decision-making process to courts and ratified certain international treaties. In many family disputes, children are frequently subjects of the dispute, sometimes even of unreasonably long decision-making by the court and numerous expert opinions. A child is not 'heard' or even 'seen'; it is even subject to 'seizure'. For the eighth year, the Ombudsman has been implementing a pilot project, "Advocate – A Child's Voice", which is an attempt to promote the voice of the child, and contribute to the prevention or at least mitigation of the great trauma of 'wounded' children, but that is not enough. Another burning issue is the difficult situation of certain children with special needs and their desperate parents, who have been trying for years to obtain early and comprehensive treatment, a national register of children at risk, sufficient capacities in occupational activity centres or suitable arrangements for those who want to take care of their children at home. When will we take care of everyone who has special needs, behavioural disorders, are violent or are victims of violence? I ascertain that state and local authorities fail to take suitable measures and do not always act in the child's best interest. They fail to provide sufficient experts, e.g. child psychiatrists, to provide children with suitable care and offer them expert support.

Implementation of the National Preventive Mechanism

Under the Act Ratifying the Optional Protocol to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (Official Gazette of the Republic of Slovenia, no. 114/06 – International Treaties, no. 20/06), the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) became

entrusted with the important duties and powers of the National Preventive Mechanism (NPM) in 2006. The Ombudsman thus became an integral part of the generally applicable system under the auspices of the United Nations Organisation, which implements an (additional) mechanism for the prevention of torture and other forms of ill-treatment of persons deprived of liberty at the international and national levels. The system is particularly based on regular visits to places of deprivation of liberty. These are preventive visits for the purpose of preventing torture or other cruel treatment before they occur.

We believe that the Ombudsman ensured efficient implementation of the duties and powers of the NPM by implementing the Optional Protocol. With the inclusion of non-governmental and humanitarian organisations (NGOs) in the implementation of the duties and powers of the NPM, the transparency of the Ombudsman's work in this field also increased, which has ensured improved quality of the duties and powers following the ratification of the Optional Protocol. Such a solution is a novelty in the introduction of a public-private partnership in the Republic of Slovenia and may serve as an example for further changes in the operations of other state authorities. From the international point of view, it is one of the possible models for implementing the Optional Protocol.

When implementing its duties and powers, the NPM visits (while following its annual programme of visits) all places of deprivation of liberty in the Republic of Slovenia and thus verifies the treatment of people deprived of their liberty in order to enhance their protection from torture and other forms of cruel, inhumane or degrading treatment or punishment. While observing legal norms, the NPM submits recommendations to the relevant authorities in order to improve the conditions and treatment of people deprived of their liberty and to prevent torture and other forms of cruel, inhumane or degrading treatment or punishment. In this regard, it may also submit proposals and comments concerning applicable or drafted acts.

In 2014, we conducted 39 visits to various institutions. We thus visited sixteen police stations (one control visit included), seven prisons, five social care institutions, two special social care institutions, four psychiatric hospitals, four institutions for the education of children and adolescents with emotional and behavioural disorders and the Aliens Centre.



Photo of the staff of the Human Rights Ombudsman of the Republic of Slovenia (October 2014)

The NPM drafts a comprehensive (final) report on the findings established at the institution after each visit. The report also includes proposals and recommendations for the elimination of irregularities and to improve the situation, including measures to reduce the possibilities of improper treatment in the future. The Ombudsman's representatives and representatives of the selected NGOs participate in drafting the report on the visits.

Implementing NPM recommendations is a commitment of the State Party to the Optional Protocol. According to Article 22 of the Optional Protocol, the competent authorities of the State Party must address NPM recommendations and establish a dialogue with it on possible measures to realise their recommendations. We are generally pleased with the response of the relevant authorities (particularly visited institutions) to our findings and recommendations for the improvement of situations, since they show a readiness to cooperate. We particularly note that the institutions try to adopt all the measures needed for improvements which are in their domain. We are pleased to establish that the findings, proposals and recommendations for improvements given by the Ombudsman within its duties and powers of the NPM frequently do result in an improvement in conditions and the treatment of persons deprived of liberty. We strive to enhance and deepen cooperation with the relevant ministries, particularly regarding issues which demand systemic changes in the field.

In addition to visiting places of deprivation of liberty, the NPM also implements many other activities, such as preparing proposals and comments concerning applicable or drafted acts, preparing and giving presentations to foreign delegations or visitors, preparing replies to questions from different NPM networks, participating at meetings etc. NPM members participate at various national and international events by presenting our operations and current experience.

I would like everyone, including leaders, to be aware of rights and also duties, which demand prompt, fair and responsible conduct. The legislative and executive branches of power must adopt legal regulations and implement these in practice in order to prevent the erosion of the rule of law and the social state. Swift and predictable action by the judiciary branch of power must restore people's trust and dignity, so that even the most vulnerable people feel that rights are indivisible and exactly the same for all.

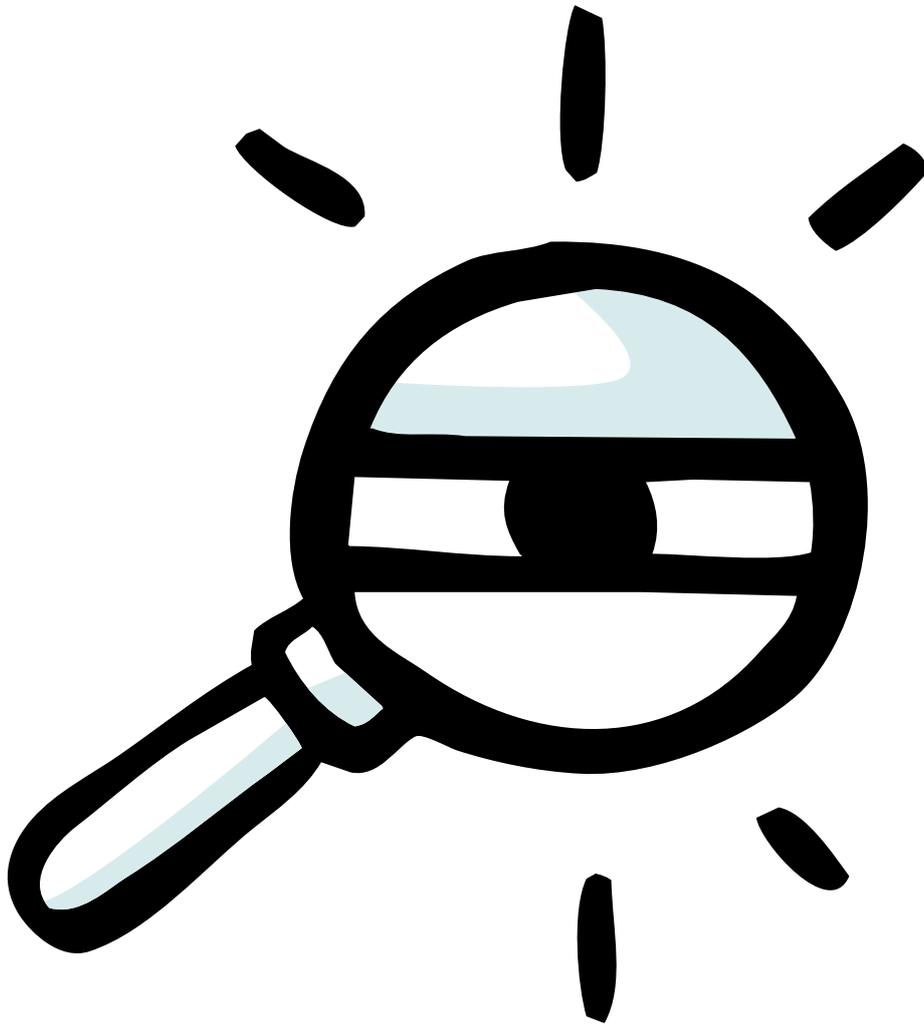
*A change is your act,
it demands your initiative,
your decision
and also your intelligence.*
(Marcus Aurelius)



Vlasta Nussdorfer
Human Rights Ombudsman

2

WORK CONTENT AND REVIEW OF CASES DISCUSSED



2.1

CONSTITUTIONAL RIGHTS

| Area of work | Cases considered | | | Resolved and founded | | |
|---|------------------|------------|-------------|----------------------|----------------|--------------------------------------|
| | 2013 | 2014 | Index 14/13 | No. of resolved | No. of founded | Percentage of founded among resolved |
| 1. Constitutional rights | 263 | 198 | 75.3 | 173 | 16 | 9.2 |
| 1.1 Freedom of conscience | 2 | 2 | 100.0 | 2 | 0 | 0.0 |
| 1.2 Ethics of public statements | 183 | 89 | 48.6 | 81 | 9 | 11.1 |
| 1.3 Assembly and association | 5 | 6 | 120.0 | 3 | 0 | 0.0 |
| 1.4 Security services | 1 | 2 | 200.0 | 1 | 0 | 0.0 |
| 1.5 Voting rights | 9 | 14 | 155.6 | 14 | 0 | 0.0 |
| 1.6 Personal data protection | 49 | 66 | 134.7 | 58 | 2 | 3.4 |
| 1.7 Access to info. of public character | 5 | 6 | 120.0 | 6 | 3 | 50.0 |
| 1.8 Other | 9 | 13 | 144.4 | 8 | 2 | 25.0 |

In 2014, the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) again received fewer complaints than in the previous year in the field of constitutional rights. The reduction occurred exclusively in complaints relating to the ethics of public statements, which halved (from 183 to 89). The number of complaints is nevertheless still high (198) and exceeds the average number of complaints in this field in the last 20 years (the average is 125 complaints a year). In other areas, numbers are comparable with previous years, or their number is so low that it renders impossible a relevant assessment of trends relating to previous periods. The number of founded complaints in the field of constitutional rights is on average always somewhat lower due to complaints being submitted too early when legal and other options have not been explored yet; as a result, we were unable to establish or confirm these violations.

2.1.1 Ethics of public statements

The number of complaints received in this field again somewhat decreased in 2014. After an exceptional increase in 2012, when we received as many as 372 complaints and 183 in 2013 with regard to the ethics of public statements (majority dealing with hate speech), we received 89 in 2014. Complaints relating to hate speech instigated particularly on certain websites and networks have thus somewhat declined. Less provocative topics were also noted in the public and in politics than in the relevant year (which was also the year of the referendum on the Family Code). Considering the long-term average in this field, the number of complaints is still high.

Complainants expect the Ombudsman to respond to cases of hate speech

Many complainants point out assumed cases of hate speech or hatred, and expect the Ombudsman's response or instructions on what to do about this. The complaints received by the Ombudsman reveal very different understandings of so-called hate speech and also the Ombudsman's role. Many complainants expect the Ombudsman to publicly condemn statements which in their opinion constitute hate speech. Some of these complaints are clearly ideologically and politically motivated, with the expectation that the Ombudsman would publicly condemn certain statements or opinions. The Ombudsman has frequently publicly condemned all cases of incitement to intolerance and hatred. Relating to individual responses, we try to respond only to those cases which indisputably display elements prohibited by the Constitution of the Republic of Slovenia. These particularly include cases of incitement to hatred against minorities who cannot respond themselves or lack access to the media. In Article 63, the Constitution clearly states that any incitement to national, racial, religious or other discrimination and inciting hatred and intolerance thereof are considered unconstitutional.

Example

The Ombudsman decides independently on its public response, not on the basis of appeals by politicians and political parties

The deputy group of the Slovenian Democratic Party contacted the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) by submitting the signatures of deputies of the group in the National Assembly. The letter was accompanied by copies of several media records from different periods, including statements of visible members of a veterans' organisation which supposedly "severely damaged the standards and norms of fundamental human rights and freedoms protected by the Constitution and denoted a continuation of the revolutionary and totalitarian practice of the pre-independence regime." The deputies expressed their anticipation that the Ombudsman would initiate its own procedure as a broader issue which is important for protecting the human rights, fundamental freedoms and legal security of citizens.

After examining the complaint, the Ombudsman discovered that the issue concerns a political debate on social and political circumstances. We communicated that the Ombudsman usually does not participate in public discussions. Much is published by the media and on the Internet which someone may find questionable. The Ombudsman does not monitor these publications and has no legal bases for doing so or responding to them. When considering whether the Ombudsman should respond, it is important to assess whether relevant cases include opinions and assessments on social and political circumstances which are protected under the constitutionally and internationally protected right to freedom of expression. In this regard the European Court for Human Rights has emphasised several times that freedom of expression must particularly be safeguarded in political discussions and debates which are important for the public. This is required by the pluralism, tolerance and breadth of spirit which constitute democratic societies. The European Court has also stressed several times that freedom of expression does not refer only to information or ideas which we accept, but also includes those which may hurt, shock or upset individuals or individual groups in a society. However, freedom of expression is only protected until it encroaches on other human rights and freedoms and the rights of others.

Both of the letters of the deputy group could be understood also as political pressure on the Ombudsman's work, or on when and in which cases the Ombudsman should make public statements and give an opinion. As per Article 4 of the Human Rights Ombudsman Act (ZVarCP), the Ombudsman is independent and autonomous in its work. The Ombudsman's independence or autonomy would be threatened in particular if it responded and initiated procedures on the basis of the wishes and expectations of a political party or politician. (1.2-2/2014)

The Ombudsman is a partner and supporter of the project, "Responding to Hate Speech – launch of an independent connecting body"

We must frequently explain to complainants that the Ombudsman is not competent to provide an assessment of whether elements of a criminal offence are present in individual cases. Such an assessment falls under the responsibility of prosecutors and judges, which is why individual complainants or journalists cannot expect

the Ombudsman to take a position concerning the criminal nature of individual statements or messages. Due to the protection of freedom of expression and particularly the freedom of the media, the conditions for the criminal prosecution of spoken or written words are justifiably very strict.

It is obvious also on the basis of complaints received by the Ombudsman that a wide 'grey' area of unsuitable public speech exists in practice which fails to comply with the requirements for criminal prosecution. No simple answer exists as to how to respond to and limit expressions of hatred and intolerance. Criminal prosecution is suitable only in the most extreme cases, when violence is anticipated or when speech is directed towards a group being discriminated against. To this end, other forms of public response and public condemnation of unacceptable practices are also important. It is also vital that the response be immediate and, if possible, in the forum where the unacceptable statements occur. If hate speech occurs in politics, then politicians should respond; if it occurs in web forums, the participants should respond, etc. Self-regulatory mechanisms for responding are also welcome, such as the Ethics Committee of the Association of Journalists of Slovenia. The Ombudsman thus proposes that deputies and other politicians adopt an ethics code and form a tribunal to respond to individual cases of hate speech in politics subject to public condemnation.

Due to the aforementioned, the Ombudsman strongly supports the new project, "Responding to Hate Speech – launch of an independent connecting body" (Z (od)govorom nad sovražni govor – zakon neodvisnega povezovalnega telesa), which is being coordinated by the Peace Institute on the basis of a successful application to a tender of the EEA Financial Mechanism and the Norwegian Financial Mechanism 2009–2014. The project was launched in September 2014. The Ombudsman participated in the project in its initial stage and is a project partner together with the Faculty of Social Sciences (Spletno oko) and RTV Slovenia Multimedia Centre.

One of the main objectives of the project is to establish a public, responsive, systematic, long-term operating and independent body which contributes to reducing the occurrence of hate speech in Slovenia. The Anti-Hate Speech Council (Council) was established in January 2015. Members of the Council work as individuals for the common good and do not represent any interest group or individual institution. The Council is supposed to respond to cases of hate speech with public statements at the request of a legal entity or a natural person or at the proposal of a member of the Council. Another objective is the empowerment of vulnerable groups, the promotion of active citizenship and the formation of a definition of "hate speech" and its inclusion in legislation. More information about the project can be found at <http://www.mirovni-institut.si/govor>.

Sanctioning public incitement to hatred, violence or intolerance as an offence

Already in past reports since 2011, the Ombudsman has proposed that the Government examine the possibility of sanctioning public incitement to hatred, violence or intolerance as an offence. The Protection of Public Order Act (ZJRM-1) defines as an offence violent or audacious behaviour which causes a feeling of humiliation, endangerment, fear or hurt feelings, indecent behaviour in a public place and writing graffiti on buildings. Article 20 of the ZJRM-1 stipulates that the penalty is a higher fine if this and some other acts are committed **with the intention of provoking intolerance on the basis of national, racial, sexual, ethnic, religious or political origin or sexual orientation.**

Relating to the Ombudsman's proposal – that the aforementioned forms of communication could also be defined as public spaces which are accessible to anyone under certain conditions with suitable interpretation of the definition of a public space referred to in Point 1 of Article 2 of the ZRJM-1 – the Government responded that the police are obliged to implement regulations and thus observe the legal conditions for enforcing individual authorisations against perpetrators, while the legislator determines elements of a criminal offence, penal sanctions and conditions for the enforcement of police authorisations. The Government assesses that modification of the interpretation of a public space would not result in the desired objective, since police officers have **limited authorisations** when determining perpetrators (in particular if an offence was committed by means of **public media**).

Irrespective of this response from the Government, the Ombudsman is pleased to observe that the recommendation to test the **possibility of interpreting web space as public space** in practice in offence proceedings was realised at least in case. In March 2014, information was noticed in the media for which the

police fined an individual who had published hate content on Facebook for “indecent behaviour in a public place”. It will be interesting to follow up how such an attempt to interpret public space in terms of offences is established or whether it will undergo a judicial review.

Compensation due to unjustified interference with privacy by way of a public publication should be higher

The Ombudsman has made several recommendations that the possibility of enacting a civil fine or compensation due to unjustified interference with privacy by way of public publication should be reviewed. According to the current system, an injured party has to prove material and non-pecuniary damage incurred due to a publication of unjustified allegations, which is why judgements awarding compensation for the interferences with personal rights are too low to have a deterrent effect on media that produces sensational news.

Example

Reporting of Radio Krka about Roma

A complainant contacted the Human Rights Ombudsman about hate speech against the local Roma population on Radio Krka. We were informed that Roma is being deliberately spelled with a lower-case letter ('roma') rather than a capital letter on the website of the aforementioned radio. Instead of the term Roma, the expression 'ethnic' is being used. According to the complainant, the texts constitute incitement and present Roma only negatively.

As per the statements of the complainant, the Ombudsman thought that this could be a case of hate speech. Although the right to freedom of expression means that the contribution may also include information which may shock, hurt or upset individuals or groups, these should not be offensive with the mere intention of being offensive, since this can be understood as an encroachment on the protection of a person's personality and dignity or that of a certain group to which these individuals belong. The spelling of Roma with a lower-case letter and renaming Roma 'ethnic', which strips the Roma of the characteristic of a specially protected minority or ethnicity itself and is primarily intended to discredit the group, cannot in any case contribute to the fundamental mission of the media, which is to inform the public, satisfy the public's cultural, educational and other needs, and communicate to a mass audience (Article 2 of the Media Act). Such conduct is contrary to the constitutional principles of equality and democratic structures in the Republic of Slovenia and the provision of Article 63 of the Constitution of the Republic of Slovenia, which prohibits incitement to national, racial, religious or other discrimination, and the inflaming of national, racial, religious or other hatred and intolerance. (1.2-29/2014)

2.1.2 Voting rights

In 2014, the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) received more than 50 per cent more complaints (14) than in previous year (9) in the field of voting rights. The reason for this were the early elections to the National Assembly and regular local elections in 2014.

We received some complaints relating to the distribution of electoral material abroad. Complainants from abroad expressed their concern about not receiving electoral material although they submitted their voter registration forms by mail. In one case, we conducted an inquiry at the National Electoral Commission (NEC) about the time frames for delivering electoral material to Great Britain. The NEC explained that material was sent as priority mail and should have been delivered in Great Britain in five working days. The NEC also explained why the material was sent so late. The final date for submissions of candidatures was 18 June 2014, which then had to be verified and a draw for classification conducted. Completed ballot papers were printed only on 28 and 29 June 2014.

2.1.3 Protection of privacy and personal data

The Ombudsman entitled section 1.6 Protection of privacy and personal data in 2010. This field previously included only the protection of personal data. Some 45 complainants contacted the Ombudsman in 2014 with various questions relating to the invasion of privacy or violation of regulations governing the protection of personal data; in total, 66 cases were discussed, almost 35 per cent more than the year before (49) but only two were justified.

In most cases, the complainants sought explanations about their rights or the legal means with which they could protect their rights to privacy and personal data protection. The complainants were usually given specifications of their rights or instructions relating to the use of legal methods for the protection of their rights and interests. They were most frequently referred to the Information Commissioner (IC) or to other national supervisory bodies for personal data protection. If necessary, we contacted the IC for explanations about procedures and were pleased with their response.

The Ombudsman succeeded with a request for a constitutional review of the Protection of Documents and Archives and Archival Institutions Act about the hand-over and accessibility of materials from psychiatric institutions

In 2012, the Ombudsman lodged a request with the Constitutional Court of the Republic of Slovenia challenging the constitutionality of the Protection of Documents and Archives and Archival Institutions Act (ZVDAGA) since it fails to regulate the hand-over and accessibility of materials of psychiatric institutions containing sensitive personal information on medical treatment. The Ombudsman believes that the contested first paragraph of Article 40 of the ZVDAGA is inconsistent with Articles 2, 35 and 38 of the Constitution of the Republic of Slovenia, since it does not regulate separately the delivery and regimen for handling material from psychiatric institutions that contains information on psychiatric treatment.

With Decision U-I-70/12 of 24 May 2012, the Constitutional Court of the Republic of Slovenia temporarily suspended the implementation of Article 40 of the ZVDAGA in the section referring to materials from psychiatric institutions containing sensitive personal data on psychiatric treatment until the final judgement of the Court on this matter.

On 21 March 2014, the Constitutional Court determined with Decision U-I-70/12 that the ZVDAGA was in non-compliance with the Constitution of the Republic of Slovenia if the archival material also includes material from health-care providers (who, according to this Act, are defined as entities of public law) which contains personal data on the treatment of patients. The National Assembly must eliminate the established discrepancy within one year after the publication of the decision in the Official Gazette of the Republic of Slovenia. Until the enforcement of a different legislative solution, the material of health-care providers (who are defined as entities of public law according to the Protection of Documents and Archives and Archival Institutions Act), which as per this Act is defined as public archival material and consists of personal data on the treatment of patients, is not regulated according to this Act or executive regulations issued on its basis. The Constitutional Court confirmed the unconstitutionality claimed in the Ombudsman's request. It also confirmed that storage of sensitive personal data by a public authority, including archiving and transferring material from a health-care institution or an out-patient clinic (where it was written) into public archives – for the purpose of enabling public access to the material – constitute an encroachment on a person's right to protection of personal data (Article 38 of the Constitution) and the right to privacy and personality rights (Article 35) while also threatening the right to personal dignity and safety (Article 34).

The Ombudsman expresses satisfaction with the success of the request and also highlights that the legal regulation which the Constitutional Court of the Republic of Slovenia pointed out has not yet been adopted.

Possibilities for identifying insulting anonymous commentators on the Internet

A complainant contacted the Ombudsman claiming that he had received insulting comments on a web portal from several users of the portal. The authors hid behind pseudonyms. The portal refused to forward him data on the authors of the comments. Due to the insulting allegations and slander, he also filed a report with the police, but was informed that slander and libel are subject to civil law. The police were unable to help him obtain data on the perpetrators and he was also unable to obtain a court order to acquire traffic data on the authors of the insulting statements. In the first paragraph of Article 149, the Criminal Procedure Act (ZKP) allows the issue of an order to establish data on traffic in electronic communications network only for acts being prosecuted *ex officio* and not for acts subject to private lawsuits. The prosecution of perpetrators of offences committed via the Internet is thus practically impossible as per the applicable legislation since these offences are subject to a private lawsuit. The injured party is unable to resort civil law concerning an encroachment on personal rights since the perpetrator cannot be identified. This explanation was also based on the opinion of the Information Commissioner provided on its website that the identity of an individual making anonymous comments via the Internet is also protected by the so-called communication privacy provided by Article 37 of the Constitution of the Republic of Slovenia. **The Ombudsman assessed that the applicable regulation prevents the efficient legal protection of victims of encroachments on personal rights taking place via web contents and we thus asked the Ministry of Justice if they shared our opinion and if they planned statutory amendments in this field.**

In its response, the Ministry of Justice particularly stressed that the latest decision of the Constitutional Court of the Republic of Slovenia no. U-I-65/13 of 3 July 2014 on the storage of data on traffic in electronic communications which repealed the entire Chapter XIII of the Electronic Communications Act (ZEKom-1) must be observed in this issue. In accordance with the strict proportionality test, the Constitutional Court assessed that the prescribed measure (non-selective storage of traffic data) was not necessary, since the legislator did not limit the processing of personal data only to the investigation, disclosure and prosecution of major criminal offences. Observing the aforementioned, the Ministry of Justice did not see a way to permit the acquisition of identification data of perpetrators of minor criminal offences (subject to a private lawsuit) in a constitutionally acceptable manner. Furthermore, considering the above decision of the Constitutional Court of the Republic of Slovenia, the Ministry of Justice stated that a narrow catalogue of major criminal offences being prosecuted *ex officio* would have to be formed to permit such an encroachment. In the opinion of the Ministry of Justice, it would be unconstitutional to limit protection before the encroachment on communication privacy with the ZKP which stipulates that a crime must be committed which is being prosecuted *ex officio* in order to acquire traffic data in an electronic communications network. In conclusion, the Ministry stated that it did not exclude the option of regulating the relevant issue in a different manner (e.g. from the viewpoint of responsibility of the media or a website) within the legislation governing the media.

The Ombudsman responded that it could not completely agree with the Ministry's reply. We particularly believe that on the basis of the decision of the Constitutional Court of the Republic of Slovenia no. U-I-65/13 that it is not possible to draw only the conclusions provided by the Ministry and that the relevant decision and explanation cannot be transferred and used in the case presented above.

In Decision no. U-I-65/13, the Constitutional Court of the Republic of Slovenia established that **prior (preventive) storage of traffic data denotes an excessive (disproportionate) encroachment on information privacy (right to protection of personal data under Article 38 of the Constitution of the Republic of Slovenia) of all users** of telephone services in the landline and mobile networks, the Internet, e-mail and IP telephony. The Constitutional Court established that the legal determination of mandatory storage of traffic data was a significant and disproportionate interference with personal data protection which did not satisfy the criteria of necessity and proportionality. Prior to that the Constitutional Court had determined that the legislator in ordering such storage of data **had constitutionally permissible objectives**, i.e. the use of traffic data for the purpose of the prevention, investigation and prosecution of major criminal offences, defence of the state and protection of state security in order to ensure the protection of human rights and fundamental freedoms and other fundamental legal goods from unlawful attack. The Constitutional Court then established **that such mass interference with information privacy failed to satisfy the criteria of necessity and proportionality in the narrow sense** (in Point 26) since it mostly affected those "who have or will not have any indirect connection with the purposes for which they were initially collected" and that "non-selective and advanced storage of traffic data means that it will significantly interfere with the rights of the section of the population that did not give a reason for such interference".

The Ombudsman highlights that the entire decision only contemplates the permissibility of interference with information privacy or the right to the protection of personal data under Article 38 of the Constitution of the Republic of Slovenia. The regulation and decision do not refer to communication privacy or the right to privacy of correspondence and other means of communication under Article 37 of the Constitution of the Republic of Slovenia. At the beginning of the explanatory note of the decision, the Constitutional Court also established that “it does not discuss the issue of whether all traffic data determined by the contested regulation are personal data in any case”. It is of key importance that it is possible from all traffic data “to deduct details from an individual's life which must be protected from the viewpoint of the right to privacy”.

In the case of the Ombudsman's complainant, it is a matter of an injured party against whom in his opinion an offence of an insult was committed by means of a publication on the Internet, and the injured party cannot obtain data to reveal the perpetrator hiding behind a pseudonym. The data cannot be obtained only because such an offence is subject to a private lawsuit. Different cases can be observed. **The case discussed by the Constitutional Court of the Republic of Slovenia involved the advanced and preventive collection of a large quantity of traffic data which could denote a threat of mass encroachments on the right to the protection of personal data** also on the rights of those who have done nothing unlawful or interfered with the rights of others. The case of our complainant involved the **acquisition of data which could identify a suspect of a criminal offence committed publicly and not in private communication.**

The Ombudsman believes that comments and other messages on the Internet cannot be considered as messages protected by communication privacy or protection of privacy of correspondence and other means of communication under Article 37 of the Constitution of the Republic of Slovenia. We believe that **the author of the content waived his right to communication privacy by publishing** and cannot expect the protection afforded to private communication. It is unacceptable that authors of public material are additionally protected only because their messages are submitted via the Internet and not in another public manner (e.g. at a public event). A rule must apply to all forms of public communication for contents which are publicly disseminated to an indefinite number of individuals. Hiding behind a pseudonym can be compared with a perpetrator hiding in a public place (e.g. by putting a hood over their head) which would be unsuccessful, since the police have the right to identify and fine them if they commit an offence.

The Ombudsman believes that the weighing conducted by the Constitutional Court of the Republic of Slovenia in Decision no. U-I-65/13 cannot be compared to the weighing of different rights which must be done in the case of our complainant. The weighing between the protection of certain personal data which may reveal the author of an Internet message and the right to judicial protection as ensured by Article 23 of the Constitution of the Republic of Slovenia had not been conducted yet. In our opinion, in deciding this matter, the right to judicial protection must take precedence. This was established by the European Court of Human Rights in the case *K. U. v. Finland* in which it was decided that the state was responsible for violating Articles 8 and 13 of the ECHR because it had failed to ensure the possibility of identifying a person who had encroached on an individual's private and family life with the use of Internet services also when the prosecution of a perpetrator is the responsibility of the injured party and not the state, and when efficient legal protection is not ensured.

Our relevant case thus refers to the **possibility of accessing (personal) data on perpetrators who have already committed an alleged offence, evidence of which (content) is publicly accessible and verifiable.** The Constitution in this case cannot claim interference with personal data, since the collection, processing, designated use, supervision and protection of the confidentiality of personal data is **legally determined** under Article 38 of the Constitution of the Republic of Slovenia. Thus the Constitution does not limit the processing of personal data for the prosecution of major criminal offences. Therefore, we still hold that it is not acceptable that victims of offences committed via publications on the Internet have no effective protection of their personality rights as guaranteed by Article 35 of the Constitution of the Republic of Slovenia. The provision under the first paragraph of Article 149.b of the ZKP which permits the acquisition of traffic data in electronic communication networks only for criminal offences being prosecuted *ex officio* is thus too restrictive, in the Ombudsman's opinion and encroaches on the right to judicial protection as provided by Article 23 of the Constitution of the Republic of Slovenia.

The Ombudsman also responded to the opinion of the Ministry of Justice that the issue is covered by the legislation on the media (i.e. the responsibility of the media/website). We believe that this issue cannot be

resolved comprehensively by amending the legislation on the media. Only a minor section of content accessible via the Internet is provided by entities registered as media which publish edited content and comments, and these are subject to the Media Act. Transferring responsibility for web content to website providers not registered as media and electronic communications operators is questionable, since it encroaches on the core of freedom of the world-wide web and is also difficult to implement in practice in an individual country. The individual in our case will also encounter the same problems; however, the option to obtain certain data from operators (through competent state authorities) would significantly increase the possibility of protecting his constitutionally ensured rights. We proposed to the Ministry of Justice that it reconsider the Ombudsman's opinion.

The Ombudsman believes that the CPC encroached on the complainant's personality rights by publically presenting its findings in a concrete case

A complainant wrote to the Ombudsman stating the belief that the publication of the relevant case resulted in an encroachment on her human rights due to the publication of findings in a concrete case on the website of the Commission for the Prevention of Corruption (CPC). It is evident from the published case that the CPC established that the conduct of officials whose names were given only in the notes of the reasoning points to suspicion of corruption, and the complainant believed that the public presentation of findings denotes prior public condemnation. The complainant also stated that she had no opportunity to defend herself in the proceedings before the CPC and that her explanations were not observed by the CPC once the latter had already prepared a draft of its findings. The complainant asked the Ombudsman to intervene with the CPC to remove the findings on the concrete case from the website.

The Ombudsman ascertained that the complaint might be founded, since public presentation of documents by the CPC has a long-term impact and consequences on the public image of persons concerning whom a violation of due conduct is established, particularly from the viewpoint of interference with their personality rights. When discussing this case and findings, the following issues arose: does (1) a relatively vague finding of the CPC on "conduct pointing to suspicion of corruption" while observing the fact that (2) the CPC itself established that corruption could be confirmed due to the lack of relevant documentation and (3) circumstances in which it is not completely clear whether e.g. a "clever use of provisions" of the Return of Investments in the Public Telecommunications Network Act (ZVVJTO) denotes a violation of due conduct **outweighs interference with the complainant's personality rights**, particularly honour and good name. In its enquiry, the Ombudsman also assessed that **evidentiary standards** which resulted in the finding that people's conduct pointing to suspicion of corruption is defined in different ways in the relevant findings. Their common characteristics in the Ombudsman's opinion are that they are indefinite and low. The CPC reproached the complainant *inter alia* with "clever application of law" and that the conduct of official and responsible persons of the municipality "point to a reasonable suspicion of corruption" and that "corruption cannot be confirmed or determined ultimately, since documentation proving the actual situation /.../ no longer exists" and that although "the actual situation relating to the legal bases for payments cannot be established /.../ the conduct shows with great probability that officials /.../ acted unlawfully and used their position to /.../ public funds". The Commission concluded that "reasonable suspicion exists that these people violated due conduct while using public funds /.../, abused their position and enabled themselves and their family members significant proceeds". According to the Ombudsman, the opinion on excessive encroachment on personality rights could also be justified by the "collective discussion" of five officials. Irrespective of different actual situations, the final findings are identical for all five people involved. The 'guilt' of the discussed people was not individualised.

With its enquiry, the Ombudsman also sought to ascertain the practice of the CPC relating to the publication of (non)anonymous findings about the concrete case. We were particularly interested to learn whether in certain particularly justified cases the CPC makes its findings anonymous or publishes all its findings about concrete cases on its website.

In its response, the CPC replied that the proceedings conducted against the complainant were informal and so cannot be understood as an administrative procedure, since they did not include a decision on rights, obligations and legal benefits of the individual. The findings in the concrete case do not denote decision-making on a criminal, minor offence, damage, disciplinary or any other liability of a legal entity or natural person and are not administrative decisions. According to the CPC, the purpose of the legislator when enacting the findings in the concrete case is a preventive and awareness-rising obligation in the field of fight against corruption which

is in the public interest. One of the fundamental activities/tasks of the Integrity and Prevention of Corruption Act (ZIntPK) and the CPC is realised with the relevant findings, which is the implementation of a preventive and supervisory function. The CPC explained that the complainant had the opportunity to state her opinion on the draft findings, as determined by the Act.

The CPC also stated that the main purpose of its authorisations lies in the fact that they recognise and identify corrupt conduct, which is later published by means of general opinions and findings in concrete cases. The Commission thus informs the public about the standards set in the field of preventing corruption and functions educationally; anything else is a matter to be discussed before other competent authorities.

After the CPC determines that the conclusions on the findings in a case must be adopted/issued, these are then published on its website (if restrictions under the eighth paragraph of Article 13 of the ZIntPK do not apply). When completing each case, the Commission decides individually on whether a document requires public presentation on the basis of the ZIntPK. In its conclusion, the CPC wrote that “the opinion of the Commission may have consequences for an individual, but – considering the above statements – not on their personal or human rights”.

The Ombudsman studied the CPC’s reply and legal basis for the public presentation of findings in a concrete case. The second paragraph of Article 13 of the ZIntPK, which was passed in 2010, stated that personal data must not be provided in general opinions. This was modified with amendments to the ZIntPK-B (Official Gazette of the Republic of Slovenia, no. 43/2011) which now in the fifth paragraph of Article 13 determines that “the Commission shall issue a general opinion or findings on a concrete case after completing the procedure”. The Ombudsman established that a **proportionality test between an individual’s right to their honour and good name and the public interest** to learn the findings of the Commission **was not implemented** in the legislation procedure. It seems that the amendment to the ZIntPK-B was adopted only because of high-profile cases, probably for cases when corruption by **holders of public office** was established or the person involved was clearly evident from other circumstances in the general opinion. The legislator did not consider whether the public presentation of findings in certain cases could also cause excessive harmful consequences for the personality rights of a discussed individual.

The Ombudsman replied to the complainant that the CPC had legal grounds to publish findings in the concrete case on the basis of the applicable ZIntPK, including a legal basis for processing personal data. The Ombudsman was thus unable to propose to the CPC that it remove findings on the complainant in the concrete case from their website. We advised the complainant to do this in civil proceedings on the basis of the Code of Obligations.

The Ombudsman’s conclusion was that **the public presentation of findings in a concrete case is an encroachment on the complainant’s personality rights**. We believe that possible anonymisation of the complainant in the CPC’s findings in the concrete case would not significantly reduce their educative and awareness-rising function. The Ombudsman also ascertained the deficiency of the ZIntPK, since it fails to demand that, before publishing its findings, the CPC verify whether the circumstances of a case, and particularly the weight of the CPC’s findings and evidentiary standard by means of which the CPC’s findings are supported, justify disclosure of the identity of persons to which the publication refers.

Example

Dismissal procedure of a council member of an institute

A complainant dismissed as a council member of a secondary school by a decision of the Government of the Republic of Slovenia at the end of May 2014 contacted the Ombudsman. The decision of the Government of the Republic of Slovenia on the early termination of her term was not explained; however, the press release on the Government’s session, which is publicly accessible also on the Government’s website, stated that the dismissal was proposed due to information submitted by secondary school students and their parents. According to the information, the finding of the proposer of the dismissal stated that the representative of the founder had not acted in compliance with the interests of the founder.

The complainant asked the Ombudsman to intervene because she believed that the Government of the Republic of Slovenia had acted contrary to the interests of the founder by publishing the statement and had thus encroached on her personality rights. According to the complainant, the statement was false and also harmed her reputation and further participation in social life. She further stated that she had not been informed about how her actions were not compliant with the interests of the founder and added that the Government had never informed her about its interests. Furthermore, she was not given the opportunity to defend or provide clarifications in the dismissal procedure.

In her letter, the complainant did not define her expectations from the Ombudsman, so we explained that she could file a lawsuit for the protection of her personality rights on the basis of Article 134 of the Code of Obligations and with it demand *inter alia* the removal of false or insulting information.

In its work, the Ombudsman so far has not found that the procedures for dismissing council members of institutions present a systemic problem; however, for preventive reasons we decided to mention the issue of dismissal procedures in the Annual Report and thus inform decision-makers about three aspects in particular. In cases of early dismissal, the principles of good governance and protection of the personality rights of dismissed individuals demand that the Government of the Republic of Slovenia (1) inform the representative about the reasons for the decision, (2) enable them to provide their opinion on the reasons, (3) be exceptionally cautious when publishing information about dismissed members. Caution when publishing information on reasons for dismissal is particularly important in cases when these reasons are not established in a special procedure allowing individuals the opportunity to defend themselves or seek legal remedies. (1.6-33/2014)

Example

Dignity and protection of personality rights (treatment of dead foetus)

The Human Rights Ombudsman of the Republic of Slovenia discussed a complaint in which we learned about the problems of parents who wanted to bury a stillborn child or a dead foetus, which the mother had carried for 16 weeks. The parents were told in the hospital that the burial of the dead foetus was not possible, since it was considered waste. Later, the grieving parents were able to bury the dead foetus in their family grave.

The Rules on the conditions and manner of implementing coroner services (the Rules) determine in Article 17 that a dead foetus is considered a stillborn child irrespective of its weight and size if the pregnancy lasts 22 weeks and more. In the case of stillborn children (foetuses reaching gestation age of at least 22 weeks), there are no issues relating to the funeral. It is different for those stillborn foetuses which do not reach the age of 22 weeks (dead foetus). The Ombudsman established that the treatment of dead foetuses varies in different places in the country. For example, it is considered biological waste in Ptuj Hospital, whereas Ljubljana Maternity Hospital enables a burial regardless of the gestational age of the foetus. At the request of parents, the burial is conducted on the basis of a report of the cause of death, and psychological help is offered to the parents.

After studying the Decree on waste, the Ombudsman submitted an enquiry to the Ministry of the Environment and Spatial Planning (MOP). It was clearly understood from the response of the MOP that a dead foetus is not considered biological waste, and the Decree on waste is not to be applied in this regard.

After studying all legal bases and responses, the Ombudsman determined that any hindering of the parents' wish to bury a dead foetus would be contrary to their human rights. To avoid possible further problems in this field, the Ombudsman thinks it sensible that the Ministry of Health inform all maternity hospitals in Slovenia about the example of the good practice in Ljubljana Maternity Hospital. We expect that the adoption of a new Act on burial services and management of cemeteries will eliminate legal impediments to the burial of a dead foetus. (1.0-6/2014 and 1.0- 7/2014)

2.2

DISCRIMINATION

| Area of work | Cases considered | | | Resolved and founded | | |
|--|------------------|-----------|-------------|----------------------|----------------|--------------------------------------|
| | 2013 | 2014 | Index 14/14 | No. of resolved | No. of founded | Percentage of founded among resolved |
| 2. Discrimination | 80 | 75 | 93.8 | 66 | 28 | 42.4 |
| 2.1 National and ethnic minorities | 33 | 33 | 100.0 | 30 | 15 | 50.0 |
| 2.2 Equal opportunities by gender | 0 | 4 | - | 4 | 0 | - |
| 2.3 In employment | 2 | 6 | 300.0 | 6 | 1 | 16.7 |
| 2.4 Equal opportunities relating to sexual orientation | 3 | 1 | 33.3 | 1 | 1 | 100.0 |
| 2.5 Equal opportunities relating to physical or mental disability (invalidity) | 16 | 25 | 156.3 | 19 | 8 | 42.1 |
| 2.6 Other | 26 | 6 | 23.1 | 6 | 3 | 50.0 |

The number of complaints in the field of discrimination declined somewhat in 2014. We discussed five complaints less than in 2013. The number of complaints under the sub-section, Other, decreased most, while the number of complaints classified under Discrimination in employment, Equal opportunities relating to physical or mental disability (invalidity) and Equal opportunities relating to sexual orientation increased; we discussed four complaints under the latter sub-section, while we discussed none in 2013.

The share of founded complaints (42.4 per cent) is again large in the field of discrimination. Many complaints assessed as founded were in the fields of equal opportunities relating to sexual orientation, invalidity and national and ethnic origin. This is not surprising, since most complaints in this field refer to poor conditions in Roma settlements and their surroundings, which are not arranged legally and in terms of municipal infrastructure, while state and local community authorities have not been responding accordingly to the Ombudsman's recommendations over the years.

In the field of discrimination, the Ombudsman made nine recommendations in the 2013 report, of which five referred to the situation of the Roma community in the Republic of Slovenia. Among other things, the Ombudsman also proposed that municipalities which had not yet done so adopt spatial acts and other measures to legalise and provide municipal infrastructure for Roma settlements in their areas and that the Government of the Republic of Slovenia on the basis of the third paragraph of Article 5 of the Roma Community Act (ZRomS-1) take measures necessary for the arrangement of conditions in municipalities where health is at risk in Roma settlements and where public law and order have been disrupted for a lengthy period or a permanent threat to the environment has been detected. The Government of the Republic of Slovenia replied to that note that spatial arrangement and planning lie in the domain of self-governing local communities, i.e. municipalities. It also established the lack of interest in municipalities in which Roma live to resolve spatial issues in the Roma settlements in their areas more intensively in practice. The dynamics of adopting spatial plans also points to this. The Government's reply confirms the Ombudsman's findings on the lack of political will and determination to change the situation of the Roma community more radically, particularly relating to

living conditions and that the state authorities should take action with regard to arranging Roma settlements at the local level, which is enabled by the third paragraph of Article 5 of the ZRomS-1.

Relating to the recommendation that the Government prepare amendments to the Roma Community Act (ZRomS-1) to eliminate weaknesses established so far in the act, particularly concerning the unsuitable composition of the Roma Community Council of the Republic of Slovenia, the Government of the Republic of Slovenia replied that the act on amendments to the ZRomS-1 was in the Government's Legislative Work Programme for 2014 and that the final deadline for the adoption of the act was 12 May 2015. The Commission of the Government of the Republic of Slovenia for the Protection of the Roma Community also included the drafting of amendments to the ZRomS-1 among its priorities.

In this regard, the Ombudsman established that in spite of recommendations submitted to, and confirmed by, the National Assembly and irrespective of the prepared and harmonised text as evident from the Government's response, the draft amendments to the ZRomS-1 have not been adopted yet, although this is urgent to improve the working of the Roma Community Council of the Republic of Slovenia, which is currently more concerned about its own affairs and is not contributing to accelerating the arrangement of conditions in the field, which in certain areas are already critical.

Relating to the concrete measures under the National Programme of Measures for the Roma of the Government of the Republic of Slovenia (NPUR 2010–2015), the Government explained that it had already started preparing a new national strategy for the 2015–2020 period. The Ombudsman in this respect expects the new national programme to contain more concrete and binding objectives and also anticipate measures in the case of their non-implementation. The realisation of the current strategy is too dependent on the will of local authorities and leaders.

The Ombudsman has recommended several times that legal decisions be adopted – which would ensure an impartial, independent and effective discussion of violations of the prohibition of discrimination on all bases and in all fields as per the EU legal regulation – and an independent advocate of the principle of equality be established who has the authority to investigate violations of the prohibition of discrimination in public and private sectors. The Ombudsman assesses the response of the Government or the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZEM) in this field as inappropriate. The Government anticipates the arrangement of the advocate's situation in the sense of its greater integration with the Ombudsman or even the extension of the Ombudsman's responsibility to the private sector by amending the constitutional provisions on the Ombudsman (Article 159 of the Constitution of the Republic of Slovenia). Without due cause, the Government connects the Ombudsman's warnings and recommendations with the arrangement of the advocate's situation and the fact that Slovenia still lacks a national institution for human rights with full authorisation which would function on the basis of the universally adopted Paris Principles. Regulating a national institution for human rights has almost no connection with the need to establish an independent advocate of the principle of equality, which a country must have on the basis of EU directives.

In 2014, the Ombudsman again unsuccessfully tried to eliminate the established discrimination in the arrangement of the transport of physically disabled students who cannot use public transport between their places of residence and education. In spite of the acknowledgement of discrimination and promises of competent ministries to solve the problem by the end of 2014, the competent authorities, primarily the MDDSZEM, failed to show sufficient readiness to eliminate this discrimination in 2014.

We wrote about discrimination in the allocation of municipal financial aid for newborns in the 2013 report. In the case discussed, the Ombudsman established that the Rules on one-off financial assistance for newborns in the Municipality of Tolmin were discriminatory, since only citizens of the Republic of Slovenia were able to receive financial assistance, but not aliens with a permanent residence permit. In June 2014, the Municipality of Tolmin informed us that it had prepared a draft of new Rules on one-off financial assistance for newborns which modifies the definition of a beneficiary of financial assistance for newborns and will now include aliens with permanent residence in the Republic of Slovenia in addition to citizens of the Republic of Slovenia. The response of the Municipality of Tolmin is assessed as exemplary and displays a high standard of work of a municipal authority and awareness of human rights protection.

2.2.1 Mechanisms to protect against discrimination and the organisation of the state

The questions of combining powers and particularly of possibilities for the efficient and independent work of the advocate remain open, and thus the Ombudsman repeats the recommendation.

For years, the Ombudsman has been emphasising that Slovenia needs a national institution for the protection and promotion of human rights (national institution) functioning on the basis of the Paris Principles (Principles relating to the Status of National Institutions).

In its legal concept, the Ombudsman is a classic parliamentary ombudsman with somewhat broader powers, but does not implement all the duties anticipated by the Paris Principles. The Ombudsman has mentioned this issue several times in previous annual reports and proposed recommendations on the need to establish such a national institution. The National Assembly confirmed the recommendations, but no further progress has been made relating to their realisation. The Ombudsman has tried to resolve this situation several times; three years ago, we proposed the continuation of the work of the then closed Information Office of the Council of Europe in Ljubljana as a centre for human rights functioning within the Ombudsman's structure and serving as a short-term transitional solution.

The Ombudsman has B status among national institutions, the status which we requested, because we are aware that not all duties anticipated by the Paris Principles can be performed due to the lack of staff. Regardless of diverse international contacts and extensive cooperation with numerous institutions at bilateral and international levels, the Ombudsman does not employ a single person for this activity. Thus the Ombudsman is also not active in national institutions within UN bodies in Geneva or in the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights – ICC. During the second discussion round of Slovenia within the universal periodic review, several countries made proposals on the reformation of the Ombudsman into a national institution according to the Paris Principles.

By means of new recommendations, many countries asked Slovenia to harmonise the institution of the human rights ombudsman with the Paris Principles or **provide conditions for the Human Rights Ombudsman of the Republic of Slovenia to be accorded A status as per the Paris Principles.**

The Inter-ministerial Working Group for Human Rights within the framework of the Ministry of Foreign Affairs, in whose work a representative of the Ombudsman constantly participates, has placed this issue on its agenda several times. At their meeting, the Ombudsman expressed readiness to assume full membership of a national institution for human rights with A status according to the Paris Principles on the condition of the suitable provision of staff and material to enable the implementation of such duties. In these discussions, the Ombudsman proposed that the most rational solution for Slovenia would be the reorganisation of the Ombudsman into a national institution as per the Paris Principles according to the Finnish example.

We believe that the experience of the Finnish Human Rights Centre (HRC) can serve as a good basis for possible future discussions on the formation of a similar centre for human rights and an institution for human rights with full membership on the basis of the Paris Principles in Slovenia. The Finnish model of the HRC at the Ombudsman is similar to the Ombudsman's proposal from 2011 for the formation of a human rights centre at the Ombudsman, which would have continued the operations of the Information Centre in Ljubljana, but whose financing by the Council of Europe ceased. At that time, the Ombudsman proposed the formation of a similar centre to promote human rights and implement educational and research tasks in this field. In combination with the centre and a consulting body, the Ombudsman could meet all conditions of the Paris Principles and request full membership status (A status) as a national institution for human rights as per the Paris Principles and participate as a full member within the United Nations and other similar associations. If this proposal had been (financially) supported by the Government, the centre could have been the beginning of the implementation of educational and promotional activities of a preventive nature in the field of human rights.

The Ombudsman thus again proposes the formation of a national institution for human rights with full authorisation and functioning on the basis of the Paris Principles. Such an institution should continuously monitor

the situation in the field of human rights also from the viewpoint of the internationally accepted obligations of the state, and stimulate and implement promotional and educational activities. The Ombudsman is prepared to undertake the reformation into an institution meeting all the conditions for compliance with the Paris Principles; however, suitable support by the state is expected.

2.2.2 National and ethnic minorities

In 2014, most of the complaints concerning discrimination based on national or ethnic origin referred to the Roma community living in Slovenia. The complaints discussed the different problems of members of these communities in individual Roma settlements; most related to living conditions. We also received several complaints from citizens living near such settlements, who pointed out the poor security conditions in the vicinity of Roma settlements and the supposed unequal treatment of citizens. We also encountered these issues during our field sessions and numerous discussions with complainants and representatives of non-governmental organisations.

The response of state authorities to the Ombudsman's enquiries in this field was good, particularly of the Office for National Minorities. The responses from certain municipalities or mayors were more problematic, since we had to contact them several times to obtain replies. In general, the situation in this field is not improving, or is improving too slowly, so the recommendations **from previous years remain current**, so we do not repeat them all in this Report.

In 2014, no complaints were received on discrimination claiming a direct violation of any of special rights guaranteed to either of the self-governing national communities (Italian and Hungarian) or their members in the Republic of Slovenia by the Constitution and law.

For several years in annual reports, the Ombudsman has been proposing that a discussion should commence regarding the position and measures for implementing the collective rights of minorities not mentioned as such by the Constitution of the Republic of Slovenia, but who are so numerous that it is necessary to state a position on their situation in the Republic of Slovenia. In this regard, the Ombudsman hosted representatives of several national communities, i.e. representatives of several associations representing members of the German-speaking community and members of minority nations of the former Yugoslavia. They presented their work and the problems they encounter, the most obvious being the lack of funds for activities to maintain their culture and language. The Ombudsman believes that a strategy for regulating the collective rights of minorities which are not explicitly defined in the Constitution of the Republic of Slovenia will have to be adopted at the level of the state. Such a document would define the policy on these minorities to preserve their cultural identity and language, develop and preserve the ethnic/national identity of members of these communities, their presence in public media and discussion partners representing these communities in their dialogue with the state.

Roma community

In general, the Ombudsman established that insufficient progress was made in the integration of members of the Roma community into Slovenian society in 2014. In some areas, conditions are even worsening or being exacerbated, particularly in the area surrounding Novo Mesto. State and local community authorities fail to express sufficient (political) will and readiness to undertake long-term activities leading to the arrangement of conditions in certain critical areas and the integration of the Roma into the social environment. We also note this at the beginning of this chapter.

The ZRomS-1 and strategic documents, particularly the National Programme of Measures for Roma of the Government of the Republic of Slovenia for the 2010-2015 period (NPUR), provided some results, but the conditions are improving too slowly or the changes are being hindered at the local level and the state cannot or does not want to utilise the available mechanisms, especially on the basis of Article 5 of the ZRomS-1. At the local level, the readiness to make long-term arrangements to improve conditions depends on the (political) will of mayors and majorities in municipal councils. It is clear that political survival with such priorities in the local environment is difficult and thus the state should help municipalities by providing financial assistance and also

by making necessary decisions at times when local politicians cannot or do not want to for various reasons. The burden of resolving the issue of the Roma settlements cannot be placed on local communities.

With the establishment of the Roma Community Council of the Republic of Slovenia, some of the powers and responsibilities for solving of the situation of the Roma community were transferred to the members of this community. Nevertheless, it has to be stated that the current functioning of the Council has not met the expectations raised by the passage of the Act. The conflicts in the Council, which are based on the poor solution of Article 10 of the ZRomS-1 and which the Ombudsman has been noting since 2007, are continuing, and as said before, this body should function as a discussion partner to state authorities in this field, but instead it deals with its own issues rather than concrete conditions in the field.

The Ombudsman believes that in cases when municipalities fail to eliminate established violations of human rights, the state must remedy their (in)actions and ensure respect for human rights and fundamental freedoms. The state is bound to do so by Article 5 of the Constitution of the Republic of Slovenia and ratified and published international treaties on human rights. When the state fails to fulfil its obligations to provide protection of human rights, their violation is solely the state's responsibility.

We provide some examples below of good and bad practice in the municipalities as per the Roma community and its representatives.

Example:

Arrangement of living conditions for residents of the Roma settlement of Goriča vas

A complainant, a member of the Roma community living in the Roma settlement of Goriča vas, wrote to the Ombudsman. In his letter, he claimed that he was living with his school-age children in inhumane conditions, without access to basic infrastructure (water, toilet facilities, electricity). The complainant stated that the mayor of the Municipality of Ribnica (MR) had promised the arrangement of the settlement on several occasions, but nothing was done. He also claimed that there was no dialogue in the MR between municipal authorities and members of the Roma community which could contribute to the improvement of conditions.

After the enquiry at the mayor of the MR, the Ombudsman proposed to the mayor in its letter of 25 March 2014 to (1) ensure residents of the Roma settlement of Goriča vas access to basic infrastructure, particularly drinking water and toilet facilities and (2) invite a representative of the settlement to a discussion and present them with the possibilities for a permanent arrangement of their living conditions. We also suggested that (3) the MR adopt a detailed sectoral programme and measure as stipulated by the second paragraph of Article 6 of the ZRomS-1.

The MR did not observe the Ombudsman's proposals and claimed that it had failed to establish suitable legal bases for the arrangement of living conditions in the Roma settlement of Goriča vas. The Ombudsman informed the Office of the Government of the Republic of Slovenia for National Minorities (Office) thereof and suggested that the Office propose suitable solutions to the MR for the provision of access to drinking water and toilet facilities. If the MR fails to ensure suitable access to drinking water and toilet facilities for the residents of Goriča vas within one month from the receipt of proposals of the Office, the Ombudsman suggested to the Office that the Government of the Republic of Slovenia adopt measures for the provision of access to drinking water and toilet facilities.

In its reply, the Office informed the Ombudsman of its efforts to arrange the Roma settlement of Goriča vas. The Office informed us on its progress on improving communication between the MR and residents of the Roma settlement, which the Ombudsman assessed as a positive move, but the Office again stated that the provision of drinking water was in the domain of the municipality and that the state would not interfere. The Office again proposed to the MR to adopt an action plan and it also planned to "further implement activities to improve cooperation with self-governing local communities".

In its opinion, the Ombudsman stressed that in cases in which human rights of members of the Roma community are violated, (e.g. access to drinking water and toilet facilities) and when it is obvious from the conduct of a municipality that it would not eliminate the violation, the Government of the Republic of Slovenia must ensure the protection of human rights. 10.1-14/2013

Equal opportunities relating to sexual orientation

A few years ago, we introduced a new classification in the chapter on equal opportunities to obtain more accurate data on discrimination on the basis of sexual orientation. Only one complaint was classified under this chapter in 2014 which was founded and we present it below.

Example:

Inclusion of (un)registered same-sex partners in compulsory health insurance

The Human Rights Ombudsman of the Republic of Slovenia was contacted by an alien with a residence permit for a family member. As a partner in a registered same-sex partnership, the complainant's status as a family member was acknowledged in the procedure of obtaining a residence permit. However, this status was not granted to the complainant when concluding compulsory health insurance. When the complainant wanted to conclude compulsory health insurance, the Health Insurance Institute of Slovenia (ZZZS) explained that partners in a registered same-sex partnership could not be insured as close family members.

After a detailed study of the relevant legislation, the Ombudsman discovered that the information received by the complainant from ZZZS was correct. In Article 20, the Health Care and Health Insurance Act (ZZVZZ) gives detailed information on who is considered a family member of an insured person and, on this basis, can be included in health insurance. In the relevant legislative provision, a registered partner in a same-sex partnership is not defined as a family member, and no legal grounds exist to allow a registered partner to be insured as the insured person's family member.

The Ombudsman established that the provisions in point a) of the first paragraph of Article 20 of the ZZVZZ and the third paragraph of Article 21 of the ZZVZZ are not compliant with Article 14 of the Constitution of the Republic of Slovenia in connection with Articles 50 and 51 of the Constitution of the Republic of Slovenia. The Ombudsman believed that this was a systemic deficiency which could be eliminated with an amendment to the ZZVZZ. The Ombudsman submitted a proposal to the Ministry of Health to eliminate the established violation.

It was evident from the Ministry's response that it agreed with the Ombudsman's opinion that partners in (un)registered same-sex partnerships should be included in compulsory health insurance as family members in order to comply with Article 14 of the Constitution of the Republic of Slovenia. The Ministry of Health stated that it planned a reform of health insurance, but did not state when the reform would be prepared. The Ministry also referred to the drafting of the Act on Civil Partnership (ZParS), which was supposed to enable the inclusion of partners in same-sex partnerships in compulsory health insurance as family members until suitable modification of the ZZVZZ.

The Ombudsman again submitted its proposal on immediate action to eliminate the deficiency, because we believed that the procedure of adopting the ZParS could be long and the result of its final enforcement uncertain. 10.4-1/2014

Rights of persons with disabilities

At the beginning of 2013, a new classification field was introduced for complaints on equal opportunities relating to physical or mental disabilities (invalidity). Sixteen complaints were discussed under this new sub-section in 2014, of which 22 per cent were founded. The majority of complaints referred to problems with parking spaces for persons with disabilities; due to their diversity, other complaints were difficult to classify in content sets. The more interesting and systemic issues discussed in 2014 arose from the new arrangement of subsidised transportation for secondary school and higher education students and the results of the infamous Fiscal Balance Act, which created new problems by unequally treating certain categories of beneficiaries. One issue relating to distance to/from school was resolved with an amendment to the act. Another issue, i.e. subsidising the transport of higher education students with disabilities, has still not been solved systemically. The Ministry of Labour, Family, Social Affairs and Equal Opportunities has failed to eliminate the established discrimination

in the transport of students with disabilities (the issue was discussed in the 2013 report; we received a new complaint referring to the same problem in 2014).

Example:

Discrimination in the transport of persons with mental disorders

Due to discrimination relating to the right to free transport of persons with mental disorders aged between 18 and 26 participating in a special education and training programme, more than fifteen complainants wrote to the Human Rights Ombudsman. The complainants stated that persons with mental disorders participating in a special education and training programme are in a disadvantaged position compared with persons with mental disorders attending occupational activity centres, since the latter are guaranteed a free transport to the centre and back. The complainants also highlighted the overcrowding of occupational activity centres, due to which participation in special education and training programmes was the only option for the inclusion of persons with mental disorders in the social environment and their further development.

The Ombudsman was of the opinion that the complaint was justified. The Ombudsman thought that the complainants were being doubly discriminated against: firstly, because persons with mental disorders participating in a special education and training programme are denied rights to which the users in occupational activity centres are entitled, and secondly, because persons with mental disorders aged 18 to 26 participating in a special education and training programme are denied the same rights as their peers in schools enjoy (e.g. the right of students to purchase subsidised tickets for transport between the place of residence and education). The Ombudsman believes that the deficiency of legislation in this field is contrary to the first indent of the second paragraph of Article 6 of the Equalisation of Opportunities for Persons with Disabilities Act (ZIMI) and the second paragraph of Article 11 of the ZIMI.

The Ombudsman notified the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZEM) about the established violations and asked the Ministry to state its opinion on the assumed discrimination as per the provision of the second paragraph of Article 22 of the Implementation of the Principle of Equal Treatment Act. The MDDSZEM was also requested to take a position on the Ombudsman's assessment of the violation of provisions of the ZIMI and to inform us on whether it was preparing amendments to the legislation in this field.

In its response, which was agreed on with the Ministry of Education, Science and Sport, the MDDSZEM agreed with the Ombudsman's opinion that the enforcement of the right to free transport for persons with mental disorders participating in a special education and training programme was not arranged appropriately. The Ministry explained that the regulation for persons with mental disorders aged 18 to 21 was not suitable.

The MDDSZEM was thus aware of the deficiency and declared, that in cooperation with other relevant ministries, it would study the possibilities of eliminating the deficiency and strive to find suitable solutions. We were not completely satisfied with the reply, since it did not include any deadlines for the elimination of the discrimination and we thus continue the discussion of this issue. 10.5-16/2013 and 10.5-1/2014

Example:

Font in an official document

The Ombudsman received a complaint from a visually impaired person with a recognised disability status. The complainant sought the Ombudsman's intervention at the Financial Administration of the Republic of Slovenia (FURS) relating to the issue of a decision on the annual tax return in a font which she would be able to read due to her visual impairment.

The complainant claimed that she tried several times to obtain letters from the tax authority in a form suitable for her low vision abilities, but was not successful in spite of her efforts. The Ombudsman submitted an enquiry to the FURS and thus stressed the rights of the disabled provided by the Equalisation of Opportunities for Persons with Disabilities Act (ZIMI), which in Article 7 stipulates that a visually impaired person is enabled

access to all writings in an understandable form in all procedures before state and self-governing local authorities, holders of public authority or providers of public services in a form selected by the visually impaired person, whereby the Act particularly notes the possibility of enlarging black print. In the same provision, the Act similarly regulates the possibility of access for persons with other types of disabilities.

After our intervention, we received the FURS's reply, which stated that the management of FURS proposed to the tax authorities that in the concrete case and in future disabled persons liable for tax be enabled access to official writings in a manner suitable for them. In this regard, they pointed to the fact that an electronic version of a document (PDF) could be printed on an A3 format in a suitable font and submitted by personal delivery. They also mentioned the option of transferring the document to a USB flash drive, which allows the review of a document on a person's own electronic device in a font suitable to the person liable for tax.

In its reply, the FURS also emphasised that at the request of visually impaired persons (and other disabled persons) tax authorities are certainly obliged to act in accordance with the ZIMI provisions and ensure their clients' protection of rights and legal entitlements.

The Ombudsman considered the complaint founded. The observance of rights stipulated by the Equalisation of Opportunities for Persons with Disabilities Act relating to access to writings in procedures before state authorities ensures the realisation of constitutional rights on the equality before the law, the right to equal protection of rights and the prohibition of discrimination relating to disability. Relating to the fact that official writings serve as a basis for filing legal remedies, access to the information these documents contain is of fundamental importance for the enforcement of a constitutional right to a legal remedy. In its response, the FURS displayed sufficient awareness of the importance of the human rights of the disabled and thus their conduct can serve as an example and encouragement to other authorities to respect and realise the provisions of the ZIMI in their decision-making processes and operations. 10.5-10/2014

Advantages when employing mothers as a special measure

A father/single parent caring for a child under the age of 2 wrote to the Human Rights Ombudsman. He believed that when looking for his first permanent employment, he was in a significantly similar situation as mothers with children under the age of 3. The complainant thought that the provision of Article 157 of the Pension and Disability Insurance Act (ZPIZ-2), on the basis of which employers may enforce partial return of paid contributions only for mothers but not for fathers caring for their children alone, was discriminatory.

The Ombudsman discussed the complaint and submitted an enquiry to the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZEM). We were interested to know how the Ministry explained the distinction between mothers who provide care for their children under the age of 3 and for whom the measure under Article 157 of the ZPIZ-2 was intended, and those men who also provide care for their children under the age of 3 on their own.

In its reply, the MDDSZEM explained that the beneficiaries to the relief under Article 157 of the ZPIZ-2 meant only employers who employed mothers, since the above relief was intended to promote permanent employment of women as they are among the most vulnerable groups in the labour market. This provision is a special measure intended to ensure actual equality of women – mothers in the labour market, or their employment because they are in a less favourable position than men/fathers because they are women/mothers. The MDDSZEM presented the less favourable position of women in statistical data. The Ministry believes that one of key reasons for the less favourable position of women/mothers in the labour market is that employers understand them as a more risky source of labour because in the existing social norms and the role of women they still play a greater child-caring role than men. The MDDSZEM added that the need for a special measure is verified on the basis of the existing statistical data, and it also established that the measure would be necessary until the difference between women/mothers and men/fathers no longer existed in the labour market or when seeking employment. The MDDSZEM thus believed that the provision under Article 157 of the ZPIZ-2 is not discriminatory, but a special measure in compliance with the legislation.

On the basis of this reply, the Ombudsman ascertained that the case in question involved a special measure intended to persons with two personal circumstances, i.e. parenthood and gender. The combination of these personal circumstances does not denote their simple sum, but puts women/mothers with small children in a special (even less favourable) position.

In the case discussed, the Ombudsman did not establish that fathers/single parents were in a significantly similar situation than mothers, since it could not be deduced from the statistical data that when seeking employment fathers/single parents encountered problems to the same extent.

2.3

RESTRICTION OF PERSONAL LIBERTY

| Area of work | Cases considered | | | Resolved and founded | | |
|--|------------------|------------|--------------|----------------------|----------------|--------------------------------------|
| | 2013 | 2014 | Index 14/13 | No. of resolved | No. of founded | Percentage of founded among resolved |
| 3. Restrictions of personal liberty | 171 | 173 | 101.2 | 130 | 21 | 16.2 |
| 3.1 Detainees | 26 | 19 | 73.1 | 13 | 2 | 15.4 |
| 3.2 Prisoners | 93 | 95 | 102.2 | 75 | 9 | 12.0 |
| 3.3 Psychiatric patients | 33 | 29 | 87.9 | 21 | 4 | 19.0 |
| 3.4 Persons in social care institutions | 6 | 12 | 200.0 | 9 | 5 | 55.6 |
| 3.5 Youth homes | 1 | 1 | 100.0 | 1 | 1 | 100.0 |
| 3.6 Illegal aliens and asylum seekers | 1 | 0 | 0.0 | 0 | 0 | - |
| 3.7 Persons in police custody | 1 | 0 | 0.0 | 0 | 0 | - |
| 3.8 Forensic psychiatry | 7 | 13 | 185.7 | 9 | 1 | 11.1 |
| 3.9 Other | 3 | 4 | 133.3 | 2 | 0 | 0.0 |

This chapter contains findings established from the complaints relating to the restriction of personal liberty and involves individuals deprived of their liberty, or whose freedom of movement was restricted for different reasons. These include detainees, prisoners serving sentence in (home) confinement, persons in forensic units, minors in youth homes, minors in correctional and juvenile facilities and special education institutions, several people with mental disorders or diseases in social and health-care institutions, and aliens at the Aliens Centre.

General findings

In 2014, we discussed 19 complaints from detainees (26 in 2013) and 95 complaints from prisoners (93 in 2013). We continued to visit prisons, which is further discussed in the chapter on the implementation of tasks and powers under the National Prevention Mechanism (NPM).

Our work in this field was aimed at establishing whether the state consistently observes the rules and standards to which it is bound by the Constitution and international conventions to respect human rights when depriving people of their liberty, particularly human personality and dignity. The complaints of detainees and prisoners were verified (in some cases with visits) at relevant bodies (e.g. courts), particularly the Prison Administration of the Republic of Slovenia, prisons or the Ministry of Justice. Individual topics in this field were also discussed

at meetings with the Minister of Justice and other representatives of the Ministry and when contacting Prison Administration of the Republic of Slovenia.

If a procedure was instigated (e.g. in case of major irregularities or obvious arbitrariness), the prisoners were informed about the replies to our inquiries at relevant bodies and our findings and possible other measures, e.g. recommendations to the relevant authorities. To establish a basis for further action, the complainants were sometimes asked to inform the Ombudsman if the clarifications they received were suitable or perhaps inaccurate and insufficient. If the complainants did not respond, we were unable to continue our inquiries. Considering the aforementioned and the fact that we intervened only if the responsible bodies failed to present their position on the matter or did not consider it, the share of closed cases as per justification matches the result accordingly.

In the beginning of 2014, the public was disturbed by the consideration of the Ministry of Justice that prisoners would have to pay for services in prisons. In this regard, we stressed that such a measure would have to be thoroughly considered and vast experience from abroad would have to be observed, while also considering all the substantive reservations of experts. We generally observe that the overcrowding (of the majority) of prisons remains the main problem of Slovenia's penal system. The main reason for this is the continuous increase in the number of prisoners. On the other hand, the number of staff (judicial police officers and other expert workers) is dropping due to austerity measures. In spite of outplacement, not all retiring staff are being replaced. This is particularly evident in the field of expert work with prisoners and their care, which may also have consequences for security. These problems are further worsened (mostly) by poor living conditions, since most prisons are in old buildings which do not meet modern requirements of detention and imprisonment. The worn out, damaged and incomplete equipment for residential and other premises is another issue, since insufficient funds are being invested in its quality. In spite of the fact that the European Court of Human Rights (ECHR) in its judgements again pointed to the unsuitable living conditions in Ljubljana Prison, it seems that a long-term solution to the problems of this prison (construction of a new facility) will continue to recede, unless the number of prisoners is substantially reduced. By means of these judgements, Slovenia was asked to form an efficient legal remedy which would ensure immediate effect on the actual circumstances of a complainant's deprivation of liberty; however, no progress has been made in this field (in spite of our warnings). We thus again encourage efforts to eliminate overcrowding in certain prisons (e.g. transfer to other less burdened facilities if this is possible), including better use of legal remedies in this field (and a search for new alternatives to the deprivation of liberty) as stated several times before. More will have to be done to enable prisoners to spend their time on useful activities, particularly work (more on this topic in the continuation), education and other training which would facilitate their reintegration into society after their sentence, which is one of the main purposes of a prison, in fact. The recent abolition of imprisonment for the non-payment of fines is a positive sign, since it should lead to less overcrowding.

2.3.1 Detainees

Detainees' complaints continued to refer particularly to the ordering and enforcement of detention. Detainees with such complaints were informed that a disagreement with individual judicial decisions (also with the orders of detention) can be enforced (only) in judicial proceedings with the aid of ordinary and extraordinary legal remedies, since the Ombudsman may intervene only if an obvious abuse of power or undue delays in proceedings are established (more on this and cases discussed under chapter on judicial proceedings). The complainants also complained about poor living conditions in detention, problems with fellow detainees, the conduct of detention staff, restriction of contacts with family and unsuitable health care. In certain cases, we also encouraged them to exploit the internal complaint channels enabled by Article 70 of the Rules on the implementation of remand, which stipulates that detainees may complain to the president of the relevant district court or the Director-General of the Prison Administration of the Republic of Slovenia if they believe that prison staff do not treat them correctly.

The Director-General is obliged to reply in writing within 30 days of receiving a complaint. In the case of complaints about unsuitable health care, we also explained the complaint procedures available as per the ZPacP.

Disciplinary punishment of a detainee

The Ombudsman discussed the complaint of a detainee from Maribor Prison about the use of coercive measures against him by judicial police officers of Maribor Prison on 24 February 2014. In this regard, a proposal for disciplinary sanctions against him was submitted by the director of Maribor Prison. Ptuj District Court approved the proposal. With decision ref. no. I Kpr 58768/2013 of 3 March 2014, the investigating judge imposed disciplinary punishment on the detainee for the disciplinary offence as per the first indent of the second paragraph of Article 213.c of the ZKP for a period of two months as per the third paragraph of Article 213.c of the ZKP, i.e. prohibiting visits by close family members and other persons.

We established that the investigating judge passed this judgement only on the basis of the proposal of the director of Maribor Prison and official notes of relevant judicial police officers. Following the appeal of the detainee's counsel, who *inter alia* highlighted that other evidence had not been observed in the decision of the investigating judge, particularly the detainee's statement, the panel of Ptuj District Court amended the contested decision according to the third paragraph of the same legal provision with decision ref. no. II Ks 58768/2013 by imposing the disciplinary punishment of prohibiting visits by close family members and other persons for a period of one month for the disciplinary offence as per the first indent of the second paragraph of Article 213.c of the ZKP. As stated in the grounds of the decision, the panel justified the omission of the detainee's hearing by stating that the accused person was given the opportunity to state his opinion on the claims of the proposer in a way in which his interpretation of the events "was realised by his counsel in his written notification of the events as of 24 February 2014 and his own perceptions". According to the panel, the contested decision undoubtedly passed the proportionality test. The panel also established that the pursued purpose of disciplinary punishment must not be above the duty to ensure rights of the accused in this decision-making process, but it is not necessarily to ensure the provision of rights to such a degree as in the case of the rights of the accused in criminal proceedings against him. The decisive factor was that the detainee had the opportunity to state his opinion on the proposed claims in any way possible.

It was difficult to agree with the panel's findings, particularly when it was obvious that the detainee had no opportunity to directly make his statement about the proposal for disciplinary punishment, which he did not see, and it can be concluded that his counsel also did not see it.

In our opinion, the principle of fairness of any judicial proceedings, and particularly proceedings which may conclude with a sanction restricting individual rights, always demands a critical and comprehensive assessment of all aspects of an individual case and not only consideration of one-sided claims. Critical assessment is absent if an injured party does not have the opportunity to give their account of an event or state their position on the alleged violation. The counsel's letter to the president of Maribor District Court of 28 February 2014 should not be considered as a statement of the injured party on proposed claims, since it was only an appeal of the counsel to the president of the court to take suitable measures after studying the detainee's case in the sense of ensuring suitable treatment of the detainee within his powers and as per Article 212 of the ZIKS-1.

In this regard, we must not overlook that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in the report on the occasion of its visit in 2006 recommended that the same protection measures be provided to detainees during disciplinary proceedings as are provided to convicted prisoners, including the right to a personal hearing by a decision-making authority. The CPT mentioned this again upon its visit to Slovenia in 2012. The report on the relevant visit claims that the Slovenian authorities in their reply to the visit in 2006 stated that suitable legislative amendments would be drafted to amend the ZKP. However, it seems that no such amendment was passed and that data collected by the delegation reveal that detainees are still not being heard by the decision-making authority during disciplinary proceedings. The CPT thus again repeated its recommendation that detainees in disciplinary proceedings be ensured the same protection measures as are ensured to convicted prisoners, including the right to a personal hearing by a decision-making authority before it imposes any penalty.

The CPT also stressed that disciplinary punishment of prisoners should never include the complete prohibition of contacts with family and that restrictions of contact with family should only be imposed for criminal offences connected with such contact; in this connection, it also noted Rule 60.4 from the European Prison Rules and Rule 95.6 from the European Rules for Juvenile Offenders for which sanctions, measures and commentaries

on these Rules apply. In accordance with the aforementioned, the CPT recommended Slovenia revise the regulations governing disciplinary punishments for detainees.

As revealed by the relevant case, the CPT recommendation that the decision-making authority hears the detainee in person is not being observed (yet). Likewise, the amendments to the ZKP promised on the occasion of the CPT visit in 2006 have not been realised. In its reply to the report of the CPT in 2012, the Prison Administration of the Republic of Slovenia again promised that in addition to the amendment to the Criminal Procedure Act the possibilities of amending provisions on the course of disciplinary proceedings against detainees would also be studied.

We submitted our findings to the president of Ptuj District Court and the Director-General of the Prison Administration of the Republic of Slovenia, and demanded a clarification from the Ministry of Justice on if and when it was planning to draft amendments to the ZKP on the disciplinary punishment of detainees in the light of the findings and recommendations of the CPT. The Ministry of Justice replied that it was planning a draft ZKP-N and that in the process of its formation, it would also study the proposals and arguments presented.

2.3.2 Prisoners

Among the complaints referring to problems which complainants encountered while serving prison sentences were particularly: poor living conditions, the regime of incarceration or relocation from a more liberal to a stricter regime, relocations to other prisons or departments (or premises), interruptions or suspensions of incarceration, endangerment by, or violence of, fellow prisoners, bonuses for work performed, possibilities for work, granting (or withdrawing) various privileges, visits and other communication with the outside world (e.g. writing), confiscation of personal belongings, health care, inclusion in addiction treatment programmes, urine testing, diet, escort by judicial police officers, parole and other. Some complaints also referred to the possibility of substituting incarceration with community service.

As in the case of complaints by detainees, prisoners' complaints were also verified if necessary (in some cases by visits) at the relevant authorities (e.g. courts), particularly at the Prison Administration of the Republic of Slovenia or the Ministry of Justice or the relevant prison.

Prisoners serving their sentences were further informed that they could complain about violations of rights and other irregularities which are not subject to judicial protection as per Article 85 of the ZIKS-1 with a complaint to the Director-General of the Prison Administration of the Republic of Slovenia. According to the above Article of the ZIKS-1, a convicted person has in the case of "other violations of rights or other irregularities which are not subject to judicial protection" also "the right to complain to the Director-General of the Prison Administration", and if they fail to receive a reply to their complaint within 30 days after its submission or if they are not satisfied with the decision of the Director-General, they also have the "right to file a complaint with the ministry responsible for justice". This is a case of an appeal procedure which may be denoted as 'internal', i.e. a procedure within the system (in this case the enforcement of sentence). The European Court of Human Rights (ECHR) described this type of an appeal (e.g. in the judgement in case *Štrucl and Others v. Slovenia* of 20 October 2011) as a legal remedy which "cannot be understood as a remedy which could directly rectify a disputable condition". In the Ombudsman's opinion, this nevertheless does not mean that proceedings as per Article 85 of the ZIKS-1 have no significance. Thorough and impartially implemented proceedings would certainly contribute to enhancing prisoners' trust that certain irregularities could be rectified by the system itself. Simultaneously, the informality of such proceedings offer many possibilities for flexibility and adjustments in a concrete case in comparison to rigid (e.g. judicial) proceedings with formal legal remedies. In our contacts with prisoners, we usually establish that their attitude to proceedings as per Article 85 of the ZIKS-1 is rather negative, since they believe that it is not efficient because the Prison Administration of the Republic of Slovenia and the Ministry of Justice supposedly only uncritically agree with the clarifications and positions of prisons.

Assessment of justifiability of the use of coercive measures

The judicial police officers have the right to use coercive measures against prisoners only if they are unable to otherwise prevent escape, assault, self-inflicted injury or great material damage. They may use only those

coercive measures which have the least harmful consequences to the person against whom they are used. No force or the use of coercive measures are permitted if no grounds exist for the use of coercive measures or their use after a person has been subdued. At this point, it is encouraging to mention that only a few complaints were submitted which claimed ill-treatment by judicial police officers or other irregularities in their work; however, every such complaint may give rise to great concern. In this regard, we emphasise the importance of training judicial police officers not to encourage conflict situations with their conduct, which may lead to the use of coercive and other measures (e.g. removal to a special room).

When discussing certain cases of the use of coercive measures by judicial police officers and also removals to a special room in different prisons, we established that prisoners were not always able to provide their statements on the occurrence of events, or this was not evident for assessing the justifiability of using coercive measures. The Ombudsman thus particularly warned the Prison Administration of the Republic of Slovenia that prisoners against whom judicial police officers use coercive measures must always be given the opportunity to give their statements or their view of the procedure and circumstances of the use of coercive measures. We believe that a comprehensive assessment of the justifiability, legality and competence of the use of coercive measures is possible only if clarifications of affected prisoners are also provided, i.e. their statements and not only statements of judicial police officers who use coercive measures. Only then is it possible to prevent hearing only one-sided claims and to ensure a critical assessment of the use of coercive measures by establishing possible non-compliances on both sides and of the provided evidence. In fact, this is also prescribed by the principles of fair assessment of correctness and legality of the use of coercive measures. We thus proposed to the Prison Administration of the Republic of Slovenia to forward our opinion to all prisons, so they would observe it in all relevant proceedings in order to ensure compliance with this opinion also in their procedures for assessing the justifiability of the use of coercive measures.

In its reply to our proposal, the Prison Administration of the Republic of Slovenia agreed with our opinion. It also stated that prisons or commanders of judicial police officers were again asked to comply consistently with the first paragraph of Article 84 of the Rules on exercising the powers and duties of judicial police officers, which determines that the report on the use of coercive measures which the prison is obliged to submit to the Director-General must contain: a description of the event, an accurate account by prisoners, judicial police officers and other people involved, reasons for the occurrence of the event, consequences and measures after the event, provision and description of possible injuries and the assessment of the director on the legal justifiability of the use of the coercive measure. The Prison Administration of the Republic of Slovenia also added that it regularly verifies the content of reports via the computer application, "Extraordinary events," and promptly informs prisons about possible deficiencies.

Example

Alleged ill-treatment of a prisoner

A case of a prisoner from Maribor Prison was also among the discussed complaints. In his complaint (more than a month after the event) and during a personal interview conducted in order to clarify his statements, the prisoner emphasised that a judicial police officer had injured or beaten him during his attempted escape from Maribor University Medical Centre, where he was taken for examination on the day he was admitted to Maribor Prison. He allegedly sustained injuries to the ear (perforated eardrum and bruising of the right eye). According to him, he only partly described the actual occurrence of the injuries when being examined at an external medical centre in the first out-patient clinic because he was interrupted by judicial police officers who were accompanying him, while in the second out-patient clinic one of the judicial police officers dictated how the injuries occurred to the doctor.

The material collected (particularly during our visit to Maribor Prison and the interview with the complainant) revealed that the injuries occurred while serving a prison sentence in Maribor Prison. The burden of proof for clarification of the entire event or treatment of the complainant lay on Maribor Prison, which would have to explain all injuries convincingly and justify the necessity and proportionality of the alleged use of force against the complainant. On this note, we add that it was established during our visit that the judicial police officer had failed to record the use of physical force in the record of the complainant's attempted escape. The complainant was later (after an examination in the prison infirmary) transferred to Maribor University Medical Centre due to a head injury and pain in the chest, where problems in the right ear were established after further medical examinations.

The prisoner's allegations were examined by Maribor Prison in detail and it was concluded that physical force had been used against the prisoner and that he had not been beaten by a judicial police officer. It was established that his statements on the manner of injury were false; however, the prison failed to provide another explanation, in spite of conducting interviews with the staff. Maribor Prison also added that the reply of the doctor at Maribor University Medical Centre testified to the prisoner's (in)credibility by stating that judicial police officers did not influence the establishment of his condition during the examination, as was claimed by the prisoner. His criminal complaint was also rejected by Maribor District State Prosecutor's Office on grounds that no reasonable suspicion existed that the suspected judicial police officer had committed the alleged criminal offence.

The complainant later no longer participated in the procedure and the discussion of his case was thus discontinued. 2.2-5472013

Placement in a special room

Judicial police officers may remove prisoners from common living and other premises and place them in a special room in the case of any of the reasons determined for this purpose by the first paragraph of Article 236 of the ZIKS-1. Prisoners may be kept in a special room no more than 12 hours (the second paragraph of Article 236 of the ZIKS-1) since this is an ultimate measure. It is thus important that other measures and solutions be applied before its application (such as professionally conducted discussions and other calming measures). In one case, we considered it a deficiency that a special professionally conducted discussion with the prisoner was not implemented. On that note, the Prison Administration of the Republic of Slovenia agreed that prior to placement in a special room, efforts must be made to particularly establish and eliminate the reasons on the part of the prisoner which led to such placement.

We also established that a medical examination of the prisoner was conducted the following day after the use of coercive measures and after the elimination of the measure of placement in a special room. When contacting the Prison Administration of the Republic of Slovenia, we stressed that the CPT on the occasion of its visit to Slovenia in 2012 recommended that a prisoner placed in a special room for isolation should always and as soon as possible be examined by a member of the medical staff, i.e. a doctor or a nurse, who then reports to the doctor. We asked the Prison Administration of the Republic of Slovenia to inform us on the measures adopted for the observance of this recommendation in practice. We were informed that the recommendation had been discussed at the working group of commanders, and it would also be observed in the first amendment to regulations in the field of executing penal sanctions.

Improvement of the situation of the elderly, sick or other disabled persons in prisons

Already in the 2012 report (pp. 66-67) and in the 2013 report (pp. 85-87), we discussed problems encountered by the elderly, sick, physically disabled and other disabled prisoners (disabled persons in prisons) while serving their sentence. We stated that we would further monitor this issue and intervene if necessary to improve the situation of these persons.

In this regard, we again discussed the cases of two prisoners who due to severe medical conditions (serious illness) needed accommodation in a social care institution (with the suspension of their sentences); however, problems occurred upon their admission to retirement homes. We reminded the competent authorities that the state is obliged to observe certain rules and standards which refer to the deprivation of liberty and that it assumed these by accessing to certain international conventions. Furthermore, the Constitution of the Republic of Slovenia also emphasises the observance of human personality and dignity during the deprivation of liberty. While implementing penal sanctions, a prisoner must be ensured all fundamental human rights, except those explicitly deprived or restricted by law. The state must ensure that all prisoners serve their sentences in conditions suitable to their (given) medical condition.

Recommendation of the Council of Europe no. Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules (see Rules 40.3 and 46.1) also determines that prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation and also that sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals when such treatment is not available in prison.

If a state deprives an individual of their freedom, it must also ensure that the deprivation of liberty and enforcement of penalty are conducted in a way that respects human personality and dignity. In our opinion, it is even more critical to observe the situation of persons who may be affected due to health problems and/or disability. Appropriate placement and living conditions where such persons can serve their sentences decently must be ensured; otherwise, this may be considered inhuman or degrading treatment and could be understood as a violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Most prisons in Slovenia do not (even) have suitable toilet facilities which would facilitate their use by disabled persons in prisons. Since prisoners due to e.g. disability cannot use regular toilet facilities, they cannot sustain suitable personal hygiene. Not only does the Prison Administration of the Republic of Slovenia fail to provide suitable facilities for maintaining personal hygiene and care for such persons, but it also lacks suitably qualified staff to offer assistance to such persons when maintaining their personal hygiene. We particularly pointed this out several times when discussing certain cases.

We also add that the European Court of human Rights (e.g. in case *Grimailovs v. Latvia*) stresses that Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms cannot be interpreted as if it requires the release of a prisoner due to medical conditions or their transfer to a public hospital even if their disease is difficult to treat. This provision namely requires the state to provide for the accommodation of prisoners in conditions in keeping with their human dignity. Furthermore, the form and manner of implementing the measure must not cause distress or pain which exceeds inevitable level of suffering in prison. Their health and well-being must be protected accordingly given the practical requirements of prison life. The Court also held that when the authorities incarcerate a disabled person in prison and keep them there for an extended period, they must dedicate special attention to the provision of conditions suitable for special needs arising from the disability. It also established that the fact that a person with severe disability had to rely on the assistance of fellow prisoners when using a toilet, bathing and changing clothes also contributed to the assessment of living conditions as degrading treatment.

In the cases we discussed, we thus highlighted that the aforementioned requires careful consideration on the suspension of sentence, and particularly the consideration of circumstances if living conditions compliant with human dignity or their medical needs can be ensured to concrete prisoners when serving sentence. Unfortunately, one of these prisoners died (in a hospital) during the procedure and the other was eventually (due to our intervention) transferred to a retirement home.

In December 2013, the MDDSZEM informed the Ombudsman that when discussing adult prisoners and other tasks in this field, social work centres had implemented several activities in order to improve the efficiency of work and mutual cooperation and integration with prisons. A seminar was organised for the third consecutive year in cooperation with the Social Chamber of Slovenia for the staff of social work centres, to which representatives of the Prison Administration of the Republic of Slovenia and consulting staff in prisons were also invited. A working group for probation and after-care at the Association of Centres for Social Work was established in 2013. The MDDSZEM also stated that more activities and working meetings are needed to prepare a cooperation protocol between social work centres and prisons. It was anticipated that in cooperation with the Social Chamber of Slovenia, the MDDSZEM would organise training for expert workers in 2014 and that the Association of Centres for Social Work would steer the working group and organise a consultation session in March. The protocol could have been prepared by the end of 2014.

At the meeting organised by the Ombudsman on the relevant topic on 24 November 2014, it was established that a draft agreement on mutual cooperation on the procedure for transferring prisoners after serving their sentence and in cases of suspension of sentence to retirement homes and special social care institutions for adults had been prepared. At the end of 2014, the agreement was only in its initial or working stage and subject to interministerial harmonisation according to the ministry's forecasts. The Ombudsman encourages

the prompt implementation of harmonisation, since the agreement will facilitate the work of all stakeholders in the procedure transferring a person after serving their sentence to a social care institution.

Unfortunately, we established that no progress had been made on (even temporary) solutions for placing disabled persons who need special care or suitable spatial adjustments of facilities when serving their sentence, since the Prison Administration does not have the substantial financial means needed to alter premises. The question of staff providing suitable care for these prisoners remains open. We believe that the establishment of a special or nursing department to provide care and social assistance within one prison (or several) is necessary, at least while persons who need such care are serving sentence.

At the working meeting on this topic held at the Ombudsman on 15 November 2013, it was established that the criteria for establishing health impairment which prevents the serving of a prison sentence would be required. A working copy of criteria had already been prepared (the latest one on 18 June 2013). In cooperation with the Ministry of Health, it was prepared by doctors conducting their medical activities in prisons. The Ministry of Justice then responded that the criteria for establishing health impairment which prevents the serving of a prison sentence prepared by doctors would be included in the proposed amendments to the ZIKS-1; however, these amendments were not realised in 2014. We therefore informed the Minister of Justice of the relevant topic. A draft agreement on mutual cooperation between the Ministry of Justice (Prison Administration of the Republic of Slovenia) and the Pension and Disability Insurance Institute of the Republic of Slovenia for the preparation of medical expert opinions of prisons on the suspension of prison sentences for health reasons was drafted. However, the Prison Administration of the Republic of Slovenia later stated that the agreement is not compliant with mutual discussions or the needs of the Prison Administration of the Republic of Slovenia because it failed to capture the entire population of prisoners who, while serving sentence, request suspension on grounds of health, i.e. acute and permanent medical conditions. The Pension and Disability Insurance Institute of the Republic of Slovenia explained to the Prison Administration of the Republic of Slovenia that its experts assess permanent or chronic changes in the medical condition of persons, while medical certificates issued after the treatment of acute illnesses or injuries are not included in the scope of work of its experts, so the Pension and Disability Insurance Institute of the Republic of Slovenia cannot be of assistance to the Prison Administration of the Republic of Slovenia in the latter issue. The solution to the above issue will apparently be included in the amendment to the ZIKS-1, so we appeal for the amendment to be passed as soon as possible.

2.3.3 Persons with mental disorders and persons in social care institutions

General findings

In the field relating to the deprivation of liberty due to a mental disorder or illness, we discussed 29 complaints involving restriction of movement in psychiatric hospitals (33 in 2013) and 12 complaints involving social care institutions (six in 2013). We continued to visit these institutions under the capacity of the National Preventive Mechanism (more is provided on this in a special NPM report).

Complainants' claims were further verified by submitting inquiries, and the complainants were then informed about the Ombudsman's findings and explanations regarding the procedures for admission to treatment and accommodation in social care institutions. We also answered their questions. We held a meeting with an independent Expert on the enjoyment of all human rights by older persons at the UN Human Rights Council and informed her about our visits to social care institutions and recommendations for improving conditions. We also met the Ministers of Health and Labour, Family, Social Affairs and Equal Opportunities and continued our cooperation with several other bodies (e.g. the Social Affairs Inspection Service).

Many of the complaints in this field were founded. Four of the 21 resolved complaints relating to psychiatric hospitals were assessed as founded, including five out of a total of nine resolved complaints relating to persons in social care institutions. Similarly to 2013, the complaints referred to admission to treatment without consent at the department under special supervision of psychiatric hospitals or the admission and discharge of persons from secure wards of social care institutions and requests for relocation to other institutions, the possibilities

of going outdoors, exits etc. In terms of content, the Ombudsman is not obliged to assess decisions made by doctors or courts about whether or not the conditions were met to detain a person within a department under special supervision (or a secure ward) in a particular case. However, the Ombudsman may consider the case when, for example, a person claims that she/he was detained in a psychiatric hospital on no legal grounds or that his/her rights were violated and that all (legal) remedies to eliminate irregularities had already been exhausted. Some complaints also referred to the living conditions, treatment, care and attitude of the health and other staff to patients or people in care in these cases. The majority of complaints (including providers of psychiatric treatment and social care services and programmes) again related to the Mental Health Act (ZDZdr). Unfortunately, no progress was made in the drafting (of certain urgent) amendments to the ZDZdr in 2014.

As per the provisions of the ZDZdr, movement may only be restricted at a department under special supervision, whereas the restriction of movement on other wards is not permitted. The European Court of Human Rights (ECHR) in case *L. M. v. Slovenia* (12 June 2014) established the violation of the first, second, fourth and fifth paragraphs of Article 5 and also of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Convention) and concluded that the applicant had been deprived of liberty as per the first paragraph of Article 5 of the Convention also in the period when she was accommodated on the open ward of the psychiatric hospital (in 2005). Although the Government stated that the applicant could leave the open ward at any time, the Court determined that the applicant had not even implicitly consented to being accommodated on the open ward; this was evident also from her statements throughout the entire judicial proceedings. The Court also noted that in order to determine the deprivation of liberty, the fact whether the applicant was detained on a 'locked' ward is not of primary importance, but whether the medical staff had complete and efficient supervision of the applicant's care and movement must be observed. In this case, the Court thus concluded that supervision of medical staff significantly exceeded the measures needed to supervise the applicant and the total effect of all the circumstances created significant restrictions of the applicant's personal liberty.

Example

Relocation to another health-care institution is not the same as release

Due to forced hospitalisation, the complainant was admitted to Ljubljana Psychiatric Hospital on 13 June 2014. Ljubljana Local Court was notified about his admission on the same day on the basis of provision of the Mental Health Act (ZDZdr). The court terminated proceedings on 16 June 2014 after conducting a hearing. On the same day, the court was notified that the complainant had been released from the health-care institution.

On the basis of the available data, we established that the notification of Ljubljana Psychiatric Hospital submitted to the court was inaccurate or could even be understood as misleading. On 15 June 2014, the complainant was actually released from Ljubljana Psychiatric Hospital, not due to a discharge from a health-care organisation (which would in our opinion mean that his treatment had concluded and he was being released into home care) but because he was transferred to Begunje Psychiatric Hospital. It was not possible to deduce from the documents we received whether an actual termination of detention of the complainant at the health-care institution had occurred. On this basis, we believed that it would be more appropriate if Ljubljana Psychiatric Hospital informed the court of the transfer of the patient to another health-care institution (and not a release), which would enable Ljubljana Local Court to continue and complete the proceedings and decide on the detention within the deadlines stipulated by the ZDZdr, or that the file would be submitted to Radovljica Local Court, which would also be bound by the above deadlines.

We thus requested an explanation from Ljubljana Psychiatric Hospital as to why the court had not been informed (also) about the transfer of the complainant to another institution. We also inquired about the measures Ljubljana Psychiatric Hospital intended to adopt to prevent the occurrence of such cases in the future.

Ljubljana Psychiatric Hospital explained that every hospital must instigate a procedure for forced hospitalisation before the competent court and thus the court was not informed about the complainant's transfer, but only about his release. The hospital also explained that as per the Ombudsman's proposal it would consider modifying the form by means of which the court is informed on the termination of detention at the department under special supervision (Notification on termination of detention at a secure ward).

While observing the aforementioned, we assessed that the conduct of Ljubljana Psychiatric Hospital was not completely correct in this concrete case and we considered the complaint justified. Had the release of the complainant from Ljubljana Psychiatric Hospital actually occurred, but not also the termination due to forced hospitalisation, since he was merely transferred from one department under special supervision to another such department in another hospital, we believed that it would be more suitable and also necessary due to comprehensively informing the court, if the hospital informed the court that the complainant was being released from one health-care institution, but only because he was being transferred to another. With such content of the notification, the court would be informed that actual termination of detention had not occurred. We submitted our findings to Ljubljana Psychiatric Hospital and requested their suitable response in order to prevent the occurrence of such irregularities in the future. Simultaneously, we commend the readiness of the hospital to suitably modify notification forms. (2.3-14/2014)

We also discussed complaints submitted by relatives of people with mental disorders who were refusing psychiatric treatment because they believed that they did not need it, whereas the relatives thought that the treatment was necessary, since the persons involved were harming themselves with their behaviour or endangering their health, causing physical harm to themselves and others and endangering the lives of others. In these situations, the relatives resorted to their doctors, psychiatrists and social work centres and expected that the person may be 'forced' to undergo treatment, including hospitalisation against their will. Some were disappointed with the response of the institutions, which stated that in certain cases no reason existed (yet) to refer the person to a psychiatric hospital without the person's consent or to submit a request for their admission to a department under special supervision without consent on the basis of a court decision, since the conditions for such admission as per the ZDZdr had not been met according to the institutions' expert evaluation.

We explained complaint procedures according to the Patient Rights Act (ZPacP) to complainants who wrote about the inappropriate conduct of the staff. We also again notified the competent authorities that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) upon its visit to Slovenia in 2012 already recommended the clear and regular informing of the nursing staff that ill-treatment of patients is impermissible. The Committee pointed out that members of staff who are aware of such conduct must report it via suitable channels. The Committee also believed that the training of the nursing staff to prevent and manage dangerous situations and the application of suitable measures must also be intensified. The CPT also encouraged the Slovenian authorities to introduce psychological assistance to staff working with patients who are known to be difficult. The Code of ethical principles in social care and the Code of ethics in health care, which were both adopted in 2014, stipulate the observance of ethical principles in social care and health care.

We also highlighted that a patient admitted to a department under special supervision had the right to a representative while being treated at the relevant department. The representative protects the rights, interests and benefits of the person being treated, and gives advice on the enforcement of rights and concrete guidelines for their enforcement, proposes possible solutions and strives for the observance of these rights and the privacy of the person or patient. The representative also verifies whether a suitable record is kept in the event of a restriction of rights, and also if records on the application of special protection measures and treatment with special medical methods (e.g. use of psychotropic medications in values exceeding the highest dosages prescribed) are being kept. A person (patient) may select a representative from a list of representatives displayed in a visible place in an institution. The funds for the operations of representatives are provided by the MDDSZEM, so representation is free of charge to the patient. In spite of certain complaints that accessibility of representatives is not always optimum, the MDDSZEM ensured that there were no problems regarding representatives' responsiveness, and that they had not received any complaints about their responsiveness, which is regularly monitored.

Guidelines on working with persons suffering from dementia

The Social Affairs Directorate at the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZEM) informed us in 2011 about the Guidelines on working with persons with dementia in the field of

institutional care for the elderly. At the beginning of June 2011, the Guidelines were submitted to the providers of institutional care for the elderly.

Throughout the Ombudsman's operation, special care has been dedicated 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 the Ombudsman has in the past highlighted the need for better protection of the rights of persons whose medical condition, in addition to medical treatment, requires certain measures which interfere with their freedom of movement. As part of the duties implemented as the National Preventive Mechanism as per the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Ombudsman stressed the need to draft suitable guidelines to assist providers of institutional care for the elderly in their implementation of requirements and procedures as per the ZDZdr. During visits to individual institutions, it was established that some institutions interpret the provisions of the ZDZdr in different ways, sometimes also incorrectly (in the Ombudsman's assessment). As a result, violations of individuals' rights have occurred or might have occurred in certain cases. That is why the Ombudsman commended the development of the Guidelines on working with persons with dementia in the field of institutional care for the elderly in 2011. However, after studying the content of the Guidelines, we established that certain solutions are not ideal. What is more, some solutions were contrary to the ZDZdr, in the Ombudsman's opinion, which is unacceptable. We also wrote about this in the 2012 (pp. 73-74) and the 2013 (p. 95) annual reports.

In addition to providing a more precise definition of a secure ward, the Guidelines have introduced a completely new form of protection for persons suffering from dementia; i.e. a high-level supervision ward. Residents in high-level supervision wards would undergo a segregation concept of treating persons with dementia without any physical restriction of their liberty of movement. This is therefore a case of accommodating dementia patients in a special ward separated from other residents, which is distinguished from secure wards in regard to the method of protection. In the light of the guidelines, physical security is thus not provided within high-level supervision wards, or it is significantly remote from the residential unit (e.g. a fence surrounding the institution). In this case, security is provided by staff, i.e. by means of their conduct founded on trust, guidance and other techniques of expert dementia treatment. Although requirements in terms of staff, technical conditions and spatial capacities should be equal for both types of wards, the verification of the high-level supervision ward would not be necessary, and the procedure regarding the admission of a resident to such a ward would not meet the provisions of the ZDZdr.

In Point 17 of Article 2, the ZDZdr clearly determines a secure ward. This is a ward of 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. Hence, the Act does not differentiate between physical and other forms of protection (although it is only a case of protection and security provided by 'resident-friendly' staff). Likewise, it does not define any limitation on security linked to the ward (but to the institution as such) and specifies the restriction of freedom of movement (regardless of various possibilities thereof) as the essential characteristic of the definition of a secure ward.

The Ombudsman informed the Ministry that the designation selected by the institution for a secure ward is irrelevant. Irrespective of the ward's name, i.e. "secure ward", "ward for dementia patients" or "high-level supervision ward", the institution must obtain (written) consent from the resident, or inform a court of the admission as per Article 75 of the ZDZdr before accommodating a person in a ward which meets the criteria referred to in Point 17 of Article 2 of the ZDZdr in terms of its characteristics. At the same time, it is also expected that staff would treat all residents suffering from dementia and accommodated in social care institutions (regardless of their accommodation in regular wards, high-level supervision wards and also (or particularly) in secure wards) on the basis of an "attitude founded on trust, providing guidance and other techniques of expert dementia treatment".

At the meeting on secure wards at the MDDSZEM on 29 May 2012, it was concluded that high-level supervision wards should be abolished because they are contrary to the provisions of the ZDZdr. The Ombudsman later asked the MDDSZEM several times to confirm suitable modifications to the Guidelines; however, the amendments were not made. Thus when visiting social care institutions in our role of the National Prevention Mechanism in 2013, we still discovered that certain institutions still define individual wards as high-level supervision wards.

On 3 March 2014, the MDDSZEM organised a consultation session to which all interested parties were invited and at which the participants were told during the exchange of opinions that high-level supervision wards were no longer permissible and that social care institutions which had such wards must either verify these wards as secure wards or adopt one of the concepts of work with dementia patients which did not in any way limit the freedom of movement. On the basis of the conclusions of the session, the MDDSZEM prepared written amendments to the Guidelines and submitted them to social care institutions and also to the Ombudsman on 1 April 2014.

We ascertained that the recast Guidelines serve as a good basis for the work of social care institutions and their employees with dementia patients. The deficiencies and weaknesses, particularly of the new concept, so-called personal monitoring, will undoubtedly be revealed in practice. We also pointed to the regulation which cites Article 96 of the Social Security Act (ZSV) in the transitional period, i.e. after the individual's consent has been revoked, but who has already been accommodated at a secure ward and before the issue of a court decision. The institution could thus with an administrative decision determine the duration, type and manner of ensuring institutional care services as per Article 92 of the relevant Act. Relating to the Guidelines under Article 38, the purpose of the ZDZdr was supposedly only to regulate the field of health care, while the ZSV should be applied for social security. We agreed to this explanation if the issue of accommodation refers to the duration, type and manner of ensuring institutional care, which is also the purpose of Article 96 of the ZSV. We added that the National Preventive Mechanism during its visits to (certain) social care institutions established in this regard that, in the event of accommodating to secure wards individuals who failed to provide their consent, institutions usually inform courts thereof on the day of the admission. Thus individuals are obviously held at secure wards without a legal basis until the issue of a court decision, while observing the ZDZdr. In our reports on the visits to such institutions, which were submitted also to the MDDSZEM, we stated that a possible reason for immediate accommodation could be that an institution cannot keep an empty bed until the completion of the court procedure. However, it must be emphasised that such conduct by the institution is not fully compliant with the procedure for admission to a secure ward of a social care institution without consent on the basis of a court decision, as stipulated by the ZDZdr. Since the Act does not provide an option of admission in urgent cases, the accommodation without the individual's consent could only be implemented on the basis of a court decision. For these cases, we suggested that institutions transfer or admit individuals to secure wards only when court decisions become final.

The situation in which an individual already accommodated in a secure ward revokes their consent is similar to the situation described above. By doing so, the legal grounds for the detention of such person in a secure ward are eliminated. An administrative decision issued on the basis of Article 96 of the ZSV may in our opinion only replace an agreement on the provision of services, i.e. institutional care, but it cannot replace an individual's consent to a detention in a secure ward or even a court decision, which is necessary if an individual fails to, or cannot, provide their consent for accommodation in a ward restricting their freedom of movement. The question (of admitting residents to a protected ward in urgent cases, or their further residence at the ward after revoking their consent) will have to be regulated accordingly in (amended) ZDZdr. Until then, the placement of residents or their further detention in a secure ward after revoking their consent is possible only with (a new) consent of the resident or on the basis of a court decision.

Irrespective of the fact that an explicit legal basis for the provision of advance consent to accommodation in a secure ward had not (yet) been prepared, we also emphasised the deficiency of the form, "Statement on consent to accommodation in the secure ward," in which conclusive actions should be mentioned explicitly, in our opinion, by means of which individuals could also revoke their consent to accommodation in a secure ward. In such cases, the institution is obliged to accommodate a resident in another, i.e. open ward and not in "other suitable care" as stated in the form.

2.3.4 Minors in juvenile facilities and special education institutions

The founder of institutions for care and education of children and adolescents with emotional and behavioural disorders (juvenile facilities) is the Government of the Republic of Slovenia. The founding rights and obligations for the ten institutions below were transferred to the Ministry of Education, Science and Sport (MIZŠ): Maribor Youth Home, Jarše Youth Home, Kranj Residential Treatment Institution, Malči Belič Youth Care Centre, Fran

Milčinski Smednik Educational Institution, Slivnica pri Mariboru Residential Treatment Institution, Višnja Gora Educational Institution, Planina Residential Treatment Institution, Logatec Education and Training Institution, and Veržej Primary School – Dom Unit. The rights and obligations for Črna na Koroškem Special Education, Work and Care Centre were transferred to the Ministry of Labour, Family, Social Affairs and Equal Opportunities. Minors are admitted to juvenile facilities on the basis of the decisions of social work centres, court decisions (as educational measures) and also on placement decisions to an educational programme in certain institutions.

Six institutions accept children and adolescents on the basis of court decisions (as an educational measure): Slivnica pri Mariboru Residential Treatment Institution, Višnja Gora Educational Institution, Planina Residential Treatment Institution, Logatec Education and Training Institution, Veržej Primary School – Dom Unit and Črna na Koroškem Special Education, Work and Care Centre, to which only adolescents with moderate, serious and severe mental disorders are accepted whose admission was ordered by a court decision. This institution implements a special education and training programme, and adolescents require a decision on placement.

In 2014, the Ombudsman continued to visit juvenile facilities while implementing the duties and powers of the National Preventive Mechanism (more is provided on this subject in a special report).

We ascertain that the issue of the education of children and adolescents with emotional and behavioural disorders is becoming more complicated, since these disorders are also frequently combined with mental problems, and institutions find it difficult to cope with their current needs and requirements. The institutions have no special units or rooms for the admission of children and adolescents with particularly challenging behaviour. Furthermore, juvenile facilities and psychiatric hospitals also lack wards suitably equipped and adjusted to them. Slovenia also has no juvenile facilities for the temporary accommodation of adolescents and work in special departments. No standards are available for the equipment of such facilities or organisation of work within them, including staffing standards for their possible establishment, even if a secure department is organised in one of the existing facilities.

We again highlight the issue that only children who have been diagnosed with a moderate, serious or severe mental disorder by the committee for placement of children as per the Placement of Children with Special Needs Act can be placed in the Črna na Koroškem Special Education, Work and Care Centre, which should also be observed by courts passing orders for placement in special education institutions. Informing of courts that a decision on the placement of a child is also necessary in addition to a court decision on the placement of a child or adolescent in a juvenile institution is, according to the Ombudsman, still merely a transitional (provisional) solution since this should have been determined by law.

The Ombudsman believes that in addition to other particularities of juvenile facilities, the field of preventing and supervision of the use of illicit drugs should also be regulated, including the competences of inspection services (e.g. Inspectorate of the Republic of Slovenia for Education and Sport, social inspection services) relating to the placement and accommodation of adolescents in institutions. The deadline for the preparation of an individualised programme according to which the education and correction of an individual take place must be uniform.

The Ombudsman also points to a substantive aspect of an educational programme which is insufficient relating to work with juvenile offenders. Ombudsman believes that the option of separating institutions which admit children and adolescents who are offenders from those accommodating children and adolescents due to poor conditions in their families, parental neglect, death of their parents or severe emotional, behavioural and the growing occurrence of psychiatric disorders should be studied. The possibility of organising accommodation and educational work in small independent units should be considered for groups of children and adolescents who are juvenile offenders (e.g. residential groups in various and mutually remote locations). The concept of classic educational work in juvenile facilities (classic organisation model and functioning of a juvenile facility) with 40 or more children or adolescents should be re-examined for its possible obsolescence or adequacy in the current situation and present problems of the young, and also if experts with the current type and level of education are still qualified to work with them.

2.3.5 Aliens and applicants for international protection

We received no complaints in the field in which we discuss possible complaints by aliens dealing with the restriction of movement or deprivation of liberty. Other findings relating to complaints by aliens are included in the chapter on administrative matters – Issues concerning foreign citizens, and the visit of the NPM to the Aliens Centre is subject to a special report on the implementation of the duties and powers of the NPM. In 2014, we also met with the representatives of the United Nations High Commissioner for Refugees (UNHCR) and exchanged opinions and findings on the treatment of aliens in Slovenia.

Amendments to the Aliens Act (ZTuj-2)

The ZTuj-2 was amended twice in 2014, i.e. with extensive amendments to the Act Amending the Aliens Act (ZTuj-2A) and the Act Amending the Act Amending the Aliens Act (ZTuj-2B). The first amendment determines *inter alia* that aliens are obliged to comply with the rules on residing at the aliens centre and the instructions of responsible staff at the centre in order to ensure discipline and order. It also determines that the rules on residing at the centre are prescribed by the minister responsible for the interior. Furthermore, it also defines (minor and major) violations of the rules on residing at the centre and measures to be taken after such violations. The amendments to the ZTuj-2A finally provide a legal basis for a monitoring system of the (forced) removal of aliens within the implementation of Council Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (Return Directive). In the 2011 annual report, the Ombudsman emphasised the need for the Republic of Slovenia to ensure an efficient system of monitoring enforced removal as per the Return Directive. We noted this need also in the reports for 2012 and 2013, because we assessed that the Ombudsman within its jurisdiction could not provide an effective monitoring system for enforced removal as stipulated by the relevant directive. Within the authorities granted, particularly in the capacity of the NPM, the Ombudsman is already involved (also) in monitoring procedures conducted by police officers (this may also include procedures referring to the removal of foreign nationals). The Ombudsman thus regularly verifies 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. The Ombudsman thus exercises powers granted by the Act ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Official Gazette of the Republic of Slovenia, no. 114/06, International Treaties, no. 20/06, MOPPM) and not the aforementioned Directive (which was adopted later).

Since the Republic of Slovenia has not yet met its obligation imposed by the Directive in the sixth paragraph of Article 8, the Ombudsman proposed that the Ministry of the Interior, which is otherwise responsible for the legislation concerning aliens, adopt all the necessary measures for the fulfilment of this obligation as soon as possible. Engaging a non-governmental organisation which is already dealing with legal protection of aliens was seen as a possible solution to transferring the relevant directive to our legislation, which is also the practice in other EU countries.

The legislator approved of our proposal. The Act Amending the Aliens Act (Official Gazette of the Republic of Slovenia, no. 26/14; ZTuj-2A) introduced new fifth, sixth and seventh paragraphs to Article 69 of the Aliens Act. The Act now stipulates that the police shall conclude a written agreement on monitoring the removal of aliens with a selected non-governmental organisation or other independent institution or body on the basis of a public call. A selected non-governmental organisation or other independent institution or body will thus monitor the removal of aliens in the Republic of Slovenia, in addition to all police activities for the purpose of removing aliens from the country, including the period before departure, during the period of flight or other means of transport, a transit stop, and arrival or admission of the alien to the country of return. The Act also determines that the police shall consider the findings of the selected organisation, institution or body referred to in the preceding paragraph indicating violations of human rights and fundamental freedoms in the complaint procedure laid down in the Police Tasks and Powers Act.

According to our information, the public call for the selection of an organisation for monitoring the removal of aliens is to be published shortly. After its selection, the Ombudsman will discuss possible cooperation with the organisation and monitor its work.

2.4

JUSTICE

| Area of work | Cases considered | | | Resolved and founded | | |
|---|------------------|------------|--------------|----------------------|----------------|--------------------------------------|
| | 2013 | 2014 | Index 14/13 | No. of resolved | No. of founded | Percentage of founded among resolved |
| 4. Judicial proceedings | 721 | 725 | 100.6 | 607 | 36 | 5.9 |
| 4.1 Pre-litigation proceedings | 32 | 38 | 118.8 | 29 | 2 | 6.9 |
| 4.2 Criminal proceedings | 106 | 103 | 97.2 | 86 | 5 | 5.8 |
| 4.3 Civil proceedings and relations | 324 | 335 | 103.4 | 286 | 16 | 5.6 |
| 4.4 Proceedings before lab. and soc. courts | 29 | 31 | 106.9 | 27 | 4 | 14.8 |
| 4.5 Minor offence proceedings | 113 | 92 | 81.4 | 78 | 7 | 9.0 |
| 4.6 Administrative judicial proceedings | 5 | 2 | 40.0 | 1 | 0 | 0.0 |
| 4.7 Attorneys and notaries | 26 | 39 | 150.0 | 33 | 0 | 0.0 |
| 4.8 Other | 86 | 85 | 98.8 | 67 | 2 | 3.0 |

2.4.1 Judicial proceedings

General findings

In 2014, 563 cases were discussed in the field of judicial proceedings (577 cases in 2013). Some 103 complaints related to criminal proceedings (106 in 2013), 335 to civil proceedings and relations (324 in 2013), 31 to proceedings before labour and social courts (29 in 2013), 92 to minor offences (113 in 2013) and two related to administrative judicial proceedings (five in 2013). Some 38 cases (32 in 2013) were discussed in the sub-section of pre-litigation procedures, 39 cases in the sub-section of attorneys and notaries (26 in 2013) and 85 other cases related to this field of work.

A minor increase in the number of discussed (received) complaints was recorded in certain sub-section, including a minor drop in some other sub-sections. The share of founded complaints is closely connected with our (limited) powers on the one hand, primarily in the relationship with the judicial branch of power, and with the established systemic deficiencies (such as the court backlog) on the other. The share of founded complaints in the sub-section of proceedings before labour and social courts is particularly high (more on this in the continuation). Relating to the powers of the Human Rights Ombudsman of the Republic of Slovenia, it must be mentioned again that the Human Rights Ombudsman Act stipulates explicitly that the Ombudsman may not discuss cases which are subject to judicial or other legal proceedings unless undue delay in the proceedings or evident abuse of authority are established (Article 24 of the ZVarCP). In the case of judicial proceedings, the

latter would denote e.g. an intentional act by means of which judicial proceedings could be abused for illicit or illegitimate objectives. With regard to the judicial branch of power, our operations may only extend to the point where they do not encroach on the independence of judges in their judicial work. Thus the Ombudsman's intervention does not extend to the field of decision making, but particularly to judicial administration. Nevertheless, we emphasise that judges also have obligations and responsibilities. They are obliged to perform their work correctly, with fairness and responsibility, and ensure the effective implementation of their judicial function. The independence of a judge does not mean they are inviolable or non-culpable, because they must comply with the Constitution and the law.

When handling cases, the Ombudsman continued to turn to the presidents of courts and other competent bodies (e.g. heads of prosecution offices) by way of enquiries and other interventions, and when necessary, the Ministry of Justice, particularly when concerning an issue of a systemic nature or regarding the regulatory framework governing the work of the judiciary, and to the Ministry of the Interior (concerning procedures carried out by the police as a minor offence authority). For the most part, the Ombudsman was satisfied with the responses from the competent bodies.

We also met the ministers of health and the interior, the State Prosecutor General and the President of the Bar Association of Slovenia. We also held a meeting with the President of the Judicial Council and his secretary, since the Judicial Council within its jurisdiction *inter alia* monitors, establishes and analyses the efficiency of judges and courts. While observing these powers and the Ombudsman's efforts to ensure compliance with the principles of the rule of law and arrangements in the field of judiciary, the Ombudsman wanted to learn more about the manner of resolving relevant issues and possible future measures of the Judicial Council for the qualitative development of the judiciary. The President of the Judicial Council informed the Ombudsman in more detail about the efforts to improve the situation in this field, particularly with long-term measures to improve the reputation of the judiciary, to which every judge individually can contribute the most. The Ombudsman particularly commended the revised work quality criteria for judges and the efforts of the Judicial Council to improve staffing conditions for the election of judges. On that note, we were unanimous that a long-term strategy for the judiciary as a fundamental framework for its successful operating would have to be adopted.

From complaints received and the Ombudsman's recommendations relating to judicial proceedings in 2014, it was again possible to discover issues which on the one hand (still) refer to the lengthy duration of individual court proceedings and to the quality of decision making on the other. The complaints thus primarily address the following rights: the right to judicial protection, equal protection of rights, right to a legal remedy, legal guarantees in criminal proceedings etc. We report our findings about complaints relating to minor offence proceedings, prosecution, attorneys and notaries in separate chapters below.

Lengthy duration of court proceedings

In spite of a significant reduction in the court backlog (reported by the judiciary and the Ministry of Justice), the complaints discussed by the Ombudsman still included those claiming the lengthy duration of court proceedings. These amounted to about a quarter of all complaints referring to judicial proceedings. Court backlogs thus remain one of the main problems of the Slovenian judiciary. The data on compensation paid due to the violation of the right to judgement within a reasonable time show the problems in the field of ensuring judgements within a reasonable time, including judgements of the ECHR (particularly cases which were concluded before the enforcement of the Protection of Right to Trial without Undue Delay Act – ZVPSBNO and also cases in which the Court determined that the available national legal remedies did not suffice in this field). As noted in several judgements of the ECHR (e.g. in *W. v. Slovenia* no. 24125/06 of 23 January 2014), the limitation of compensation for non-pecuniary damage as per the ZVPSBNO could be problematic, since in certain cases this limitation prevents the determination of suitable compensation.

We explained several times that contacting the Ombudsman is not the only way to speed up a lengthy trial and, consequently, eliminate possible violations of the right to a judgement within a reasonable time. The Ombudsman's intervention is usually an option only when a party has not been successful with the application of other means available to eliminate the violation. A party to court proceedings has other legal remedies at their disposal, which are stipulated by the ZVPSBNO for cases of lengthy trials. These remedies include appeal

with a motion to expedite the hearing of the case (supervisory appeal) and a motion to set a deadline (motion for deadline). The decision on these remedies lies with the president of the court before which the individual proceedings are carried out, or the president of a higher court when deciding on the motion for a deadline. An intervention by the Ombudsman can thus be justified if the party has used such an (expediting) legal remedy, and a decision on it has not been made within the legally prescribed time limit. If a supervisory appeal or motion for a deadline is granted, this may be the basis to enforce the right to just satisfaction in the form of (nominal) compensation for damage incurred as a result of the violation of the right to trial without undue delay. It is not possible to enforce the right to just satisfaction in a case in which only the Ombudsman intervenes. In the case of the Ombudsman's intervention, the president of the court is limited to measures available within the scope of implementing tasks of the judicial administration pursuant to the Courts Act, because a legal basis for the use of measures in accordance with the ZVPSBNO has not been provided. Dissatisfaction and claims on the general decisions of presidents of courts are noted in some complaints relating to cases in which the parties used the legal remedies provided by the ZVPSBNO. When reviewing such decisions, we can ascertain that these decisions were frequently correct for entirely formal reasons. However, it is impossible to look beyond the fact that a decision could be different upon a broader view of the proceedings and particularly its entire course. We may hope that supervisory appeals, irrespective of their outcomes, are sufficient warnings in concrete cases and also in general that more can be done in the field of ensuring this constitutionally guaranteed right of individuals.

Example

When the main hearing never concludes

The complainant claimed that judicial proceedings on the division of joint ownership at Ljubljana Local Court in case ref. no. N 23/2007 has been ongoing for seven years and the property has still not been divided. In spite of the complainant's appeal of 2 December 2013, the proceedings did not continue.

We reminded Ljubljana Local Court that the relevant proceedings started in 2007, and in spite of the fact that the court decided (already) on 3 September 2013 (which was more than six months after our intervention) that the proceedings at first instance would continue, the complainant has not received a summons or any other notification about the continuation of proceedings.

The court explained that the last hearing was held on 6 June 2013, which the judge concluded, determining that a decision was to be issued in writing. On 3 September 2013, a decision was issued to hold the main hearing again, because the procedure for taking evidence had to be supplemented and important issues referring to the expert opinion had to be clarified. The court justified the delay in the hearing with the current absence of the judge, who was supposed to report by 29 April 2014 on when she would return to work. The court ensured that in the case of the lengthy absence of the judge, the case would be allocated to another judge.

The complainant was informed about the court's reply and legal possibilities of accelerating the proceedings as per the Protection of Right to Trial without Undue Delay Act (ZVPSBNO). We also asked her to inform us if the proceedings did not continue in a reasonable period, or if the court failed to allocate the case to another judge in the event of the lengthy absence of the relevant judge. This complaint was considered founded, since it was obviously a case of lengthy judicial proceedings, prolonged also because of a repeated main hearing and the unforeseen absence of the judge. In our opinion, the court should particularly carefully monitor absences in such cases and prevent further extension with the timely reallocation of cases. (6.4-69/2014)

We thus establish that the ZVPSBNO provides certain remedies for the acceleration of judicial proceedings (such as supervisory appeal and motion for deadline); however, practice reveals that these are not always effective (see example below) and their further intensification should be considered.

Proceedings before labour and social courts

At least one third of complaints referring to proceedings before labour and social courts discussed the lengthy judicial proceedings. However, complainants particularly expressed their dissatisfaction with the course of

judicial proceedings in their cases and individual (also final) court decisions. Some also requested various clarifications and advice or legal aid.

When discussing complaints referring to proceedings before labour and social courts in 2014, we were again able to ascertain that Ljubljana Labour and Social Court still has a backlog of labour and social disputes. One of the main reasons for this is the great caseload (also of cases in which the state is the defending party, which is particularly worrying). In one of the cases, i.e. a social dispute which began in August 2013, more than one year had passed between the filing of the lawsuit and the scheduling of the main hearing.

As per the provision of Article 50 of the Court Rules, cases in labour and social disputes must be resolved in six months from the receipt of the case, or the case is already defined as a court backlog. Data on court backlogs are more important for the statistical processing of data on the time needed to resolve cases by individual courts and usually have no significant impact on an individual case in an individual type of procedure. The average anticipated time for resolving a case or its final decision are more important in the case of the latter. The data from the Court statistics for the second half of 2014 of the Ministry of Justice (p. 305) reveal that the average expected duration of resolving important cases at labour and social courts has somewhat reduced, i.e. from 15 months in 2013 to 12.3 months in 2014 (or to 12.9 months in social disputes and to 11.9 months in individual labour disputes). The data from the opening of the judicial year 2015 of the Service for judicial administration development at the Supreme Court of the Republic of Slovenia (p. 7) similarly state that the expected duration of resolving important cases at labour and social courts dropped below one year, i.e. from 14.6 months in 2013 to 11.3 months in 2014.

From the commitment on the improvement of the situation in the judiciary, it can be understood that as of 1 June 2014, the target for the average time required to resolve a case is nine months in social disputes, while in cases of individual labour disputes about the existence or termination of an employment relationship, the first settlement hearing or (if there is no settlement hearing) the first main hearing is called no later than two months after the court receives the statement of the defence, or after the deadline for the statement of defence has expired. Considering the data of court statistics for the second half of 2014, this target has not (yet) been attained, since the actual average time in social disputes amounts to 14.4 months and 18 months in individual labour disputes. The Ombudsman thus proposes that relevant stakeholders again study the efficiency of measures adopted by labour and social courts in the past in order to reduce court backlogs and ensure trials in a reasonable time as per the results of the Court statistics for the first half of 2014 and the fact that the targets of the aforementioned commitment has not been realised (yet). The stakeholders should then adopt such measures by means of which targets would be realistically achieved. Otherwise, the situation in which Ljubljana Labour and Social Court has particularly found itself according to our data may remain unchanged for a long time, which, in spite of possible new commitments and promises, fails to present a suitable basis for enhancing people's trust in the rule of law and the judicial system.

In 2014, the Ombudsman still (too) frequently encountered complainants' information about long deadlines for the beginning of hearings in individual cases on employment relations.

The loss of employment is usually related to the social distress of the individual, who is thus additionally affected. In such cases, people often feel cheated by their employers, even more so if prior to the termination of employment they were subject to pressure, misbehaviour, abuse or mobbing. With termination of employment, psychological stress only enhances. It is therefore important that affected individuals enforce their rights as soon as possible in such cases, including possible compensation for pecuniary and non-pecuniary damage incurred due to the employers' conduct. However, this has not (yet) been implemented in practice, as seen in the example below.

Quality of decision making

Dissatisfaction of complainants about court decisions could particularly be seen in the majority of complaints (more than one half of those referring directly to judicial proceedings). The complainants frequently sought reasons for their failure in judicial proceedings in the bias of the judge, and accused their lawyers of not acting, and accused everyone involved even of corruption. Although such cases can never be completely excluded, the

dissatisfaction of complainants is in most cases the result of exaggerated expectations connected with their understanding of legal regulations in a way that is beneficial to them. Lawyers undoubtedly have a great deal of responsibility (if complainants used their services) for this, since after examining a case and later during judicial proceedings, they are apparently unable to sufficiently explain individual court decisions even if the circumstances of the case perhaps suggest an unfavourable result. Following the Ombudsman's clarification of its (very limited) jurisdiction in this field, complainants were usually dissatisfied with the clarifications because they did not receive what they had been expecting. We established that it does not suffice if we only listen to their problems, because they expect us to agree with their claims and take action, irrespective of the perhaps already final court decision, which could be difficult to object to. The fact that individuals find it difficult to accept an unfavourable court decision is also displayed by the fact that they contact the Ombudsman several years or even decades after the decision by which the court settled disputed relations became final.

We have emphasised several times the importance of the qualitative, fair and independent decision making which is entrusted to the judicial branch of power. Effective protection of human rights cannot be guaranteed without a judiciary whose decisions provide formal protection of human rights. It is thus important that judicial proceedings be legitimate, without undue delay and that they observe all guarantees of a fair procedure as determined by the Constitution, international treaties and acts, because only such proceedings can end with a fair court decision.

The Ombudsman repeatedly stresses the importance of issuing qualitative court decisions (upon guaranteeing trials without undue delay) in its annual reports. We highlighted in the 2010 annual report (p. 105) that the judiciary itself can contribute most to improving its reputation. Several Ombudsman's recommendations issued so far also emphasise the significance of high-quality judicial decision making. The Ombudsman encourages courts to issue qualitative court decisions adopted in fair judicial proceedings, while ensuring trials without undue delay (see, for example, the 2010 annual report, p. 129). The importance of carefully conducted judicial proceedings which conclude with the issue of qualitative court decisions was again stressed in the 2011 annual report (p. 142). By providing the right to trial without undue delay and no errors in proceedings, courts themselves contribute most to restoring their reputation, which must remain their main priority, as we highlighted in the 2012 annual report (p. 96). On that note, we (again) proposed to the judicial branch of power to adopt all measures needed to enhance the quality of judicial decision making (the 2012 annual report, p. 123). When ensuring trials without undue delay, the Ombudsman in the 2013 annual report (p. 122) stressed the importance of carefully conducted court proceedings, which should conclude with the issuing of sound court decisions.

The complaints discussed by the Ombudsman still point to the need for fair and just judicial proceedings and meticulous and critical supervision of court decisions. Judges must also bear their obligations and responsibilities. They are obliged to perform their work legally and responsibly and ensure the effective implementation of the judicial role. The independence of judges does not mean they are inviolable or may act irresponsibly.

The systemic independence and autonomy of the judicial branch of power in itself does not prevent certain anomalies which can occur in concrete cases. The legal system provides safeguards for such cases; people may use ordinary and extraordinary legal remedies if they believe that courts are biased in their cases. The right to a fair trial is safeguarded not only in Slovenian national law, but after the exhaustion of internal legal remedies, may be ensured before the European Court of Human Rights, i.e. particularly within Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms. The existing legal system thus anticipates the use of ordinary and extraordinary legal remedies to prevent possible irregularities in decision making, including a constitutional complaint and other mechanisms for the protection of human rights and fundamental freedoms. Various forms of responsibility, such as disciplinary, criminal, and damage liability, are also established. Furthermore, there are also instruments of judicial legislation, e.g. termination of a judicial function and judicial service (Article 74 of the Judicial Service Act) and dismissal of a judge (Article 77 of the Judicial Service Act), ensuring that suitably qualified and qualitative judges perform judicial services. Official supervision of a judge's work is a measure aimed at establishing the fulfilment of judicial duties according to the law and judicial regulations and encompasses all measures to eliminate reasons for unsuitable scope, quality and professionalism of work and delays. The efficiency of these mechanism certainly depends on their actual application. We thus encourage further enhancement of the efficiency of judicial and supervisory authorities, including their improved transparency and public openness.

Enforcement procedures

Complaints relating to enforcement procedures were submitted by creditors (e.g. due to inefficient or lengthy enforcement) and debtors (e.g. disagreement with claims, inability to pay, conducts of enforcement officers etc.). From cases referring to concrete judicial proceedings, 113 referred to enforcement, of which 14 discussed enforcement by enforcement officers, 43 enforcements conducted by banks and 56 to other types of enforcement (e.g. sale of real estate). Lengthy judicial proceedings were problematic in six cases involving enforcement, and the content of a court decision or conducted procedural act by the court were also problematic in six cases.

Enforcement officers carry out direct acts of enforcement, which are all the acts specified by the relevant act to ensure the implementation of enforcement or secure a creditor's claim, and acts which are necessary for preparation and enforcement. In particular, they must, as is also stipulated by Article 39 of the Rules on the performance of bailiff services, implement enforcement with due skill, care and diligence and in a way which ensures the repayment of the creditor or enforcement or secures the debtor's liability in the shortest time possible and most effectively, while respecting the dignity of the debtor, members of their household and other persons and not causing any unnecessary damage or costs. In cases of alleged irregularities in the work of enforcement officers, we inform complainants about their complaints options.

Free legal aid

In the majority of cases, it is important to have (sufficient) legal knowledge or obtain suitable legal assistance for the successful enforcement of different rights, particularly the right to judicial protection. We have, for example, encountered cases where individuals succeeded in judicial proceedings, but then waited for the fulfilment of obligations from the final court decision. Claims that they had not received an award were submitted to the court, although they failed to file a suitable request for enforcement. Furthermore, individual complaints point to thoughtless and hasty decisions by parties to conclude a court settlement proposed by the opposite party or agreed on in a mediation. They later frequently regret such decisions, but the possibilities of contesting a court settlement (with a special lawsuit) are very limited.

We thus explained to many complainants that in the case of social distress they should request free legal aid (FLA). We informed them about where to obtain suitable forms and explained the procedure for acquiring such aid. It seems that the awareness of complainants of the possibility provided by the state to persons in social distress for the enforcement of their right to judicial protection is still (too) low.

In spite of the aid provided by the Legal Aid Act (ZBPP), the Ombudsman has noted that people frequently do not receive free legal aid because they do not meet the criteria due to their having an income that exceeds the threshold by a few euros, which is frequently also burdened by various loans, or because they own real estate, which generates no income, and instead even burdens them financially, or because they are in a dispute over real estate (for example, division of assets after a divorce), or other reasons. Several complaints expressed disagreement with decisions rejecting or disagreeing with the established financial situation of complainants (improvements are to be made in this field with amendments to the ZBPP-C). It is encouraging that these gaps are being overcome by different non-governmental and humanitarian organisations, municipalities and lawyers (more in the chapter on attorneys). We nevertheless still encounter people in distress who have blindly trusted those closest to them or even mere acquaintances and secured their loans with their guarantees, or even took out mortgages on their real estate without suitable consultation with a legal expert. We thus discussed a case in which an elderly woman permitted a mortgage on her real estate, the small apartment where she lived and her only property, in order to secure a loan from an acquaintance. Because he was unable to pay the instalments, her apartment was put up for auction. The complainant is in severe distress because she does not know where to go if her apartment is sold and she did not dare to inform her children, who are also in social distress.

Court experts

Complaints stressing dissatisfaction with the work of court experts were still among the complaints we discussed in 2014. There were fewer complaints about the exceed time limit for drafting the expert opinion and

more about the content of the opinion. Although in these cases dissatisfaction (may) mostly be connected to the unfavourable result of judicial proceedings and thus claims about the unprofessionalism and corruptibility of the expert, we still believe that a review of the efficiency of procedures would have to be made which should ensure the highest possible degree of professionalism of experts and also prompt and effective discussion of individuals' complaints about the (un)professionalism of experts. Unfortunately, we note that courts and the Ministry of Justice dismiss complaints about the work of experts (too) quickly by stressing the inadmissibility of interference with judicial proceedings or the independence of judges. We encourage the adoption of additional measures to establish and ensure the professionalism of experts, which is particularly important in expert opinions involving children and family matters. It is also necessary to determine where and under what conditions experts conduct their reviews and other activities for expert opinions, since this is not regulated. The Minister of Justice was explicitly informed about this issue in 2011, when we also provided proposals to improve the situation in the field of experts. The issue was also discussed in the 2011 annual report (p. 124).

2.4.2 Minor offence proceedings

Somewhat fewer cases (92) were considered in this sub-section than in 2013 (113). No significant changes were made regarding this issue. The highest number of complaints related to dissatisfaction with fines or decisions taken in minor offence proceedings. The complainants wrote about the possibility of deferring the payment of fines, issues of time limits and individual actions in minor offence proceedings (e.g. breath test). Complaints relating to participation in road traffic and the police as a minor offence authority were still predominant.

Example

Establishing the identity of an offender in minor offence proceedings

A complainant informed the Human Rights Ombudsman that he had received several payment orders for minor offences which were allegedly committed by his cousin, who did not have a valid driving licence, but knew the complainant's personal data. In minor offence proceedings, he told police officers (of different police stations) on site that he had no personal document on him and gave them the complainant's personal data. Police officers verified the personal data on site with data from official records and since all the data matched, the offender was handed a payment order issued in the complainant's name. The latter became aware of the payment orders issued in his name only in the enforcement procedure, because the offender did not pay or contested them by means of a request for judicial protection.

The Ombudsman inquired at the Ministry of the Interior as to the following: in how many minor offence proceedings had the complainant objected to the identity of the offender and in how many cases did he succeed, and also how was the (incorrect) identity of the offender established in these cases, and how do police officers in compliance with the applicable legislation establish identity in cases when an offender claims not to have any personal documents? We also wanted to obtain data about how many similar cases of personal data abuse per year were recorded in the last five years, but the Ministry of the Interior replied that it did not keep such records.

After reviewing the case of the complainant, the Ministry of the Interior stated that the complainant had contested the identity of the offender in three final minor offence proceedings. In the first one, the police officers of Maribor II Police Station verified the authenticity of the personal data provided by the offender with the on-duty police officer; in the second case, police officers of Slovenska Bistrica Police Station established the identity with a driving licence provided by the offender, and in the third case, the offender's cohabiting partner, i.e. a passenger in the vehicle confirmed the authenticity of the personal data provided by the offender to the police officers of Šmarje pri Jelšah Police Station. On that note, the Ministry of the Interior determined that when establishing identity in the first and third cases, the police officer failed to comply consistently with the provisions of Article 41 of the Police Tasks and Powers Act (ZNPPol). Due to such and similar cases, the police informed all police units of the consistency when establishing the identity of persons in proceedings with document no. 220- 44/2010/1 (2151-01) of 17 February 2010. As per the fact that the Ministry of the Interior discovered the re-occurrence of the relevant issue, it also stated that all police units would be warned again about the correct procedure for establishing a person's identity in police procedures by means of an additional notification about the possible consequences of incorrectly establishing identity.

The negative consequences (fines and penalty points) were later remedied. However, these should not have occurred at all if due care of officials when establishing the identity of the offender had been observed as determined by Article 41 of the ZNPPol. The Ombudsman thus assessed his complaint as founded. This case also points to the need for the continuous training of police officers and other officials executing legal authorisation in their field of duties. 6.6-29/2014

Abolition of imprisonment for the non-payment of fines

An offender who failed to partially or fully pay a fine within a certain deadline was forced to pay the fine by a court which, on the basis of Article 19 of the ZP-1, decided on the imprisonment for the non-payment of fines. The Ombudsman believed that the introduction of imprisonment for the non-payment of fines into our legal order was problematic from several aspects, while the regulation itself was deficient. The Ombudsman has been addressing imprisonment for the non-payment of fines since it became law. We wrote about this issue in the 2010 annual report (p. 121). Since all amendments to the ZP-1 also ignored our positions and the warnings (of a section) of experts who objected to the measure and provided their reservations relating to the constitutionality of imprisonment for the non-payment of fines, the Ombudsman proposed that the Constitutional Court of the Republic of Slovenia at the beginning of 2012 assess constitutionality of the first paragraph of Article 19 of the ZP-1 and repeal it as non-compliant with the Constitution of the Republic of Slovenia, as the Ombudsman believed that it impermissibly intervenes with human rights or fundamental freedoms.

At its session on 11 December 2014, the Constitutional Court of the Republic of Slovenia determined in the proceedings of reviewing constitutionality to repeal the first, second, third and fourth paragraphs of Article 19 of the Minor Offences Act (Official Gazette of the Republic of Slovenia, no. 29/11 – official consolidated text, 21/12 and 111/13), and the seventh paragraph of Article 19 of this Act if referring to the execution of imprisonment for the non-payment of fines, and also Article 202.b of the same Act. The Court stayed all decision-making proceedings on imprisonment for the non-payment of fines which had not been completed before the publication of the decision of the Constitutional Court of the Republic of Slovenia in the Official Gazette of the Republic of Slovenia. In cases in which the proceedings on imprisonment for the non-payment of fines had already been completed, imprisonment for the non-payment of fines was not to be executed or its execution suspended.

The Constitutional Court of the Republic of Slovenia did not establish the unconstitutionality of the contested measure of imprisonment for the non-payment of fines as such. However, it ascertained that individual conditions and the arrangement of proceedings as prescribed for the enforcement of imprisonment for the non-payment of fines are non-compliant with the Constitution of the Republic of Slovenia because they fail to provide guarantees ensured by the Constitution of the Republic of Slovenia to a sufficient degree. Since the established cases of unconstitutionality and particularly the manner of arranging the measure prevent the Constitutional Court from repealing only individual provisions, the Court fully repealed the regulation of imprisonment for the non-payment of fines. In decision no. U-I-12/12 of 11 December 2014, the Court also emphasised *inter alia* that – because the ZP-1 orders the court to reject the complaint when an offender fails to fully implement tasks intended for the general benefit of the public even if the offender displayed in the procedure of deciding on the request for the elimination of tasks intended for the general benefit of the public that they were unable to settle the fine due to their poor financial situation – the contested regulation fails to meet its objective it is thus not a suitable remedy in this section for the attainment of the objective and is non-compliant with the right under the first paragraph of Article 19 of the Constitution of the Republic of Slovenia. Furthermore, the ZP-1 is non-compliant with the request for the provision of proportionality balance between the weight of consequences of the intervention in personal freedom and the benefits which would result thereof, because it excludes the possibility of the court to observe the amount of the determined and unpaid fine when determining the length of sentence and is thus non-compliant with the right under the first paragraph of Article 19 of the Constitution of the Republic of Slovenia. The regulation according to which the court determines imprisonment for the non-payment of fines without asking the offender to provide reasons against such a decision interferes with the rights to a fair trial and to be heard, whereby the court decides on the basis of officially conducted proceedings. Since imprisonment for the non-payment of fines encroaches on personal liberty – which is why the measure must not only guarantee payment discipline – this objective must

not justify an intervention in the rights to a fair trial or to be heard in the initial phase of decision making on imprisonment. The contested regulation which permitted such conduct is thus non-compliant with Article 22 and the first paragraph of Article 23 of the Constitution of the Republic of Slovenia.

The Constitutional Court of the Republic of Slovenia thus agreed with the Ombudsman, who claimed that the regulation of imprisonment for the non-payment of fines impermissibly interfered with human rights or fundamental freedoms. If the legislator persists on imprisonment for the non-payment of fines, the regulation will have to be amended in a way that observes the guarantees provided by the Constitution of the Republic of Slovenia.

2.4.3 Prosecution service

In the sub-section of pre-litigation proceedings, where most of the complaints deal with the work of state prosecutors, 38 complaints were discussed in 2014 (32 in 2013). When necessary, the claims of complainants were verified at the heads of state prosecution offices, who regularly responded to our inquiries. We also met the State Prosecutor General and his colleagues and agreed on further cooperation and acquainted him with the findings on complaints discussed in this field.

We established that changes had not occurred yet to improve the situation of an injured party in criminal proceedings, which was more extensively discussed in the last two annual reports. The Ministry of Justice ensured that the recommendation of the Human Rights Ombudsman would be observed during the preparation of amendments to the ZKP.

The content of complaints in 2014 also related primarily to the dissatisfaction of complainants with individual decisions of prosecutors (e.g. rejection of complaints) or the long-term processing of their criminal complaints. On a positive note, no major unjustifiable delays in the processing of cases at prosecution offices were established. Some complaints required further review of prosecution files.

We have already emphasised that speedy and efficient prosecution, which is the main task of the prosecution service, also depends on adequate material and staffing conditions for the work of the prosecution service, in addition to suitable legislation. It can thus be expected that staffing improvement at the prosecution service, which (finally) occurred in 2014, will greatly contribute to the aforementioned, and eliminate differences in the burdening of individual prosecutors or prosecution offices.

Criminal prosecution of aliens with false passports

On its behalf and on behalf of non-governmental organisations (Amnesty International Slovenia, Slovene Philanthropy, Peace Institute, Jesuit Refugee Association of Slovenia, Association SOS Help-line and Association for Non-violent Communication), the Legal-Informational Centre for NGOs (PIC) informed the Ombudsman about the circumstances in which aliens (refugees) may find themselves when entering Slovenia with false documents or with no documents at all, i.e. illegally. The NGOs stressed that law enforcement authorities would have to observe Article 31 of the Convention relating to the Status of Refugees when processing these persons and enable them international protection, instead of punishing them for illegal entry. They stated that the postponement of criminal prosecution as per Article 162 of the ZKP also represents punishment for these persons, since payment of a certain amount to the benefit of a public institution or charitable purposes is also a great burden for them. They presented their positions and a proposal for the compassionate treatment of asylum seekers to the Office of the State Prosecutor General of the Republic of Slovenia, to which they addressed the "Proposal for amending practice/instructions in the treatment of refugees from Syria as per Article 251 of the Criminal Code".

The Office of the State Prosecutor General of the Republic of Slovenia responded that state prosecutors discuss aliens without passports or with fake documents as per the provisions of the ZKP. In the opinion of the Office of the State Prosecutor General of the Republic of Slovenia, the adopted decisions are not contrary to the provisions of the Convention relating to the Status of Refugees. Detention must be ordered against persons

whose identity cannot be established upon their entry to the country, as per Point 1 of the first paragraph of Article 201 of the ZKP. After completed criminal proceedings, all defendants in the recent period received a suspended sentence and were exempt from paying criminal proceedings costs. Only one of the defendants referred to the severity of conditions in his homeland, but he did not come to Slovenia directly from Syria, i.e. a place where his life or freedom was threatened. Relating to the weight and circumstances of a criminal offence and while observing the offender's personality, state prosecutors decide in each case separately also on the postponement of criminal prosecution if the offender is prepared to follow the state prosecutor's instructions. In such cases, perpetrators are ordered as per Point 2 of the first paragraph of Article 162 of the ZKP, to pay a certain amount to the benefit of a public institution, charitable purposes or to the fund for the compensation of damage to victims of criminal offences. The Office of the State Prosecutor General of the Republic of Slovenia stressed on that note that such a task is not a criminal sanction imposed on perpetrators for criminal offences and is also not kept in the criminal record. The decision on the postponement of criminal prosecution is thus also not contrary to Article 31 of the Convention relating to the Status of Refugees. In cases in which a prosecutor determines disproportionality in a minor criminal offence, the criminal complaint can also be dismissed; prosecutors have also done so in individual cases. The Office of the State Prosecutor General of the Republic of Slovenia concluded that work of state prosecutors had been professional and correct and also highlighted that such conduct did not exclude the necessary observance of the Convention relating to the Status of Refugees or awareness of the vulnerability of persons with false passports.

In order to become better acquainted with all the circumstances of the treatment of aliens forced to leave their homeland in order to protect their lives and freedom, the Ombudsman met representatives of the aforementioned NGOs and a representative of the Office of the United Nations High Commissioner for Refugees (UNHCR). The Ombudsman also invited representatives of the Office of the State Prosecutor General of the Republic of Slovenia to the next meeting with the NGOs. After the presentation of the issue by the NGOs and argumentation of conduct of state prosecutors, the Ombudsman did not ascertain that state prosecutors had acted contrary to the current legislation. Furthermore, the Ombudsman had not yet received any complaints pointing to possible violations of rights in the treatment of aliens. The Ombudsman agrees with the opinion of the NGOs that aliens who are forced to leave their homeland with false passports in fear of their lives and freedom must be treated with compassion in criminal proceedings, but also in compliance with the law, particularly the Convention relating to the Status of Refugees.

Relating to the fact that at the meeting with the representatives of the NGOs and the Ombudsman, the State Prosecutor General said that all state prosecutors would (again) be informed on the provisions of Article 31 of the Convention relating to the Status of Refugees and relating to the awareness of the Office of the State Prosecutor General of the Republic of Slovenia that criminal prosecution of aliens required due attention and observance of the Convention and the awareness of the vulnerability of persons with false passports who were or could become victims of human trafficking, we can expect state prosecutors to dedicate all due attention to the treatment of aliens in accordance with Article 31 of the Convention relating to the Status of Refugees also in the future.

2.4.4 Attorneys

Some 39 cases were discussed in this field (29 in 2013). Complaints about the negligent provision of services or dissatisfaction with the work of attorneys (including representation within allocated free legal aid), incorrect calculation of costs, unprofessional conduct (a complainant in one complaint claimed that the attorney of the opposite party/debtor threatened him and refused to present his authorisation; disciplinary proceedings against him are still underway) and refusal to return documentation, disagreement with a decision of the disciplinary authorities of the Bar Association of Slovenia and other irregularities prevailed. We ascertain that complainants frequently direct their dissatisfaction with court decisions (also) at their attorneys. They reproach them for lack of activity when representing their interests, lack of professionalism, sometimes even cooperation or negotiation regardless of their will with the attorney of the opposite party or even any other influence of the opposite party on the attorney.

In dealing with individual cases, we primarily addressed the Bar Association of Slovenia (OZS). Cooperation with the Association was also good in 2014. We also met the President of the OZS and discussed different open issues.

We commend attorneys' decision to open their doors once a year for pro bono legal advice. We are also pleased with continued cooperation with the Management Board of the OZS in the field of allocating pro bono legal aid by attorneys, since we have noticed that people are frequently left with no free legal aid in spite of legal aid guaranteed by the Legal Aid Act because they do not meet the criteria since they have an income that exceeds the threshold by a few euros, and which is frequently also burdened by various loans, or because they own real estate which generates no income, and instead even burdens them financially, or because they are in a dispute over real estate (for example, division of assets after a divorce), and other reasons. The OZS pointed out that such pro bono aid with the exception of aid on the day of pro bono attorney aid (19 December) had still not been regulated with regard to taxes. We notified the Minister of Justice about the aforementioned. The latter informed us that the Ministry of Justice planned to regulate all issues relating to pro bono legal aid in a special act.

The Ombudsman has no direct jurisdiction to take action with regard to individual attorneys, but takes measures when the circumstances of a case reveal that the OZS or its disciplinary authorities fail to implement public authorisations with due care. Grounds for the Ombudsman's intervention at the OZS or its disciplinary authorities are thus given particularly when the Association fails to respond to an individual's complaint or if the procedure for discussing the complaint by the disciplinary authorities takes too long. On this note, it must be stressed that the Ombudsman cannot file legal remedies against the decisions of the Association's disciplinary authorities and does not have the power to change their decisions.

2.5

POLICE PROCEDURES

| Area of work | Cases considered | | | Resolved and founded | | |
|-------------------|------------------|------|-------------|----------------------|----------------|--------------------------------------|
| | 2013 | 2014 | Index 14/13 | No. of resolved | No. of founded | Percentage of founded among resolved |
| Police procedures | 112 | 100 | 89.3 | 81 | 9 | 11.1 |

General

In 2014, the Human Rights Ombudsman discussed 100 complaints relating to police procedures. This is a slight reduction compared to 2013, when 112 complaints were considered. The complainants are encouraged to (first) file a complaint about the work of police officers on the basis of the Police Tasks and Powers Act (ZNPPol) and thus present their disagreement with an act or the omission to act of a police officer when conducting police tasks which may denote violation of human rights or fundamental freedoms. We inform the complainants that in such cases our intervention is usually suitable only if they are dissatisfied with the anticipated complaint procedure, a lengthy procedure or even a lack of response from a competent authority. In particularly founded cases, the procedure was instigated immediately after the receipt of the complaint.

We ascertain that few complainants contact us again after we have suggested they use a complaint procedure as per the ZNPPol, which either points to the fact that they are pleased with the result of the complaint procedure or they are no longer interested in our further intervention. In such cases, we cannot continue the procedure, and the case is closed with mere clarifications without actually stating a position on the violations claimed. The latter may also be seen in the share of (un)founded complaints in this field.

Certain police stations were visited in 2014 also within the implementation of tasks and powers under the National Prevention Mechanism (NPM), which is the subject of a special report on the implementation of tasks and powers of the NPM. The Ombudsman submits its enquiries about concrete procedures relating to complaints about the work of police officers particularly to the Ministry of the Interior and in certain cases directly to the Police. We can again commend the prompt responses of the Ministry of the Interior and the Police. In order to enhance cooperation and improve communication between both authorities, we held a meeting with the Police and Security Directorate at the Ministry of the Interior in 2014. At the end of 2014, the Ombudsman and her colleagues hosted the Minister of the Interior and her colleagues at an introductory working meeting (including the then acting Director General of the Police) where we spoke about different methods of cooperation between the Ombudsman, the Ministry of the Interior and the Police and discussed individual issues. Our cooperation with the Police Academy still continues, whereby a representative of the Ombudsman annually participates with a contribution in the field of the Ombudsman's work. As an external expert, Ivan Šelih, Deputy Ombudsman, was reappointed a member of the Expert Council on Police Law and Powers, a permanent, autonomous and consulting body of the Police and the Police and Security Directorate at the Ministry of the Interior. The Council combines the external and internal expert public in the provision of lawful and expert and proportionate application of police powers, and contributes to enhancing trust among the internal and external public in the expert integrity and operational autonomy of the work of the Police.

On the basis of Article 53 of the Human Rights Ombudsman Act, the Ombudsman appointed to its expert service an employee of the Ministry of the Interior for a limited period for the first time since its establishment in order to strengthen mutual cooperation and exchange experience and knowledge in the field of police procedures and particularly the National Prevention Mechanism. This exchange has proven useful and successful for both institutions.

2.5.1 Rules on police powers

When conducting police tasks, police officers may implement different police powers determined by the ZNPPol and also other acts. The ZNPPol also explicitly defines that the manner of implementing police powers is prescribed in more detail by the Minister after obtaining the prior opinion of the Ombudsman (second paragraph of Article 33 of the ZNPPol). Such a solution represents (also according to the Ministry of the Interior) a higher standard of human rights and freedoms, particularly when police intervene in people's rights and freedoms with their powers. The Ministry of the Interior prepared draft Rules on police powers in 2013, which observed most of our comments. The Rules on police powers were then issued in 2024 (Official Gazette of the Republic of Slovenia, no. 16/2014).

Police detention is short-term, and contacts of the person detained with the outside world are not as important as for persons in remand or prisons. Nevertheless, we must not overlook the fact that the police encroach on the right to personal liberty when detaining a person, which requires the limitation of the period of detainment to the shortest time possible, whereas only restrictions which are necessary for attaining the legal objective of detention may be used against the person detained. If contacts with the outside world do not pose a threat to this objective, there is no reason for the police to prevent the person detained from making phone calls or receiving visits from their family etc. Referring to the eight-hour continuous rest or the fact that family members have already been informed of the circumstances of detention are not (always) convincing arguments for prohibiting visits. Security reasons are also not convincing for preventing visits by the closest family members (e.g. mother). Such visits may even calm the person detained, which may lead to the termination of further detention, since the legal grounds for detention ceased to apply. The Ombudsman thus proposed that the police be less strict when enabling contacts with the outside world for detained persons. When adopting the Rules on police powers, we again proposed that regulation on the contacts of persons in detention with the outside world be improved. We noted that the exceptionality of the encroachment of the executive branch of power on the right to personal liberty must be observed, which determines that only the most necessary restrictions may be used against the person detained.

The Rules on police powers regulates contact with the detained person in Article 34. The detainee is allowed free contact with their counsel and representatives of competent state or international institutions or organisations in the field of human rights and fundamental freedoms. It also determines that a complaint or a request of the detained person to these bodies must be submitted by mail as soon as possible. The Article also defines the method of enforcing the right of the person detained to communicate with the Ombudsman by phone, but unfortunately does not regulate visits by close family members.

2.5.2 Findings from complaints considered

The complaints we discussed most frequently referred to the violations of rights to equality before law, protection of a person's personality and dignity, the right to personal dignity and safety, legal guarantees in minor offence proceedings, the right to equal protection of rights and other. Complaints expressing the helplessness and despair of complainants due to disputes with neighbours, harassment, stalking, blackmailing or other threats were also frequent. Since the Ombudsman's powers are limited in these cases, we directed complainants to the relevant authorities to ensure efficient conduct by state authorities which are obliged to maintain personal safety and safety of property and prevent and examine criminal acts. The same applies in cases of alleged domestic violence. On the official website of the Police, the Criminal Police Directorate at the General Police Directorate published a comprehensive review of information on police procedures in the field of domestic violence. The information was compiled and published in order to familiarise the general public with the comprehensive approach in the field of domestic violence and to provide suitable and objective

information to victims of domestic violence and also those who wished to help victims, but did not know what to do. We understood the aforementioned information as useful and we thus followed the invitation of the Police and published a link to the relevant information on our website. The link is available at <http://www.varuh-rs.si/iscete-pomoc/koristni-naslovi/nasilje-v-druzini/>.

Complainants usually pointed out irregularities in police procedures in which the police acted as a minor offence authority when discussing violations of public peace and order and road traffic offences. The (in)action of police officers (even intentionally stopping and imposing fines in certain cases), subjectivity when establishing the facts and circumstances of alleged offences, incomplete establishment of the actual situation, and dissatisfaction with the issue of a payment order or a fine and other violations of rights were mentioned in particular. Violations of public peace and order and road traffic offences are most frequent, including traffic accidents.

Complaint procedures

Complainants who believe that their rights and fundamental freedoms were violated by means of an act or the omission of act by a police officer may in addition to all other legal possibilities (e.g. criminal proceedings, civil proceedings etc.) also complain about the work of a police officer (Article 137 and further articles of the ZNPPol). As already explained, we encourage complainants to first exploit this complaint method if they disagree with the conduct of police officers, because we believe that the questionable procedure should first be verified within the system in which the alleged irregularity occurred. We act in such cases if a complainant is not satisfied with the complaint procedure. On this note, we emphasise the importance of consistently establishing the actual situation and the need to verify all circumstances in the police procedure which is the subject of the complaint. The correctness of the decision in the complaint procedure depends particularly on a correctly implemented preliminary procedure for resolving the complaint (see e.g. the Annual Report of the Ombudsman for 2008, p. 125). In certain cases where the claims of the complainant and clarifications of the police differ over events, we must unfortunately determine that our further examination would be fruitless in the absence of witnesses or other means of determining the actual conduct of the police. When complainants are dissatisfied with the results of complaint procedures, we use own procedures to try to contribute to the establishment of possible irregularities. One example, case 6.1-66/2013, entitled Offender, was not given a chance to state his opinion on the facts and circumstances of the alleged offence and to submit evidence in his favour, which was presented above.

In a complaint discussed as per the ZNPPol, the deadline for dealing with a complaint in a conciliation procedure and informing the complainant about the findings is 30 days from the receipt of the complaint, unless this is not possible for objective reasons (seventh paragraph of Article 150 of the ZNPPol). A 90-day deadline is prescribed for complaints discussed by the senate, within which the procedure before the senate must be completed unless this is not possible for objective reasons (fourth paragraph of Article 153 of the ZNPPol). In this regard, we established that the deadlines for dealing with complaints were not always observed in practice, and it is difficult to assess whether truly objective reasons were provided in all cases.

As an example of good practice, we mention the material of the Sector for complaints against the Police of the Police and Security Directorate, where summaries of high-profile and educational examples of founded complaints in 2013 are collected. In order to eliminate unsuitable practices by police officers when implementing police tasks and ensure the consistent observance of human rights and fundamental freedoms of persons in police procedures, the material was submitted to the General Police Directorate at the beginning of 2014 with a proposal to inform all police units of the relevant content and to use the material in the training of police officers. Findings from the complaints discussed can provide useful guidelines for the improvement of police work and the establishment and elimination of reasons for complaints.

In example, the complainant requested the opinion of the Ombudsman about the conduct of police officers in the case of her minor child. Police officers intervened on the basis of the phone call of an applicant who felt threatened because the child was carrying and displaying an object which looked like weapon, but was in fact a toy gun. The complainant believed that the child's right had been violated because he was being processed in her absence, due to which he was shocked and was crying. The complainant filed a complaint relating to the police procedure, which was discussed directly by the senate, which unanimously decided that the complaint was unfounded.

We studied the findings of the complaint procedure, but they did not display irregularities in the work of the police officers. This case points to the importance of suitable conduct by police officers in relation to persons being processed. They have to be polite and civilised in their conduct and particularly careful and tactful when dealing with children and adolescents. This case also serves as an example for all parents and children about handling toys which look like weapons in public. Carrying, displaying or using decorative weapons, replica guns, weapons intended for sounding alarms, signalling or other objects which resemble weapons is a criminal offence, irrespective of the fact that as per the Firearms Act they are not considered weapons, if they cause a disturbance or a feeling of being threatened in another person (second paragraph of Article 11 of the Protection of Public Order Act). Finally, the relevant case also raises the issue of the suitability of instructions on handling such toys in public.

We agreed with the complainant, who justifiably pointed to the deficiency in the procedure to respond to his request for the protection of hard-copy recordings of communication between the police officers who were the subject of the complaint procedure. In this case, we assessed our intervention as successful. After an additional inquiry, the Ministry of the Interior informed us that it had received all the required recordings of communication from the police and stored them on a CD, which it filed in the complaint file. The Ministry of the Interior also added that two representatives of the Minister from the Sector for complaints against the Police conducted a review of technical information databases which clarified, displayed or recorded the events which were the subject of the complaint in a different way. At the request of the Sector for complaints against the Police, the Police submitted to the relevant sector a letter which clearly specified who had interfered with the digital voice recording device of the relevant Operation and Communication Centre at the Police Directorate.

While discussing certain complaints in this field, we were able to establish that retired police employees participate as representatives of the public in senates to handle complaints against the work of police officers. In terms of ensuring objective discussion of complaints against the work of police officers, we believe that this is not appropriate, since the purpose of the participation of representatives of the public in the senate is to ensure external (civic) supervision when dealing with complaints against police officers and thus enhance objectivity and independence in deciding on complaints against the work of police officers. The appropriate composition of senates which decide on complaints against the work of police officers can deter possible reproaches that the police supervises itself, and particularly reproaches that decisions are biased. We submitted these reservations to the Ministry of the Interior and asked it to state its position. The Ministry of the Interior explained that formal conditions for appointing representatives of the public do not permit limitations as per their previous professional affiliation. It also believed that the participation of former police officers in the senate did not present a systemic issue. According to the Ministry of the Interior, the advantage of former police officers who enjoy the trust of the applicant and are not inclined towards any party in the complaint procedure could be their familiarisation with police powers, which is sometimes lacking among other representatives of the public in the process of making an expert decision.

Example:

Apprehension and release of an alien

The cases discussed in this field included the case of a citizen of Romania who was deprived of his liberty by police officers of Ljubljana Police Station for Compensatory Measures when it was established upon the verification of the FIO police computer record that an international arrest warrant had been issued for him and a European Arrest Warrant issued by the Romanian judicial authority. The investigating judge on duty of Ljubljana District Court was informed about the apprehension of the alien in the evening. He ordered the police to detain the alien and bring him to Ljubljana District Court the next day (at 10:00). The reason for the detention was supposedly that he was unable to obtain an interpreter for Romanian. Since the police later assessed that it no longer had legal grounds to further detain the person after the police procedure, the alien was released, whereby he was instructed to come the next day at 10:00 to Ljubljana District Court, which he failed to do.

The Ombudsman believed that this case raised certain broader issues relevant to the protection of human rights and fundamental freedoms and legal certainty in our country. We pointed to this already in the 2011 annual report (pp. 167-169) and stressed the need for priority and prompt action by all authorities without undue delay in criminal cases referring to the apprehension of persons on the basis of a European Arrest Warrant.

After our inquiries about the reasons preventing the investigating judge in the relevant case from (immediately) hearing the apprehended person and implementing further proceedings, or for the person's prompt appearance before the investigating judge after the police implemented all necessary activities and no need for further detention of the person was required, Ljubljana District Court *inter alia* explained that it was not possible that night for the investigating judge to obtain a document in Slovenian which the detainee would understand and could thus be able to inform the latter of the reasons for the deprivation of his liberty. Furthermore, it was impossible to present the reasons for detention to the relevant person at e.g. 22:30 in a language he understood, and there was also practically no way to explain to him the decision of detention so that he would understand, or for the decision to be translated for him into his mother tongue. To take proper measures, an interpreter would have to be provided to the investigating judge at 23:00, which is objectively impossible. The judge must verify that the European Arrest Warrant is composed as stipulated by law, particularly if this was a case of double criminality, which is one of the conditions for instigating a surrender procedure. The European Arrest Warrant was submitted to the only available interpreter for Romanian on the same night, who explained that she could only come to court the next day. The court also assessed that, regarding Compensatory Measures, Ljubljana Police Station misinterpreted the third paragraph of Article 17 of the Cooperation in Criminal Matters with Member States of the European Union Act (ZSKZDČEU) because the second paragraph of Article 18 of the same Act permitted Ljubljana Police Station to detain the relevant person for up to 48 hours, and the amendments to the ZSKZDČEU in Article 19 also give the police the right to detain someone for up to 24 hours.

Upon additional inquiry at the court, we emphasised that we agree that the ZSKZDČEU gives the police the right to detain a person for up to 48 hours, but only if sufficient reason exists (on the side of the police). In the absence of reasonable grounds (if the police e.g. implemented all required tasks and prepared documents for the person to be brought before the court) then further (unjustified) detention of the person by the police could constitute an abuse of this right and unlawful implementation of police powers. Considering the fact that deprivation of liberty is the most severe encroachment on personal liberty, it is our understanding that the police must bring the person concerned to the investigating judge for further proceedings after completing its tasks. The court, however, would have to organise everything necessary for the judge to hear this person immediately or instigate proceedings determined for such cases, so that undue continuation of the deprivation of liberty would be prevented. We are also of the opinion that relevant legal provisions and guidelines must be observed when apprehending persons on the basis of a European Arrest Warrant. According to our assessment, these provisions (police document no. 220-210/2008/24 (2251-04) of 25 May 2011) also do not permit the interpretation that the police could release an alien on the basis of their interpretation if a relevant investigating judge fails to (immediately) take over the case after the police complete their procedures; although some believe that these provisions are unlawful for this very reason.

2.5.3 Private security and traffic warden services

Security staff and traffic wardens can also severely encroach on human rights and freedoms with their measures, which is why the Ombudsman is also interested in this issue. However, the Ombudsman did not deal with any complaint related to the conduct of security staff this year that demanded our intervention. The responses that the Ombudsman provided to complainants in this field mainly related to the duties and measures of a security guard and complaint procedures. When preparing this report, the discussion of the complaint by a private security company relating to informing the police about criminal offences being prosecuted based on a complaint if the latter is not submitted and the application of Article 58 of the Private Security Act (ZZasV-1) was still underway.

A municipal warden may also use physical force, instruments of constraint and mechanical restraints and gas spray. These instruments may be used only when legal conditions have been met and if a simultaneous unlawful attack on themselves or another person cannot be prevented in another way.

The municipal warden is obliged to write a report on the use of coercive measures and submit it to the head of the municipal wardens, their superior or a person authorised by the superior. In the case of physical injury, death or if a coercive measure was used against more than three people, the assessment of the conduct of the municipal warden is performed by a special committee according to the Act on Local Police. The committee

normally discusses complaints against the work of municipal wardens, but it may also discuss other cases of the use of coercive measures in procedures of municipal wardens when this is assessed as necessary.

On the basis of information from public media on the use of coercive measures (physical force and gas spray) against one person, we requested the findings of the committee for the assessment of legality and professionalism in the conduct of municipal wardens. On the basis of collected information, evidence on circumstances of the use of coercive measures and findings in the discussed case, the committee stated that the conduct of municipal wardens relating to the use of coercive measures was in compliance with regulations (legal), professional and proportionate. But partly inefficient and at a distance less (one metre) than recommended by the gas spray producer in the part referring to the use of gas spray. Since the affected person alone did not contact us in this case, there were no grounds for us to further discuss this matter.

We also attended the meeting of the Slovenian Association of Corporate Security, where we actively participated in the debate on the role of polygraph testing in ensuring corporate security, while the Ombudsman attended the Private Security Days.

2.6

ADMINISTRATIVE MATTERS

| Area of work | Cases considered | | | Resolved and founded | | |
|----------------------------------|------------------|------------|--------------|----------------------|----------------|--------------------------------------|
| | 2013 | 2014 | Index 14/13 | No. of resolved | No. of founded | Percentage of founded among resolved |
| 6. Administrative matters | 409 | 453 | 110.8 | 388 | 103 | 26.5 |
| 6.1 Citizenship | 15 | 7 | 46.7 | 7 | 0 | 0.0 |
| 6.2 Aliens | 67 | 65 | 97.0 | 57 | 9 | 15.8 |
| 6.3 Denationalisation | 12 | 14 | 116.7 | 14 | 4 | 28.6 |
| 6.4 Property law matters | 39 | 42 | 107.7 | 33 | 14 | 42.4 |
| 6.5 Taxes | 78 | 85 | 109.0 | 74 | 11 | 14.9 |
| 6.6 Customs duties | 1 | 4 | 400.0 | 4 | 0 | 0.0 |
| 6.7 Administrative procedures | 98 | 130 | 132.7 | 106 | 28 | 26.4 |
| 6.8 Social activities | 68 | 82 | 120.6 | 72 | 32 | 44.4 |
| 6.9 Other | 31 | 24 | 77.4 | 21 | 5 | 23.8 |

General findings

The number of complaints received regarding administrative matters in 2014 was 11 per cent higher than in 2013. The highest growth was recorded in the field of administrative procedures.

We critically establish that our recommendations from the 2013 annual report were accepted by the National Assembly, but were not realised. And for that reason, the same issues took up our time again. At this point, we particularly highlight the issue of registering residence. In spite of our many activities, numerous complaints and extensive communication with the relevant Ministry of the Interior, a new act was not passed and systemic solutions were not realised to which we have been drawing attention and demanding solutions for quite some time.

Many complainants wrote to us and complained about municipalities which act arbitrary, fail to reply to their residents and fail to eliminate established violations. At this point, we mention problems relating to the categorisation of municipal roads sited on private land and that frequently cause disputes between municipalities and land owners. To make the situation even worse, neighbours with their interests are also often involved in these disputes.

We also established violations of rights to decision making within a reasonable time, efficient legal protection, social security, private property and personal dignity.

We are also not pleased with the implementation of explanatory duties of public authorities as determined in the Decree on administrative operations. Although responding to received applications and letters by citizens

is one of the fundamentals of good governance and administration, we still too frequently receive complaints from dissatisfied citizens claiming that the authorities fail to reply them.

2.6.1 Citizenship and aliens

The number of complaints in this field was low in 2014 (only seven), i.e. half the amount in 2013. On this basis, we can conclude that problems relating to procedures of obtaining citizenship are being resolved.

The most frequent questions by complainants were: how to obtain Slovenian citizenship; what are the conditions; which are the competent decision-making bodies etc. Two complainants wanted to obtain Slovenian citizenship on the basis of approved decisions as per the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia (ZUSDDD). We explained that this was a case of two different rights, which is why persons whose permanent residence was recognised on the basis of the aforementioned Act were not also automatically entitled to citizenship of the Republic of Slovenia. In the complaints discussed, the Human Rights Ombudsman did not establish any violations of human rights and fundamental freedoms.

In 2014, we discussed 65 complaints (three less than in 2013) referring to status issues of aliens. Similarly to previous years, complainants were merely inquiring on how to obtain residence permits in Slovenia for themselves and their family members. We were pleased to establish that only one complaint was received this year which concerned lengthy decision making in the acquisition of a permanent residence permit on the basis of the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia (ZUSDDD), which was not justified.

We also discussed a complaint about **lengthy decision making relating to the issue of the first permit for temporary residence**. Maribor Administrative Unit violated the law by double extension of the legally determined deadline for the issue of the decision. It also took the administrative authority unreasonably long to determine the authenticity of a residence permit issued to a third country national by another EU member.

In the field of international protection, the Ombudsman discussed four complaints. In two complaints, the complainants objected to a decision on deportation and in one the complainant complained about the rejection of the application for international protection. The Ombudsman did not detect irregularities in any of the above complaints.

We also discussed a complaint about **lengthy decision making in the procedure for granting international protection**. The Ombudsman established a violation of the right to equal protection of rights under Article 22 of the Constitution of the Republic of Slovenia, which requires relevant authorities to adopt decisions in reasonable time. In the relevant case, the Ministry of the Interior was searching for a suitable interpreter for one year and four months, and it needed almost two years to decide on the application. In response, the Ministry stated that it was an exceptional and isolated case. The Ombudsman believes that such a response is insufficient, because the work of the authorities must be organised so that it also includes exceptional cases.

Within the relevant case, we also conducted an inquiry about the **methodology used by the Ministry to calculate the duration of procedures for granting international protection**. The Ministry did not provide the methodology. It replied that the average duration of procedures in the first instance had been reduced in comparison to previous years. The methodology for calculating the duration of procedures has not changed over the years and includes all types of procedures conducted at the first instance. Therefore, the number of procedures which were stopped remained the same according to the statistics. Relating to the reasons for the arbitrary departure of applicants for international protection, the Ministry replied that they did not keep such data. The main reasons for this were: another country of destination, relatives in another country, guidance of assistants, better economic situation in other countries etc.

In 2014, the Ombudsman also held a **meeting with representatives of non-governmental organisations in the field of aliens, asylum seekers and refugees**. The meeting was attended by representatives of the Legal Information Centre for NGOs, Amnesty International Slovenia, Jesuit Refugee Association of Slovenia, Matevž Krivic, and the complainant who was represented by Mr Krivic. The following topics were discussed:

observance of the principle of non-refoulement, which clashes with procedures for the extradition of an alien and criminal prosecution of applicants for international protection due to false documents; problems in supervising the quality and ethics of interpreters and unsuitable cooperation between the Ministry of the Interior and international organisations providing help to state authorities when translating from certain languages. We also mentioned the lengthy procedures of applications for international protection; however, the trend is now positive, also because of the great decline in the number of applicants for international protection. The Ombudsman was surprised that some authorities claimed a malfunctioning computer system for the non-implementation of amendments to the Ztuj-2. Lastly, the topic of the erased was also addressed. The representative of Amnesty International stressed the urgency of adopting an integration package for aliens who have or will return to Slovenia on the basis of positive decisions as per the ZUSDDD.

Example

Lengthy decision making on asylum

On the basis of an interview held with a complainant at the Asylum Centre, the Human Rights Ombudsman investigated a complaint due to lengthy decision making on an application for international protection which supposedly took more than three years.

On the basis of the inquiry, the Ombudsman learnt that the Ministry of the Interior took almost two years to decide in a repeated procedure on the basis of the judgement of the Administrative Court of the Republic of Slovenia. The Ministry claimed that the relevant authority did not have an interpreter for the applicant's mother tongue at the time the applicant submitted his application for international protection and that he did not understand any other language. The relevant authority was thus unable to immediately conduct a personal interview, which is necessary for the implementation of the procedure. In October 2012, the Ministry conducted a personal interview with the applicant and after a thorough review of the case and acquisition of suitable information on the country of origin issued another decision in April 2014 by which the applicant's application was rejected. The Ministry was thus searching for an interpreter for sixteen months.

The Ombudsman considered these clarifications as insufficient, because it was impossible to determine whether decision making in the concrete case was actually implemented in the shortest time possible and if the manner for making the decision in the relevant case was the most suitable. The Ombudsman further inquired whether the Ministry had contacted the European Asylum Support Office (EASO) to seek assistance with interpreting. The Ministry replied that it was not possible to use the EASO system because the new method of cooperation between member states was not functioning yet without intervention by the aforementioned organisation. The Ministry received the list of languages provided by other member states after it had already found an interpreter for the applicant's language. In the following seven months, the Ministry implemented suitable public procurement procedures because it was impossible to conclude a copyright contract due to the then applicable regulations.

We wrote to the Ministry again asking to be informed on possible measures adopted within the Ministry or in cooperation with other state authorities to prevent such (systemic) irregularities in the future. The Ministry replied that this was an exceptional and isolated case and that the lengthy processing of this case did not indicate a systemic irregularity. It was impossible to conduct an interview in the concrete case solely because of the unavailability of an interpreter for the applicant's language, which is the result of the limitations of the Slovenian market in translation and interpreting and specific needs for these services in the field of international protection.

The Ministry additionally explained that for the purpose of continuously providing translation and interpreting in all languages, the public procurement for translation and interpreting services in 2012 also anticipated other languages the need for which might have occurred at a later time. Unfortunately, the Ministry did not receive any offers for this set of the procurement. The Ministry is preparing a new public procurement for "other languages" in the hope that conditions have changed and that the implementation of remote translation and interpreting (video conferencing) will also be included. In relation to the applicant's language, the Ministry had already obtained an offer for remote interpreting via a third person (double interpreting).

The Ombudsman considered the complaint partly founded. A lengthy search for a suitable interpreter in the concrete case constitutes a violation of the right to equal protection of rights under Article 22 of the Constitution of the Republic of Slovenia, which requires the competent authorities to make decisions in reasonable time; we are nevertheless pleased that the Ministry adopted certain measures to prevent future delays in similar cases. (5.2-11/ 2014)

The Ombudsman also discussed a complaint from a foreign worker who was a victim of trafficking in human beings and illegal employment to whom the Employment Service of Slovenia refused to issue a work permit on the basis of the certificate on a submitted application for the issue of a first temporary residence permit for an alien permitted to stay in the Republic of Slovenia. In this concrete case, the Ombudsman pointed to provisions of Articles 50 and 51 of the Ztuj-2, which stipulate that “the competent authority shall issue a certificate /.../ which shall act as a temporary residence permit until the decision on the application becomes final”. The Ombudsman believes that the correct linguistic explanation of these two articles clearly determines that the certificate on a submitted application applies as the temporary residence permit until the finality of the decision on the application. Article 23 of the Employment and Work of Aliens Act (ZZDT-1) stipulates that a work permit is issued to a victim of trafficking in human beings or illegal employment for the period of validity of the residence permit. The only condition thus being that the person hold a residence permit. After several exchanges of correspondence with the Employment Service of Slovenia, the Ombudsman succeeded with its interpretation of the Act, as is evident from the case described below. The Employment Service of Slovenia agreed with the Ombudsman’s opinion and stated that the certificate on a submitted application for a residence permit issued as per Article 50 of the Ztuj-2 would be observed as a valid residence permit until the finality of the decision on the application when issuing a personal work permit according to Article 23 of the ZZDT-1. The Ombudsman also succeeded with its second proposal, i.e. that a victim of trafficking in human beings be issued a certificate on the acquired personal work permit as anticipated in Article 179 of the ZUP and not only the entire decision, which may stigmatise the victim at their future employer.

Example:

Victim of illegal employment

On 9 June 2014, a representative of the Association of Free Trade Unions of Slovenia (complainant) representing an alien who was a victim of illegal employment (the affected person) contacted the Human Rights Ombudsman. The complainant requested the Ombudsman’s assistance in obtaining a residence permit and a personal work permit for the affected person, who was a victim of illegal employment, i.e. on the basis of the Aliens Act (Ztuj-2).

It was evident from the complaint that the affected person had worked for the employer in inhuman conditions, without suitable work equipment, at continuous risk of injury, without a written employment contract or any legal protection. The employer also failed to provide the agreed payment. The affected person later filed a criminal complaint against the employer and also instigated a civil action for the reimbursement of obligations arising from the employment relationship. He then submitted an application at the competent administrative unit for the issue of a temporary residence permit due to illegal employment, which is enabled by Article 50 of the Ztuj-2. He also requested the issue of a personal work permit at the Employment Service of Slovenia on the basis of Article 23 of the Employment and Work of Aliens Act (ZZDT-1), which was rejected upon his request.

The complainant requested our intervention at the Employment Service of Slovenia, which in its opinion did not decide accordingly and in compliance with the Act relating to the issue of a personal work permit. The issue of a personal work permit according to Article 23 of the ZZDT-1 is conditional on a residence permit which an alien who has been a victim of illegal employment can obtain on the basis of the fourth paragraph of Article 50 of the Ztuj-2, for which the applicant must file an application at the competent administrative unit. The Ztuj-2 anticipated the possibility of obtaining temporary residence permits for aliens who were victims of illegal employment because of the integration of aliens who are waiting for decisions in judicial proceedings instigated against employers due to illegal employment. It is understandable that during this time aliens who stay in Slovenia in order to participate in criminal or civil proceedings against their former employers must have an opportunity to reside and earn a personal income. To realise the latter, aliens must obtain suitable work permits from the Employment Service of Slovenia.

Since the procedure for obtaining a residence permit, which is a prerequisite for the issue of a personal work permit, may be lengthy, it is important for the alien to have the possibility of earning income in a legal way during this time. The sixth paragraph of Article 50 of the Ztuj-2 thus explicitly determines that “the competent authority shall issue a certificate confirming that an application /.../ was submitted in due time, which shall act as a temporary residence permit until the decision on the application becomes final”. It is thus understood that the certificate on a submitted application for a residence permit suffices for the fulfilment of the condition for a residence permit also in the procedure for issuing a personal work permit as per Article 23 of the ZZDT-1.

After studying the complaint, the Ombudsman submitted an inquiry to the Employment Service of Slovenia relating to the interpretation of the relevant articles in which the Employment Service of Slovenia objected to the use of the sixth paragraph of Article 50 of the Ztuj-2 when issuing personal work permits. In its correspondence, the Ombudsman also attached its opinion on the interpretation of this provision. In its second reply, the Employment Service of Slovenia agreed with the Ombudsman’s opinion and stated that the certificate on an application for a residence permit issued as per Article 50 of the Ztuj-2 would be observed as a valid residence permit until the finality of the decision on the application when issuing a personal work permit according to Article 23 of the ZZDT-1.

An important issue raised in connection with this complaint referred to the question of what the affected person should do when proving the fulfilment of work conditions at a new employer with a decision whose explanatory note includes circumstances of illegal employment. The stigma that may occur lies in the fact that the new employer will discover that the worker instigated (although rightfully) legal proceedings against the previous employer. The latter may have negative effects on the employment relationship, if there is one. The unfavourable situation presented by the complainant was resolved by requesting the opinion of the Employment Service of Slovenia **on the possibility of issuing a certificate on the obtained personal work permit as anticipated in Article 179 of the ZUP**. The certificate merely presents the fact that the alien obtained a personal work permit without providing conditions for its issue. The Employment Service of Slovenia noted in its reply that the possibility of issuing such a certificate was also anticipated in Article 63 and 64 of the ZZDT-1.

The competent authorities were thus reminded that when issuing personal work permits issued due to illegal employment they should inform their clients about the possibility of obtaining a certificate which would stigmatise them less when they enter the labour market. The complaint was founded and the Ombudsman succeeded in enforcing its opinion at the competent authorities in both instances. (5.2-21/2014)

Right to basic care as per the Aliens Act

In 2014, the Human Rights Ombudsman also discussed a complaint on the non-observance of the right to financial assistance for aliens with a temporary residence permit who have no means of subsistence as defined in the second paragraph of Article 51 of the Aliens Act (ZTuj-2). The Ombudsman already discussed this issue in the 2013 annual report (under point 2.6.1, p. 183), where it focused on the **violation of the right to social security**.

The relevant right was introduced to the ZTuj-2 already in 2011, while its implementation was not realised due to disagreements between competent ministries (Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZEM) and the Ministry of the Interior) on the provision of funding and payment. The ministries referred to the lack of clarity in the legal regulations on competences for the realisation of the relevant right.

In 2013, the Ombudsman submitted inquiries to the MDDSZEM and the Ministry of the Interior about this issue. Since the relevant ministries failed to propose suitable solutions in their responses, the Ombudsman highlighted this problem in the 2013 annual report. The amendments to the ZTuj-2A were adopted in 2014, which were supposed to eliminate vagueness about competences for the realisation of the relevant right; however, the date of their enforcement was set for 1 January 2015. According to the MDDSZEM, the amendments to the ZTuj-2A transferred the competence for the provision of funding and payment of the relevant right to social work centres. Since, after the adoption of the amendments (and prior to their enforcement on 1 January

2015), the implementation of the right had still not been ensured, we submitted a request to the Government of the Republic of Slovenia for the harmonisation of disagreements between the competent ministries before the application of the amendments to the Act.

In response to our inquiry, we received a courtesy copy of the letter from the Ministry of the Interior addressed to the MDDSZEM on harmonisation for the implementation of the relevant right until the application of the amendments to the ZTuj-2; however, the disagreement continued until the end of validity of the old Act. In its reply the MDDSZEM again repeated its position from the beginning of the discussion and also asked the Ministry of the Interior for assistance in composing internal instructions for social work centres about the question on the basis of which circumstances social work centres should assess if aliens are entitled to financial assistance on the basis of the second paragraph of Article 51 of the ZTuj-2A. This issue is of key importance, because even eligible applicants will possibly encounter problems when enforcing their rights before social work centres due to the different practice after the application of the amendments to the ZTuj-2A.

We believe that the right was already unquestionably anticipated in the Act upon its enforcement in 2011. Nevertheless, the competent ministries were unable to ensure it, due to the alleged lack of clarity. We repeat our findings from 2013 in which we established that the right to basic care as per the ZTuj-2 was obviously a dead letter. The Ombudsman believed that the complainant's **right to social security was violated by the MDDSZEM** with the non-observance of applicable regulations. The Ombudsman hoped that the MDDSZEM would be able to look beyond the framework of the Financial Social Assistance Act (ZSVarPre) which stipulates that aliens with permanent residence in the Republic of Slovenia are entitled to financial social assistance. The MDDSZEM should have also observed the then applicable ZTuj-2 which gave the right to basic care to aliens who had permission to stay and held temporary residence permits on this basis. The Act also determined that social work centres were responsible for decision making on this right. Relating to the fact that the right to basic care was a dead letter in view of the decision making and eligibility and from the aspect of providing funds, the Ombudsman proposed that executive acts be adopted as soon as possible to regulate this field and prevent further violations of human rights and fundamental freedoms.

We establish that the Ombudsman's wishes and expectations were not realised; however, the amendments entered into force, which also in the opinion of the MDDSZEM grant the competence for payment and the provision of funds for the relevant right to social work centres.

The erased

Since the passage of the Act Regulating the Compensation for Damage Sustained as a Result of Erasure from the Register of Permanent Residents (ZPŠOIRSP), the Ombudsman received two complaints relating to rights of relatives of the erased who were deceased to the compensation for damage sustained. The complainants claimed that their relatives had lost their work and health insurance due to the erasure and were maintained by others, i.e. their relatives and friends. The loss of income caused extreme poverty in the entire family of the erased person. The ZPŠOIRSP which entered into force on 18 December 2014 anticipated compensation only for the erased and not their relatives.

The Ombudsman's opinion was that relatives of the erased who sustained damage due to the erasure (pecuniary or non-pecuniary) could claim compensation on the basis of general liability for damages caused by the state.

We were also informed about a case of an erased person without arranged status who has been living in the territory of the Republic of Slovenia for more than 51 years with no regulated citizenship. The family of the affected person also lives in Slovenia and holds Slovenian citizenship. The complainant was issued a decision on return and a decision on accommodation at the aliens centre due to a violation of the third indent of the first paragraph of Article 60. The Ombudsman reminded the Ministry of the Interior about the criteria determined by the European Court of Human Rights and which bind the state to legalise the **status of persons with long-term residence in a member state**. In our opinion, the right to the recognition of a de facto situation and its legalisation in such cases prevail over the requirements of the immigrant legislation in a member state.

The Ombudsman also discussed a similar case relating to a complainant who was born in Slovenia, but had no established citizenship or arranged residence in the Republic of Slovenia. His primary and his own families have Slovenian citizenship; however, the relevant person committed a major criminal offence in the territory of the Republic of Slovenia. In similar cases, the Ombudsman particularly stresses the observance of the criteria which enable the implementation of the proportionality test between the right of an individual to family life and the obligation and right of the state to ensure public order when removing an individual who violates laws in the host country. The relevant criterion determines that a country which wishes to remove an alien who has family members in the host country must observe the severity and nature of the violation, duration of residing in the host country, family ties in the host country and age of any children.

Example

Compensation forms for the erased on the basis of the ZPŠOIRSP

The Human Rights Ombudsman discussed a complaint in which the complainant requested the Ombudsman's intervention at the Ministry of the Interior to achieve the issue of a uniform form for filing applications for compensation for persons who were erased from the Register of Permanent Residents of the Republic of Slovenia on 26 February 1992 (the erased).

In the case *Kurić and Others v. Slovenia* (European Court of Human Rights, *Kurić and Others v. Slovenia* (26828/06 Item 2) of 26 June 2012, the European Court of Human Rights (ECHR) in Strasbourg established that Slovenia had violated human rights by erasing persons from the Register of Permanent Residents on 26 February 1992 and that individuals had sustained damage as a result of the violation. The Court also established that the entire group of the erased was still denied the right to compensation for the violation of their fundamental rights, and demanded in this regard that the Government draft a compensation scheme at the national level for this particular case within one year.

The decision of the ECHR contributed significantly to the adoption of the Act Regulating the Compensation for Damage Sustained as a Result of Erasure from the Register of Permanent Residents (ZPŠOIRSP). The ZPŠOIRSP determined possibilities for obtaining compensation on two bases. Beneficiaries can acquire compensation by proving damage they sustained before a competent court, or they can file an application at the administrative unit which decides in an administrative procedure on granting a lump-sum in compensation in the amount of EUR 50 for each month of the erasure.

According to data from the complaint, a total of some 12,000 beneficiaries are entitled to compensation. Since the deadline for filing applications (18 June 2014) was long awaited by the beneficiaries, it was logical to conclude that administrative units would be overburdened with the large amount of cases. The complainant asked the Ombudsman to intervene with the Ministry of the Interior to issue a uniform form by means of which the beneficiaries would find it easier to claim their rights to compensation in administrative procedure. A unified form of filing applications would also facilitate the work of administrative units, which would have little time to decide on many claims.

In this regard, the Ombudsman submitted its proposal on drafting a standard form to the Ministry of the Interior. The Ministry of the Interior rejected the Ombudsman's proposal in its reply, stating that beneficiaries in administrative procedures were not obliged to attach evidence to justify their application, since the amount of compensation was determined in advance. All required evidence was to be obtained *ex officio* from official records kept by administrative units.

In spite of this opinion, the need for such a standard form was displayed in practice, since certain administrative units independently issued forms to facilitate the processing of applications. This fact also proves the merits of our proposal, and we regret that the Ministry refused to consider it. 5.2-25/2014

Implementation of social and employment agreements with countries of the former Yugoslavia

At our own initiative, we addressed in 2014 the issue of implementing social agreements and employment agreements concluded with countries of the former Yugoslavia on the basis of an article in which the writer pointed to the provisions of the Agreement between the Government of the Republic of Slovenia and the Council of Ministers of Bosnia and Herzegovina on the employment of Bosnian citizens in the Republic of Slovenia (Agreement) which put migrant workers in a subordinate position at a Slovenian employer. After reviewing applicable agreements and reply of the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZEM), we discovered that certain observations that we made were already discussed by the Ministry.

We highlighted the first paragraph of Article 16 of the Agreement, which put migrant workers from the relevant country in a subordinate position because the workers were afraid or are still afraid to ask for exceptional termination of employment at a Slovenian employer where violations occurred because they are afraid of losing their jobs. In cases of exceptional termination and if they were unable to find new employment within the deadline determined by the Agreement, they had to return to Bosnia and Herzegovina for at least six months. Such provision deterred migrant workers who supported their entire families by working in the Republic of Slovenia from reporting their employers on fault-based grounds, although it is understood that in such cases responsibility for terminating a legal relationship lies with the employer. The Ministry replied that it agreed with our findings and informed us that in cooperation with the Bosnian side a uniform interpretation was adopted relating to the implementation of Article 22 of the Agreement at the first session of the intergovernmental commission for monitoring the implementation of the Agreement, which took place in Ljubljana in January 2014. The intergovernmental commission for monitoring the implementation of the Agreement determined that the provisions of Article 22 of the Agreement may only be applied cases when the permit ceases to apply due to its expired validity.

The Agreement also requires that non-skilled workers return to Bosnia and Herzegovina for six months after three years. This prevents them from obtaining permanent residence in Slovenia (circulation system). According to the Ombudsman, the above provision puts migrant workers from Bosnia and Herzegovina in a worse position in comparison to other migrant workers. The Ministry responded that this provision was based on the reference framework of EU policies in the field of migrant integration policy with third countries in the sense of better governance of legal migrations and promotion of circular migration. Furthermore, the Agreement also considered the interests of Bosnia and Herzegovina that workers, i.e. its citizens return to the country of origin and try to re-integrate in their society and enrich their labour market with newly acquired experience and professional skills. The Agreement does not terminate the residence of those migrant workers in the Republic of Slovenia who will still have employment in the Republic of Slovenia after the expiry of validity of their permits, since they will be able to extend the permits for another three years and continue to reside in the Republic of Slovenia. Only workers who do not have an employment or who cannot find an employer in the Slovenian labour market at the time of the expiry of validity of their permits in the Republic of Slovenia will have to return voluntarily to their country of origin.

Relating to social agreements with former Yugoslav republics and Kosovo, we wanted to know if the right to unemployment benefit was also regulated with other countries in the region as per the example of amendments to the social agreement with Bosnia and Herzegovina, which determines that unemployment benefit is paid also to persons with temporary residence in the Republic of Slovenia. The Ministry's reply stated that the amendment to the social agreement with Macedonia was harmonised on 27 January 2014 and signed in Ljubljana on 30 January 2014. The amendment to the Agreement was in the ratification phase. Slovenia and Kosovo did not conclude an agreement on social security, which means that only Slovenian legislation applies to workers from Kosovo. Agreements with other countries do not have a similar provision. (5.2-6/2014)

Reunification of a refugee with her minor sister

The case of reunification of a refugee with her minor sister (Somalian girl) received a lot of media attention. A complainant contacted the Ombudsman requesting us to intercede with the Constitutional Court of the Republic of Slovenia for absolute priority discussion of two cases referring to the request of a refugee for family reunification in the Republic of Slovenia with her minor sister. The Constitutional Court of the Republic

of Slovenia decided to consider the petition to initiate a review of the constitutionality of Article 16.b of the International Protection Act and the constitutional complaint due to the particularly difficult conditions in which the refugee's minor sister found herself. However, the complainant thought that the Constitutional Court should discuss the case with absolute priority. The minor sister was unaccompanied and lived in Ethiopia as a Somali refugee. Because of the situation in the country and her uncertain position, she was at risk of severe violence and irreparable damage, such as inhuman conduct, slavery and even rape and human trafficking.

The Ombudsman reviewed the request and established that the circumstances of the discussed case justified the proposal for absolute priority discussion. The Ombudsman thus addressed a letter to the Constitutional Court in which we supported the proposal for absolute priority discussion. The Ombudsman assessed that the decision of the Constitutional Court could significantly affect the situation of the unaccompanied minor girl, whereas a possibly delayed decision of the Constitutional Court could lose its significance (the minor could come of age).

We based our proposal for absolute priority discussion on the provisions of Article 3 of the Convention on the Rights of the Child, which states that the best interests of the child must be a primary consideration in all actions concerning children, including those undertaken by courts of law. The Ombudsman believed that the minor girl was in an exceptionally difficult situation which justified the decision for absolute priority discussion before the Constitutional Court. If the Constitutional Court wished to follow the guideline of the best interests of the child under Article 3 of the Convention on the Rights of the Child, it should have discussed the relevant matters with absolute priority, according to the Ombudsman.

The Constitutional Court replied to the Ombudsman that it adopted a decision on absolute priority discussion of relevant matters. The Constitutional Court would discuss the matter in the order of similar absolute priority matters.

The International Protection Act has changed several times in the section discussed by the Constitutional Court. The field of family reunification of an alien with granted refugee status or recognised subsidiary protection is currently regulated by Article 47.a and b of the Aliens Act. The Ombudsman believes that a systemic irregularity can be established from the discussed case, whose solution can be found in the amendment to the Aliens Act, which would provide a suitable basis for a competent authority to exceptionally consider another alien's relative as the alien's family member when special circumstances point to the benefit of family reunification in the Republic of Slovenia.

At the beginning of 2015, the Constitutional Court of the Republic of Slovenia established the unconstitutionality of Article 16.b of the International Protection Act. It set aside the decision of the Ministry of the Interior, and repealed the judgements of the Supreme Court and the Administrative Court in this case. It returned the case to the Ministry of the Interior for reconsideration and thus ordered the Ministry to, when considering family reunification, exceptionally consider another relative of the person with granted refugee status as that person's family member if special circumstances point to the benefit of family reunification in the Republic of Slovenia. A decision was then issued to the refugee, and deputies instigated a procedure to amend the Aliens Act.

2.6.2 Denationalisation

A total of 14 complaints were dealt with in 2014, while 12 were discussed in 2013. We particularly received letters from complainants who disagreed with final decisions. We again emphasise the lengthy duration of procedures and unacceptable situation of incomplete denationalisation.

The state must adopt all necessary measures in order to ensure suitable conditions for the regular and efficient work of state authorities to enable decision making within reasonable times. Deciding on complaints with a two-year delay, which is evident from the example provided below, is unacceptable, according to the Human Rights Ombudsman. Referring to possible staffing and other issues which cause delays is inappropriate on the part of the competent authorities.

2.6.3 Property law matters

In this field, 42 cases were discussed in 2014, and 39 in 2013; the content of issues discussed did not change significantly. The complainants described their problems with municipalities which frequently refuse to listen to them and refuse to settle property disputes, which in some cases have been going on for many years. In these cases, even the complainants themselves refuse to give up and insist on their proposals. If no agreement is reached in civil disputes between the parties (municipality and citizens), only legal action remains to resolve the complications that occur.

In the 2013 annual report, we already wrote about issues relating to categorisation of municipal roads sited on private land. As can be deduced from discussions with mayors which are conducted during our field sessions, these issues are topical in most municipalities. The problems are addressed to the best of their abilities and available financial resources. The approach of municipalities is selective.

2.6.4 Taxes

In the field of taxes, 85 cases were discussed in 2014, and 78 in 2013; almost 15 per cent were considered justified. We dealt with issues relating to tax on high-value immovable property and the results of the decision of the Constitutional Court of the Republic of Slovenia to repeal the Real Property Tax Act and the findings of non-compliance of the Real Property Mass Valuation Act due to its taxation. Complainants who had failed to complain about the decisions on the assessment of tax on high-value immovable property and had paid the tax before the decision of the Constitutional Court of the Republic of Slovenia was made claimed that the legal grounds for the assessment of tax were also removed in their cases. People who filed legal remedies against the decision on the assessment which had not been discussed before the decision of the Constitutional Court of the Republic of Slovenia was made will be exempt from the payment of tax on high-value immovable property due to the effect of the constitutional decision, which repealed the Real Property Tax Act in advance. The complainants were given explanations provided in the example below.

2.6.5 Other administrative matters

Many complaints also referred to the **work of inspection services**. We again stress that the lack of staff must not present an obstacle for the establishment of complainants' rights. We thus call upon the Government to ensure the efficient functioning of individual inspection services by reassigning public servants (particularly at the Public Sector Inspectorate, the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning, Labour Inspectorate of the Republic of Slovenia).

Decision-making deadlines

In the past, we reported on the unduly lengthy decision making in complaint procedures against decisions of the Slovenian Environment Agency (ARSO).

Example:

The Ministry of Agriculture and the Environment is resolving complaints unduly slowly

The complainants informed the Human Rights Ombudsman of the Republic of Slovenia about a letter of 11 October 2012 by means of which the Slovenian Environment Agency (ARSO) forwarded their complaint about the decision of the ARSO of 17 September 2012 to the Ministry of Agriculture and the Environment for decision making. The Ministry of Agriculture and the Environment had not yet decided on the complaint in May 2013.

On the basis of the complaint, we instigated an inquiry at the Ministry of Agriculture and the Environment and proposed that the complaint be considered as soon as possible.

In its reply, the Ministry of Agriculture and the Environment explained that complaints against spatial administrative acts (nature conservation permits, environmental permits, water approvals etc.) are demanding due to their scope, high-profile and diversity. This takes more time, particularly because the Ministry of Agriculture and the Environment discusses complaints substantively. The Ministry of Agriculture and the Environment receives many complaints and the number is growing (113 cases were being discussed in 2012 at second instance and 110 cases had already been received between January and August 2013). Problems also occur with staffing which are related to the retirement of public servants who are not being replaced, according to the decision of the Government of the Republic of Slovenia. The complaints against spatial administrative acts are thus being handled by only one official, which was causing the delay.

Relating to the concrete case, the Ministry of Agriculture and the Environment stated that complaints were being resolved according to the order of their receipt. As per the chronological order, the relevant complaint could be discussed in January 2014 at the earliest, because 32 unsolved complaints had to be addressed first, which the second instance authority received before 12 October 2012 (i.e. the date when the second instance authority received the complainant's complaint).

We proposed that the Ministry of Agriculture and the Environment adopt measures by which it will ensure decision making within reasonable deadlines.

The Ministry of Agriculture and the Environment replied that it was constantly searching for internal reserves by means of organisational and technologically informational measures due to their awareness of the importance of this issue. In this regard, we submitted a proposal to the Ministry of the Interior and the Ministry of Justice with the objective of finding options for the temporary delegation of administrative complaints to other public servants who have experience in managing administrative procedures or to administrative units to which cases could be delegated as per subject-matter competence. They were also considering the option of concluding employment contracts with attorneys or other persons with similar competences. They would further explore the possibilities of temporary or permanent internal reassignments of lawyers employed with the Ministry of Agriculture and the Environment.

In January 2014, the Ministry of Agriculture and the Environment decided on the concrete case which it had received for discussion in October 2012 from the first instance authority. The complaint was justified. 5.7-31/2013

Arranging permanent residence

Several complaints were received recently in which people complained about problems they encountered when arranging permanent residence. Particularly critical were cases in which the competent authorities established that people were not residing at the address where their permanent residence was registered, and because the authorities were unable to determine their new residence, they de-registered these persons from the address of their old permanent residence.

Some complaints were resolved with explanations on the basic purpose of the Register of Permanent Residents and information that the Residence Registration Act (ZPPreb) in the procedure of establishing actual permanent residence enables the registration of an individual at a certain address if they actually reside there and if they have the right to reside at that address (ownership of the apartment, tenancy agreement, owner's statement).

Other complaints revealed deficiencies in the provisions of the existing ZPPreb or their implementation in practice. We noted that the competent authorities fail to sufficiently consider the purpose of the party to keep the address of permanent residence and reasons for absence from this address in their procedures of establishing the actual permanent residence. The aforementioned also blurs the delimitation between permanent and temporary residence and leads to inconsistencies in the decision making of administrative authorities. We illustrate the aforementioned with the example below.

Lengthy procedures for determining permanent residence are also pressing. At our proposal that a time frame for completion of these procedure must be set, the Ministry of the Interior only responded with an idea on certain simplifications of the process.

Example:

De-registration of permanent residence of a person with mental disorders in the care of the state

Sežana Social Work Centre informed the Human Rights Ombudsman at the beginning of June 2014 about the issue of registering permanent residence for their resident (complainant). The social care institution informed Sežana Administrative Unit that their former resident no longer resided at their address. In the procedure to establish the actual permanent residence, the administrative body established that the complainant had been declared contractually incapable a decade before. After de-registration of the old residence, the registration of the address of the social care institution was made in 2010. Due to violent behaviour, the complainant was released from the institution and transferred to the Unit for Forensic Psychiatry of the Department of Psychiatry of Maribor University Medical Centre on the basis of a court decision.

The Ombudsman informed the Ministry of the Interior about the problem of registration of residence, whereas the Ministry of Labour, Family, Social Affairs and Equal Opportunities was informed about the case from the view of caring for a person declared contractually incapable.

In its reply, the Ministry of the Interior stated that the procedure of establishing permanent residence should be suspended until the complainant moved to a new address, relating to the fact that he was currently in temporary treatment. We inquired at Sežana Administrative Unit whether they would comply with the above proposal or what further actions they would take.

Sežana Administrative Unit responded that the complainant no longer resided at the social care institution, but at Maribor University Medical Centre, and they thus asked Maribor University Medical Centre to consent to register the complainant at their address, which they refused. On the basis of the third paragraph of Article 8 of the Residence Registration Act (ZPPreb), Sežana Administrative Unit submitted the case to Maribor Administrative Unit, which returned the case by explaining that the person could not be register as per the sixth paragraph of Article 8 because the person was in a health-care institution, which meant that the nature of residence was temporary.

Sežana Administrative Unit responded that suspension of the procedure was not a suitable solution, because the complainant would be staying at Maribor University Medical Centre for a relatively long period (on the basis of the court decision). They would agree to the suspension if the release from the hospital was anticipated within one or two months. The case was again submitted to Maribor Administrative Unit with a proposal that the complainant nevertheless be registered as per the sixth paragraph of Article 8 of the ZPPreb. If Sežana Administrative Unit decided on the concrete case, the only solution compliant with the currently applicable ZPPreb would be the re-registration of the person from the social care institution relating to the established actual situation. That would practically only mean that a new residence was not registered.

We agreed with Sežana Administrative Unit that the fact that the complainant was residing at Maribor University Medical Centre and not at the social care institution was completely clear, but that we were unable to fully accept their position. We are aware that the fundamental purpose of the ZPPreb is to ensure an overview of the situation and movement of the population and up-to-date management of the Register of Permanent Residents. But we wonder to what extent this purpose is actually attained by mere de-registration of an individual from the address of permanent residence or de-registration from the Register of Permanent Residents. From the view of the protection of human rights, the observance of the fact that many fundamental rights (health insurance, social benefits etc.) are connected with the registration of permanent residence seems essential and crucial. The particularly sensitive nature of this case must be stressed, since it concerns a person declared contractually incapable and in temporary treatment. The duration of the treatment is not known. Relating to the condition of the person, accommodation in a social care institution will undoubtedly be necessary after the treatment. As per the stated above, we assess that a possible de-registration of such person from the Register of Permanent Residents is an utterly disproportionate and unsuitable measure by the competent body.

The complaint is assessed as justified, because it revealed deficiencies in the current registration of a permanent or legal residence, which can be understood from the relevant complaint and other complaints received which refer to the same topic. We emphasise that it is completely unacceptable for an individual actually residing in the Republic of Slovenia to be de-registered from the Register of Permanent Residents due to unsuitable legal provisions or practices of relevant authorities and thus deprived of all rights arising in this regard.

In September 2014, Sežana Administrative Unit informed us on the suspension of the procedure until the completion of treatment and accommodation of the complainant at a new address. (5.7- 50/2014)

Public events

We discussed several cases in which a company failed to obtain consent for an extended operating period, but reported a public event and also applied for a permit to organise an event. Such actions may constitute circumvention of the applicable legislation or even double-crossing the rule of law. Several warnings and proposals for amending legislation in order to prevent such bending of the rules were addressed to the then Minister of the Interior, Dr Gregor Virant.

2.7

ENVIRONMENT AND SPATIAL PLANNING

| Area of work | Cases considered | | | Resolved and founded | | |
|--|------------------|------------|--------------|----------------------|----------------|--------------------------------------|
| | 2013 | 2014 | Index 14/13 | No. of resolved | No. of founded | Percentage of founded among resolved |
| 7. Environment and spatial planning | 127 | 131 | 103.1 | 93 | 24 | 25.8 |
| 7.1 Developments in physical space | 46 | 60 | 130.4 | 39 | 10 | 25.6 |
| 7.2 Spatial planning | 30 | 29 | 96.7 | 22 | 1 | 4.5 |
| 7.3 Other | 51 | 42 | 82.4 | 32 | 13 | 40.6 |

The number of complaints discussed by the Human Rights Ombudsman in the field of the environment and spatial planning has been practically the same for a few years. The content of these complaints and the level of their justifiability have not changed significantly. Complainants wrote about being prevented from participating in procedures of siting facilities in physical space. What rights do they have as individuals, what are the rights of the public in developments in physical space, how to obtain important information on the environment and spatial planning and other questions were frequently addressed to the Ombudsman by individual complainants or those organised in numerous civil initiatives. The participation of the public in procedures of environmental and spatial decision making was thus a recurring topic on the Ombudsman's website, at press conference, when meeting relevant ministers and mayors and also when meeting non-governmental organisations.

In 2014, we also frequently dealt with the issue of environmental pollution with particles (PM10 and less), metals, waste and other pollution sources (light pollution, base stations, overhead power lines etc.). The last of the seven ordinances on the air quality plan which determine measures in fields of excessive ambient air pollution with PM10 particles was also adopted. However, the mere adoption of ordinances does not suffice. An active approach to the implementation of adopted measures must be taken, including the comprehensive rehabilitation of polluted environment, whereby the rehabilitation of air and soil must be planned. Soil and air are closely connected, since air is a source of soil pollution and thus related consequences.

For many years, we have been pointing out that the rehabilitation of polluted areas should be approached according to the example of the Mežica Valley. In 2007, the Government adopted the Ordinance on the areas of the highest environmental burden and on the programme of measures to improve the quality of the environment in the Upper Mežica Valley. The results of the rehabilitation are positive, and thus possible austerity measures and reducing funds for the rehabilitation of the Mežica Valley to protect the health of the local residents are not permissible.

Relating to the Celje Basin, it is impermissible that we have been discussing the rehabilitation of polluted soil for years, but the relevant Ministry of the Environment and Spatial Planning has only recently established that regulations must be amended first. The Ministry of the Environment and Spatial Planning is thus preparing a Decree on soil, which is to be adopted in 2015. This Decree will provide a legal basis for the adoption of suitable measures for the rehabilitation of the Celje Basin or the adoption of an Order designating the Celje Basin a degraded area.

Due to the non-compliance with obligations under the Waste Framework Directive and the Directive on the landfill of waste relating to illegal waste dumps, including hazardous waste in the Municipality of Celje, the European Commission instigated a special procedure against the Republic of Slovenia. At the beginning of 2014, the European Commission filed a lawsuit against the Republic of Slovenia at the Court of Justice of the European Union for the aforementioned violations. We hope that these actions will encourage the Government and the Ministry of the Environment and Spatial Planning to take a more active approach to solving environmental pollution.

The issue of noxious odours from different sources is still topical (particularly fertilisation with liquid manure, biogas plants, pig farms and other sources). The complainants refuse to accept the explanation that an agricultural or municipal inspector cannot take action due to noxious odours as per the applicable legislation, since there are no provisions or an odour meter to enable such interventions. If a farmer does not spray liquid manure when this is prohibited, the inspector cannot take action.

The main violations we established particularly include violations of the constitutional right to a healthy living environment (Article 72 of the Constitution of the Republic of Slovenia) and violations of the right to a legal remedy (Article 25 of the Constitution of the Republic of Slovenia). In many cases, a violation of the principles of good governance was detected, which is illustrated in examples below.

Realisation of recommendations for 2013

The Human Rights Ombudsman assesses the Decree amending the Decree on bodies affiliated to ministries (Official Gazette of the Republic of Slovenia, no. 91/2014) as positive. The Decree determines that the Slovenian Environment Agency (ARSO) is a body affiliated to the Ministry of the Environment and Spatial Planning and is *inter alia* explicitly responsible for administrative and expert tasks of environmental protection and management of land with water use. The latter was the field which was frequently moved in the past from the relevant ministry to the ARSO and back. Due to such changeable jurisdiction, cases frequently remained unresolved for several decades.

Notification about received reports and the anticipated deadline of discussion should remain good practice in all inspection services also in the future.

The adoption of all seven ordinances on the air quality plan in areas of excessive air pollution with PM10 particles must be followed by their realisation with programmes of measures which will be harmonised with local communities. As for the remainder, our recommendations remained unrealised.

2.7.1 The public and developments in the environment and physical space

The Human Rights Ombudsman noticed the lack or even complete absence of the public in decision making affecting the environment. We point to the importance of participation in environmental issues in concrete campaigns, annual reports and other activities. In compliance with our powers, we thus advocate the realisation of the right to a healthy living environment in connection with the right to free access to environmental information, participation of the public in environmental decision making and access to legal protection.

Many complaints referred to the improper participation of the public in developments in the environment and physical space. Complainants' requests varied; some claimed exclusion when adopting regulations in the field of the environment and spatial planning; below, we discuss an unduly short deadline for the submission of comments to the amended Decree on limit values for environment noise indicators.

2.7.2 Noise

Several complaints referred to disturbing noise resulting from unsuitable road arrangements, restaurants, motocross tracks and other sources. In these cases, we informed the complainants about the relevant

inspectorate, i.e. the Environment and Nature Inspection Service within the Ministry of the Agriculture and the Environment. With the reorganisation of ministries, the Ministry of the Environment and Spatial Planning or its affiliated body, Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning, became responsible for the relevant field. Supervision over noise and implementation of the Decree on limit values for environment noise indicators is implemented by the aforementioned inspectorate.

In previous annual reports, the Human Rights Ombudsman highlighted that the field of noise was not suitably arranged at the systemic level. Many disturbing types of noise are not regulated by relevant regulations or are not regulated suitably (e.g. barking of dogs, low frequency noise, church bells, noise from restaurants, noise at public events, air-conditioning devices etc.). The Ombudsman's appeal to spatial policy makers urges thoughtful spatial planning, particularly when siting in space facilities which impact the environment and health (recorded as the Ombudsman's recommendation in the 2011 annual report).

2.7.3 Water-related issues and land with water use

In 2013, similarly to previous years, we wrote about problems relating to issuing water permits and land with water use. We demanded measures for the elimination of backlogs. In 2014, we can again mention unresolved ownership and property issues relating to land with water use. No progress has been made so far. We hope that the aforementioned provision of the Decree on bodies affiliated to ministries, which determines the Slovenian Environment Agency as the only body responsible for expert tasks of environmental protection and management of land with water use, will contribute to solving this several decades long problem. We held a special meeting on this topic with the Director General of the ARSO and his team. The informed us that the problem was the result of the then unclear jurisdiction: which body (ARSO or the Ministry) was exclusively responsible for land with water use. Obtaining sufficient financial resources, the ARSO will become more actively involved in the elimination of backlogs.

Example

The procedure for arranging the property situation of land with water use has been underway for almost 10 years

The Human Rights Ombudsman received a complaint about unresolved property relationships for a section of the Mislinja River. Since 2006, the complainant had been contacting the Slovenian Environment Agency (ARSO) with a request to receive suitable payment or exchange his land through which the Mislinja River flows after a relocation of part of land of the former riverbed owned by the Republic of Slovenia. He failed to receive a reply from the relevant or any other authority.

We wrote to the ARSO in July 2014 requesting a clarification for such (unacceptable) delay in resolving the complainant's application. On 3 October 2014, we also invited representatives of the ARSO to a meeting, since we had been emphasising the lack of regulation in the field of land with water use for several years. The main problem presumably presented the lack of clarity about jurisdiction over the conclusion of legal transactions: ARSO or the Ministry. Applications (some even more than a decade old) were being transferred between both authorities. The ARSO explained that the situation would be regulated with the proposal that the new Decree on bodies affiliated to the Ministry of the Environment and Spatial Planning determined that the ARSO would be responsible for the discussion of these applications.

The ARSO also explained that a decision was issued at the end of October in the complainant's case stating that the status of national water public assets ceases on land which is categorised as meadow. After the deletion of the relevant status in the land register, the land could be subject to legal transactions.

The complaint was thus considered justified; further development of the case or realisation of the ARSO's commitments will be monitored. 5.7-39/2014

2.7.4 Environmental pollution

Several examples of environmental pollution were discussed; we only mention a few in the continuation.

Air pollution is a particularly burning issue due to dust particles (PM10 and also smaller); due to individual heating systems in winter and ozone in summer, to which urban areas are particularly exposed.

In 2014, the Government adopted the last of the seven ordinances on the air quality plan, which should have been adopted one year after accession to the European Union, i.e. in 2006. These ordinances contain concrete measures (a total of 40 measures) for areas of excessive pollution of ambient air with dust particles. An operator is determined for each measure. The ordinances are general and their implementation will begin with a programme of measures which will be harmonised with local communities and will also anticipate the financial resources needed.

At the beginning of 2015, the Government adopted detailed programmes of measures from the ordinances on the air quality plans in the area of Zasavje and municipalities of Maribor, Murska Sobota, Celje and Novo Mesto. The ordinances on the air quality plans in these areas and the anticipated national incentives (Climate Fund and Cohesion Fund 2014–2020) denote significant progress in resolving the issue of air quality. Currently, the worst air is still being breathed in all seven excessively burdened areas.

In 2014, the Government adopted the last of the seven ordinances on excessively burdened areas in Slovenia, i.e. for the Municipality of Ljubljana. Similar ordinances had already been adopted for municipalities of Maribor, Murska Sobota, Celje, Kranj, Novo Mesto and the area of Zasavje.

2.7.5 Inspection procedures

In the field of inspection procedures, we mostly dealt with lengthy procedures and backlogs and thus related questions about criteria for the priority discussion of inspection services. The criteria were determined by the former Transport, Energy and Spatial Planning Inspectorate (IRSPEP) with an internal act, and these were also published on its website. According to the response by complainants and also on the basis of our own findings, the Human Rights Ombudsman repeats the recommendations from the 2013 annual report that these criteria should be published in a regulation which complies with the transparency of operations of individual inspection services. This would also eliminate doubts about the objectivity and impartiality of operations of inspection services. It is nevertheless necessary that inspection services as per the Decree on administrative operations inform the notifier about the received report, the time anticipated to consider the report and the fact that the notifier must explicitly demand to be informed about the adopted measures of the inspection service. Otherwise, the notifier will not receive this notification; inspection procedures are conducted *ex officio* for the public benefit, and the notifier is not considered a party to the procedure.

2.8

PUBLIC UTILITY SERVICES

| Area of work | Cases considered | | | Resolved and founded | | |
|-----------------------------------|------------------|-----------|-------------|----------------------|----------------|--------------------------------------|
| | 2013 | 2014 | Index 14/13 | No. of resolved | No. of founded | Percentage of founded among resolved |
| 8. Public utility services | 92 | 80 | 87.0 | 76 | 5 | 6.6 |
| 8.1 Municipal utility services | 37 | 24 | 64.9 | 23 | 2 | 8.7 |
| 8.2 Communications | 9 | 13 | 144.4 | 13 | 0 | 0.0 |
| 8.3 Energy sector | 19 | 14 | 73.7 | 13 | 0 | 0.0 |
| 8.4 Transport | 16 | 20 | 125.0 | 18 | 3 | 16.7 |
| 8.5 Concessions | 9 | 6 | 66.7 | 6 | 0 | 0.0 |
| 8.6 Other | 2 | 3 | 150.0 | 3 | 0 | 0.0 |

In the field of public utility services, 80 cases were discussed in 2014, and 92 in 2013. The number dropped in comparison to 2013; however, 75 complaints were on average discussed annually in the last five years in this field. The majority of complainants write to us when they are unable to settle the costs of municipal services (water, waste collection, connection to sewage network, electric energy supply) due to personal distress. The costs are rising, while the standard of living is falling. This is also shown in the low percentage of justified complaints. We explained to complainants their rights and advised them on possibilities of enforcing these rights at competent authorities. Significant issues based on received complaints and our discussion are described below, including interesting examples from substantive sets.

Our recommendations from previous years were not realised and we are thus unable to write about progress.

2.8.1 Municipal utility services

Disconnection of water supply

Many complaints referred to the question of the price of services for the supply of individual municipal services (drinking water supply and waste collection). Complainants sought help relating to the disconnection of the water supply. Complainants' distress at being unable to pay for individual municipal utility services was evident. We informed those at risk of disconnection from the drinking water supply due to the non-payment of the provisions of Article 23 of the Decree on drinking water supply, which determines the conditions for the disconnection or restriction of drinking water. The same article of the Decree also determines that more detailed conditions for the disconnection or restriction of the drinking water supply are determined in the municipal regulation governing the drinking water supply. As per Article 149 of the Environmental Protection Act, the supply of drinking water is a mandatory municipal utility service of environment protection. Relating to the disconnection of the drinking water supply in a residential building where certain residents failed to pay for the supply, a decision ref. no. Up-156/98 of 11 February 1999 was issued by the Constitutional Court stating

that the disconnection of the drinking water supply is permissible according to conditions and procedures as determined by municipal regulations. However, this is a disproportionate measure relating to the non-payment by which the quality of life of all family members and other residents (who paid for the water supply) in the residential building where the supply is disconnected would worsen significantly.

We again highlight the urgency of the right to water to be included in the legal order of the Republic of Slovenia as a fundamental human right. Management of the right to water must be uniform and not as it is now, when each municipality individually determines the conditions for disconnecting the drinking water supply. The right to water is also inseparably connected with the right to life, dignity and health. Due to the aforementioned and because Slovenia is a social state, the governance of the right to water requires amendments at the legislative level.

Disconnection of electric energy supply

New Energy Act (EZ-1) was adopted in 2014. In Article 51, the Act determines that distribution operators must not disconnect electricity to vulnerable citizens or restrict the supply below the quantity or power which, according to circumstances (season, temperature conditions, place of residence, medical condition and other similar circumstances) is necessary to not endanger the life or health of the customer and persons who live with the customer.

2.8.2 Transport

Most complaints in this field related to traffic arrangements on local roads. Municipalities implemented categorisations of municipal roads, but failed to conduct procedures for the transfer of ownership of land on which the roads are sited. This is an extensive problem which requires systemic measures for the arrangement of illegal situations. We discussed this issue with the Minister of Infrastructure and at a press conference. In decision ref. no. U-I-208/10 of 20 January 2011, the Constitutional Court of the Republic of Slovenia gave priority to the protection of property rights and started repealing municipal ordinances on the categorisation of municipal roads in disputable sections, firstly, with suspensive deadlines and later without deadlines.

Many complaints also referred to the work of the Motorway Company of the Republic of Slovenia (DARS). Unresponsiveness, the conduct of supervisors in minor offence proceedings due to the non-payment of vignettes and unsuitable installation of noise barriers were the main complaints relating to the work of the staff of the DARS.

2.8.3 Concessions

We are still receiving complaints relating to chimney sweeping services. Some complain about systemic arrangements, while others comment on the implementation of chimney sweeping services (quality, scope, prices etc.). The complainants were explained the complaint procedures which enable them to complain about providers of chimney sweeping services. They must first contact the provider of the service/concessionaire; then they can demand at the Ministry of the Environment and Spatial Planning that suitable sanctions be imposed on the concessionaire to eliminate established deficiencies. Nevertheless, Article 148 of the Environmental Protection Act was amended already at the end of 2013: chimney sweeping services will no longer be a mandatory national public utility service; the latter applies only until 31 December 2015.

2.9

HOUSING MATTERS

| Area of work | Cases considered | | | Resolved and founded | | |
|---------------------------|------------------|------------|-------------|----------------------|----------------|--------------------------------------|
| | 2013 | 2014 | Index 14/13 | No. of resolved | No. of founded | Percentage of founded among resolved |
| 9. Housing matters | 124 | 111 | 89.5 | 101 | 9 | 8.9 |
| 9.1 Housing relations | 59 | 61 | 103.4 | 56 | 4 | 7.1 |
| 9.2 Housing economics | 59 | 46 | 78.0 | 41 | 4 | 9.8 |
| 9.3 Other | 6 | 4 | 66.7 | 4 | 1 | 25.0 |

In 2014, 111 matters were addressed, which is approximately 10 per cent less than in 2013, when a record number of housing matters were addressed.

In terms of content, most complaints referred to questions such as how to obtain proper housing, how to emerge from the grip of debts, what are the conditions for the acquisition of a subsidy, where to go following an anticipated eviction, how to protect the children, etc. Since most questions referred to systemic inconsistencies and to circumstances related to the economic crisis, the number of founded complaints was not as great as the housing problem in Slovenia. The number of housing-related complaints is actually higher than shown in the table above, as certain such complaints are recorded under other subject areas, e.g. poverty, social matters, etc.

The State does not have to provide housing for people. Nevertheless, the State has an active role, since, pursuant to Article 78 of the Constitution of the Republic of Slovenia, it must provide opportunities for citizens to obtain proper housing. Does the State carry out these constitutional tasks? The Ombudsman's findings show that the State is insufficiently active. Moreover, it is completely inactive and has left the housing field almost entirely to the market and its principles of operation.

Violations of the rights referred to in the Constitution, the European Social Charter, the Convention for the Protection of Human Rights and Fundamental Freedoms, and the EU Charter of Fundamental Rights were established again. They were described in more detail in last year's report.

The housing problem and homelessness are always topics for discussion with mayors during the Ombudsman's visits to individual municipalities. The general findings that there is a lack of housing and residential units in municipalities, that funds provided for residential construction are insufficient, and that the existing housing legislation is not flexible, since it does not anticipate potential mutual assistance between municipalities when resolving housing problems of their residents cannot be ignored.

2.9.1 Evictions, lack of accommodation, and rent subsidies

We received letters from several complainants who were in a very difficult situation. Some were facing eviction and feared that they and their children would be left without accommodation. Other people's living conditions were unbearable. They requested assistance from municipalities and received replies that they would be able

to apply for the allocation of non-profit dwellings when a tender was published and that the municipality had no residential units.

Example:

The Municipality of Grosuplje only provided its rent subsidy during enforcement procedure

The Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) was contacted by a complainant who stated problems when exercising the right to subsidised market rent. The complainant stated that the Municipality of Grosuplje (Municipality) did not pay the subsidy. The complaint also showed that the Grosuplje Social Work Centre (SWC) had issued a decision on 11 February 2013 stating that the complainant was eligible for a subsidised market rent in the amount of EUR 191.77 per month for the period between 1 February 2013 and 31 January 2014. The Municipality of Grosuplje unsuccessfully appealed this decision at the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ). Regardless of the aforementioned, the Municipality should have paid the subsidy to the complainant from the day the first instance decision was served, since an appeal against the decision does not delay its execution. However, the Municipality did not do so. The opinion of the Municipality was that the complainant was not eligible for subsidised market rent, as the complainant allegedly lived in illegally built housing. In this matter, the complainant contacted the SWC on 7 August 2013 and requested that the centre file an enforcement proposal for the decision in question with the competent authority. However, the proposal has not yet been filed.

We requested an explanation from the Grosuplje Social Work Centre and the Municipality of Grosuplje.

The reply from the SCW also showed that the SWC had substantive and technical problems filing an enforcement proposal in the matter in question, which were related to the e-enforcement application of the Customs Administration of the Republic of Slovenia (CURS) through which enforcement proposals are filed in electronic form. Initially, the application did not support the entry of such a claim, which was then facilitated by an agreement on cooperation in tax lien proceedings concluded between the MDDSZ and the CURS on 13 February 2014. Problems subsequently occurred also when entering the creditor in the application, as the system determined the MDDSZ as the creditor instead of the beneficiary/complainant. On 28 February 2014, the SWC entered the enforcement proposal in the e-enforcement application. In our opinion provided to the SWC we stated that the procedure for filing the enforcement proposal was too lengthy, regardless of its efforts to eliminate the technical and substantive deficiencies of the electronic application. The complainant filed a request for the SWC to file the proposal on 7 August 2013. The proposal was filed by the SWC on 28 February 2014, i.e. six months after the request had been filed. The matter in question included a social benefit and therefore required immediate action. Reference to "technical problems" cannot be acceptable grounds for the lengthiness of the procedure.

The reply of the Municipality showed that the Municipality had instigated administrative dispute in the matter in question, since the decision regarding the rent subsidy was made on the basis of unsuitable documents, and the actual situation was established incorrectly. Proceedings before the Administrative Court of the Republic of Slovenia are allegedly ongoing. The Ombudsman does not agree with the Municipality's reply. Pursuant to Article 38 of the Exercise of Rights to Public Funds Act (ZUPJS), an appeal against a SWC decision on subsidised market rent does not delay its execution. We believe that the Municipality is acting unlawfully in the matter in question, as it is not paying the complainant's rent subsidy as recognised by a decision. An appeal, which also includes potential further legal remedies, does not delay the execution of the decision of the Social Work Centre. We proposed to the Mayor that the Municipality immediately pay the complainant's claim in full, including statutory default interest, and reimburse him for potential damage incurred in relation to the matter in question.

We received a reply stating that the Municipality did not accept our opinion or proposal, and insisted *mutatis mutandis* on the provided position that the matter involves illegal construction, which should be taken into account by the SWC when making a decision on market rent subsidy or which would be decided in the administrative dispute before the Administrative Court of the Republic of Slovenia which was in progress. Therefore, we pointed out to the Mayor again that, pursuant to the ZUPJS, an appeal against such a decision does not delay the execution, which means that the Municipality insisted on, and maintained, an unlawful situation by not executing the decision in question. We proposed to the Mayor again that the Municipality

immediately pay the complainant's claim in full, together with statutory default interest, and reimburse him for potential damage incurred in relation to the matter in question. We received an explanation that the Municipality had fully settled the complainant's claim.

The reply from the Municipality was misleading, as it merely showed that the Municipality had fully settled the complainant's claim regarding the market rent subsidy. In the meantime, the complainant contacted the Ombudsman again, and claimed that he had not yet received the amount in question. The latter led the Ombudsman to believe that the Municipality did not comply with our proposal in the matter in question and had not settled the amount owed voluntarily, but the amount was forfeited during the enforcement procedure that had been instigated. The aforementioned was also confirmed by the Mayor of the Municipality in a letter. The complaint was founded. 9.2-8/2014

2.9.2 Management in blocks of flats and housing inspection

Several complainants contacted the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) and stated their problems with managers in blocks of flats. Among questions complainants most frequently addressed to the Ombudsman were what the tasks of managers were, what managers' competences were, whether managers might be replaced, and how operating and maintenance costs were divided in blocks of flats, and the issue of the lack of transparency of managers' invoices. On the basis of the questions received, we may conclude that people were frequently dissatisfied with the work of managers, that supervision was insufficient, and replacing a manager was a rather complex process. The main condition for replacing a manager is that owners who own over 50 per cent of residential surfaces agree to the replacement.

2.9.3 Other

Several people contacted us, as they were bothered by noise or dirt from neighbouring dwellings. Certain people complained about the quality of residential units offered for rent by housing funds of municipalities. Problems also occurred in relation to incomplete legal manners to exchange dwellings. We also received several questions related to invoices issued by managers and their lack of transparency. Complaints required our explanations and guidelines as to how to act in such cases and where to turn to speedily resolve the problem.

2.10

EMPLOYMENT RELATIONS

| Area of work | Cases considered | | | Resolved and founded | | |
|-----------------------------------|------------------|------------|-------------|----------------------|----------------|--------------------------------------|
| | 2013 | 2014 | Index 14/13 | No. of resolved | No. of founded | Percentage of founded among resolved |
| 10. Labour law matters | 332 | 270 | 81.3 | 241 | 59 | 24.5 |
| 10.1 Employment relationship | 153 | 133 | 86.9 | 125 | 24 | 19.2 |
| 10.2 Workers in state authorities | 108 | 89 | 82.4 | 74 | 15 | 20.3 |
| 10.3 Scholarships | 57 | 30 | 52.6 | 26 | 13 | 50.0 |
| 10.4 Other | 14 | 18 | 128.6 | 16 | 7 | 43.8 |

Fewer complaints were handled in 2014 compared to 2013, i.e. by 19 per cent. This reduction was noticed in all fields, except among complaints that cannot be classified in one of the other sub-fields in which labour matters were recorded. Nevertheless, we handled many matters (270) in 2014, which was significantly higher than the number in the period prior to 2013. Several complaints were again unsigned. Complainants requested advice and assistance regarding how to obtain their salary and other rights. Complaints reflected employees the fear of employers, i.e. if they learned that they had reported a violation and written to the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) and other supervisory bodies.

The key issues we handled were: non-payment of salaries and contributions; mobbing and other forms of workplace violence; the problem of inspection procedures; lengthy decision-making at the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ); voluntary traineeship; and problems regarding the suitability of incentives for unemployed persons when seeking a job.

As in previous years, we established violations of the same rights in 2014. The rights violated were constitutional rights, and rights of the Universal Declaration of Human Rights, the European Social Charter, the European Convention on Human Rights, and the EU Charter of Fundamental Rights.

2.10.1 Non-payment of salaries and social security contributions

In 2014, we handled cases of persons who had received no payment for their work, cases when social security contributions had not been paid and cases when complainants had received salaries in cash without suitable records. We have been recording such sad stories for years. We have also been requesting for years the establishment of a system that provides employees with at least minimum dignity, and prevents situations when they work and do not get paid, and situations when they learn that employers have not paid their social security contributions after several years.

2.10.2 Consultation: How did work lose its honour?

We organised a consultation on workers' rights together with the National Council. We discussed problems with the payment of salaries and social security contributions with representatives of the Labour Inspectorate of the Republic of Slovenia (IRSD), the Labour Court, the Tax Administration of the Republic of Slovenia, the Police, the Prosecutor's Office, and the criminal judges, and with legal experts. Special attention was paid to the self-employed in various fields (especially in culture and journalism) and to precarious forms of work.

2.10.3 Workers in the public sector

89 (108 in 2013) complaints were handled by the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) in 2014. In terms of content, most complaints related to mobbing in the workplace in various state authorities and institutions, and in bodies of local self-government and elsewhere in the public sector. We explained to the complainants which behaviours may be deemed mobbing, and advised them on what recourse they had and how to act. Pursuant to point 2 of the first paragraph of Article 217 of the Employment Relationship Act (ZDR-1), the Labour Inspectorate of the Republic of Slovenia (IRSD) may impose a fine on an employer who violates or infringes the prohibition of sexual or other harassment and mobbing in the workplace. Nevertheless, we believe that the current arrangement – the supervision of private employers is carried out by the IRSD, while the supervision of employers in the public sector is carried out, in addition to the IRSD, by the Defence Inspectorate and the Public Sector Inspectorate – is not satisfactory. If we add the limited practice of labour and criminal courts, and the fear of employees, we may conclude that the protection of victims of mobbing is insufficient.

We again point out the situation in Slovenia prisons. In last year's report, we wrote about the promises of the Minister of Justice to resolve the personnel shortage by relocating employees from the Customs Administration of the Republic of Slovenia, and that the Government had approved the replacement employment of 11 judicial police officers. We may say that the competent authorities are making efforts this year. Relocations from the Customs Administration of the Republic of Slovenia were carried out, and overtime was paid. Replacement employments were approved and we expect them to be employed as soon as possible. A permit for the expansion of the personnel plan was issued.

Example:

An officer was rendered jobless due to the unlawful actions of the Ministry of the Interior

A complaint was addressed to the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) by a former employee of the Police at the Ministry of the Interior (MNZ). The employment contract of the complainant with the MNZ was extraordinarily terminated at the beginning of 2011. The complainant brought an action against the termination, which was partially granted by the Labour Court in Maribor, i.e. regarding the establishment of the unlawfulness of decisions on extraordinary termination of the employment contract, while in relation to rights arising from the employment relationship, the Court granted the payment of salaries and taxes, and social security contributions. However, the Court rejected the part of the action in which the complainant required the employer to recall him to work and include him in compulsory insurance.

On the day the first instance judgement was issued, the complainant was still included in compulsory insurance and received wage compensation, although his employment contract had been extraordinarily terminated. On the day the first instance judgement was received, the MNZ excluded the complainant from compulsory insurance immediately after it learned that the employment relationship had not been terminated in the MFERAC programme for salary calculation at the beginning of 2011 due to an error. The error occurred (as shown in the statements of the MNZ in the appeal against the judgement) at the Police, a state authority with almost 10,000 employees within which various expert services operate. Miscommunication occurred between these services, due to which the complainant remained suspended and received a part of his salary.

Due to the error made at the MNZ, which did not exclude the complainant from compulsory insurance when it should have, the first-instance court did not grant the part of the claim which stated that the employer had

to recall the complainant to work and include him compulsory insurance, since there was no basis for doing so at that time. The first-instance judgement became final with a judgement of the Higher Labour and Social Court in July 2012. When the complaint was filed, the complainant had not yet returned to work, although the final judgement established that the extraordinary termination of the employment contract was unlawful. We carried out several enquiries at the MNZ regarding the handling of the complaint. In its first reply, the MNZ explained the course of events related to establishing the unlawfulness of the extraordinary termination of the employment contract. It stated that it had discovered the error that

the employment relationship had not yet been terminated in the MFERAC programme for salary calculation. On that day, it had excluded the complainant from compulsory insurance, since the judgement which established that the extraordinary termination of the employment contract had been unlawful was final. The letter concluded with a promise to reintegrate the complainant in the employment relationship as soon as possible.

After three months, as the situation was not as they had undertaken, we wrote to the Ministry again.

In its reply, the MNZ explained that certain activities had been carried out to reintegrate the complainant in the employment relationship (seeking a suitable job, determining the date for the medical examination, etc.). However, the matter had come to a halt when judicial proceedings were instigated before the Labour Court in Maribor (when the complaint was being handled, the complainant requested his reintegration in the employment relationship with an action). The MNZ received minutes on the settlement hearing and the main hearing from the branch office of the State Attorney's Office in Maribor, which stated that a decision should be made in the matter and that the judgement should be issued in writing. Considering the aforementioned and in view of the fact that there was actually no legal basis (e.g. a final judgement) for the complainant's reintegration, the Ministry decided to halt the reintegration until the reception of the judgement. The Court dismissed the action with a decision, as it had established that the complainant's request for judicial protection was delayed. The complainant appealed to the judgement in question. The appeal has not been decided yet. The MNZ concluded the letter by stating that it would act in accordance with the decision of the competent court on the basis of the aforementioned in the matter in question. If the court decided that the complainant had to be reintegrated in the employment relationship, it would comply immediately.

The Ombudsman believes that the actions of the MNZ in the matter in question were unethical and unlawful, and prejudiced the rights of the complainant. The MNZ violated the law by not promptly excluding the complainant from compulsory insurance, and by correcting its error without a legal basis by excluding the complainant following the receipt of the first-instance judgement which established (although not finally) that the termination had been unlawful.

We believe that the State should be the first to observe regulations, and the principles of good and ethical management. In this case, it failed to do so.

1. If the MNZ had not unlawfully terminated the complainant's employment contract, the problem would not have occurred.
2. If the MNZ had not forgotten to exclude the complainant's from compulsory insurance in time, the Labour Court in Maribor would have decided differently and granted the complainant's claim in full, and also decided that he should return to work.
3. If the MNZ had not corrected its error as it did, the complainant would have been employed without interruption. The complainant could have avoided the judicial proceedings which are currently ongoing. The result of the proceedings is unknown, while their costs will be borne by the national budget.

The position under point 2 confirms another identical case of a complainant's co-worker whose employment contract was terminated at the same time due to the same event. In this case, there was no error and the police officer was reintegrated in the employment relationship a while ago.

We may agree with the opinion of the MNZ that currently there is no legal basis for a complainant to be reintegrated in the employment relationship, but the MNZ also had no legal basis to not exclude the complainant

from insurance until 15 November 2011. Referring to the principles of fairness and good management, we submitted our opinion to the MNZ in which we proposed the complainant be reintegrated in the employment relationship.

In its reply, the MNZ explained again that there was legal basis for the complainant to be reintegrated in the employment relationship. In its opinion, all decisions should take into account the third paragraph of Article 16 of the Civil Servants Act, which stipulates that the employer may not afford to civil servants any rights to an extent greater than provided by law, executive regulations or collective agreement if this would burden public funds. Therefore, the complainant will not be reintegrated in the employment

relationship, since this would be unlawful. However, the MNZ agreed with our findings that its actions in this part were unlawful. Therefore, it will contact the complainant regarding the possibility of his re-employment at the same authority and attempt to resolve the matter in to the satisfaction of both parties.

In our last letter sent to the MNZ, we agreed that there was no legal basis at that time for the complainant to be reintegrated in the employment relationship. However, there was also no legal basis for excluding the complainant from insurance after receiving the first-instance judgement. Based on the aforementioned, our position remains that the MNZ must reemploy the complainant. In view of the statements of the MNZ, we expect this to actually happen. The complaint was founded. 4.1-5/2014

2.10.4 Violations of drivers' rights

At the systemic level, we handled the issue of violations of drivers' rights, especially by carriers/owners of companies or sole traders. Carriers frequently force workers to work without an arranged status. Several workers do not have suitable permits to transport hazardous substances. Vehicles are frequently inadequate. There are no draining containers at lorry car parks. Carriers install magnets in their vehicles to incapacitate tachographs. Payment is frequently made in cash. There is no supervision, except for fines for traffic offences. In addition to safety and environmental hazards, the dignity of drivers is also at stake. Since this is a field which requires the supervision of various authorities, we addressed the enquiry to the Inspection Board. The latter operates as a permanent inter-ministerial working body to coordinate work and achieve greater efficiency in various inspectorates. The Inspection Board explained that it had adopted a plan of joint coordinated actions of inspection services for 2014 in which they included *inter alia* the supervision of transport activity which includes the supervision of the transport of goods, i.e. the supervision of goods transport, tighter supervision of the issue of invoices and VAT calculation, the control of vehicle roadworthiness, the fulfilment of obligations regarding permissions and permits, and the supervision of potential violations of labour legislation. The Labour Inspectorate of the Republic of Slovenia (IRSD), the Transport, Energy and Spatial Planning Inspectorate (IRSPEP), the Financial Administration of the Republic of Slovenia and the Police will participate in such inspections.

We expect tighter supervision to reduce the number of violations and improve the situation.

2.10.5 Violations of the rights of security guards and chaining of companies

Due to the invalid collective agreement on private security (the last collective agreement ceased to be valid in 2006), the situation in this industry is intolerable. Low salaries, lengthy working hours, overtime, fixed-term contracts, poor working conditions, unsuitable training and education of security guards, the manner of granting licences, overlapping of security with other economic activities, etc. affect the implementation of security activity, and the safety of people and property. Due to the aforementioned, we believe that the Ministry of the Interior (MNZ) should make every effort to conclude a new collective agreement on private security, and to suitably amend the Private Security Act through the initiation of a wide public discussion.

2.10.6 Procedures of supervisory institutions

Cooperation with supervisory institutions, i.e. the Labour Inspectorate (IRSD) and the Public Sector Inspectorate, was good. Most of our communication was in writing. We had a meeting the chief labour inspector and her colleagues. We especially point out the great cooperation with the Inspection Board, which was headed by the head market inspector for most of the year.

We established that several situations arise when individual inspectorates declare themselves as incompetent and send notifiers from door to door. Therefore, the role of the Inspection Board to provide for the coordinated and harmonised work of various inspectorates is all the more important.

We note the shortage of personnel at inspectorates and, in this regard, to long queues, especially at the Public Sector Inspectorate. We are not satisfied with replies stating that the inspection service will address reports in accordance with its priorities. According to the Decree on administrative operations and the principles of good management, a notifier who makes a report to the inspection service should receive a reply regarding within 15 days the reception of the report and the anticipated time frame for its consideration, as well as a notification that, pursuant to the Inspection Act, they will be informed of actions taken only if they explicitly so request it.

2.10.7 Position of workers in the case of extraordinary termination of employment

We note again our unrealised recommendations regarding urgent amendments to the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act (ZFPPIPP). Payment for work carried out before a person submits an extraordinary termination of the employment relationship pursuant to Article 111 of the Employment Relationship Act (ZDR-1) on the grounds that the employer has not paid them salary for a certain period must remain a priority claim of the employee in bankruptcy proceedings. We repeat this from previous years. A mere three-month period prior to filing for bankruptcy is insufficient protection for employees.

2.10.8 Voluntary traineeship

In 2014, we again handled cases of voluntary traineeship. Traineeship is mandatory only in the field of social security, while in the fields of education, health care and the judicial system, it is a condition for taking professional examinations. However, we noticed the practice of unpaid work in the guise of voluntary traineeship in all fields of the public sector. We emphasise that traineeship is only possible if an employment contract or a contract on the performance of voluntary traineeship has been concluded with the trainee if allowed by law, pursuant to Article 124 of the ZDR-1. The acts that allow voluntary traineeship are the Organization and Financing of Education Act and the Civil Servants Act. We believe that traineeship without the reimbursement of work-related costs (i.e. excluding costs for transport and meals, no right to annual leave) and at least minimum remuneration is exploitative of young unemployed people. In this respect, the State provides a poor example to private employers. How could one expect the private sector, which is market-oriented and where the only criterion of success is profit, we have not encountered similar occurrences and employment although employing voluntary trainees is only possible in the public sector.

2.11

PENSION AND DISABILITY INSURANCE

| Area of work | Cases considered | | | Resolved and founded | | |
|---|------------------|------------|-------------|----------------------|----------------|--------------------------------------|
| | 2013 | 2014 | Index 14/13 | No. of resolved | No. of founded | Percentage of founded among resolved |
| 11. Pension and disability insurance | 490 | 147 | 30.0 | 127 | 22 | 17.3 |
| 11.1 Pension insurance | 435 | 101 | 23.2 | 90 | 17 | 18.9 |
| 11.2 Disability insurance | 55 | 46 | 83.6 | 37 | 5 | 13.5 |

In comparison with 2013, the number of complaints in this field has significantly declined, which could be attributed to the fact that certain consequences of the unconstitutional interference with pensions introduced by the Fiscal Balance Act were eliminated. The Constitutional Court of the Republic of Slovenia repealed this part of the Act on the initiative of the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman). The State did not eliminate all the negative impacts of the unconstitutional withdrawal of part of pensions, as it did not acknowledge interest to beneficiaries. Interest on funds withdrawn would not amount to much, but the Ombudsman believes that there are no grounds for the State to treat its responsibility differently by recognising different positions to different groups of beneficiaries. We already warned about this issue in the 2013 Annual Report.

2.11.1 Pension insurance

The Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ) did not realise the Ombudsman's recommendation stated in the 2013 Annual Report to prepare an analysis of the realisation and effects of the Pension and Disability Insurance Act (ZPIZ-2) by the end of 2014, and organise a public discussion on the findings and assessments, as well as prepare potential amendments to the pension and disability insurance system. Therefore, various public forecasts and speculations appeared as to when and how the state would interfere again with the system of rights in this field. The insecurity of insured persons regarding justified expectations in a field that requires well-considered and long-term interventions does not contribute to realising the principle of the rule of law.

We established that people frequently contact various state authorities regarding alleged violations of their rights, especially regarding the correctness of their pension calculation, instead of contacting the Pension and Disability Insurance Institute of the Republic of Slovenia (ZPIZ) or the competent ministry, which leads us to believe that insured persons have insufficient or unsuitable information regarding options for exercising their rights.

The problem of insufficient information is particularly noticeable when a person has spent part of their insurance period in one of the republics in former Yugoslavia. The provision of social agreements with new countries which regulate such problems are obviously little known to insured persons. Additional problems with understanding are posed by various rights that differ in different pension systems.

According to the ZPIZ, first-instance proceedings took an average of 66 days in the first eight months of 2014, while 79.2 per cent of matters received were resolved within the statutory time limit. Proceedings in complaints regarding international insurance took 129 days on average, which is within the statutory time limit (six months). The Ombudsman believes that the aforementioned time limits should be shorter.

The Ombudsman encountered the problem of different informative calculations of the date of possible (old-age and/or early) retirement several times, which may be the result of incomplete records managed by the ZPIZ, overlooked data or even negligent work. We are well aware that different informative calculations may also be the result of frequently amended regulations. Each calculation includes a special warning that its nature is merely informative and it is not the basis for the recognition of the right to a pension. However, different numbers arouse justifiable distrust in the entire system of collecting and processing data, and the credibility or correctness of data in the informative calculation.

Therefore, the Ombudsman expects the competent authorities to ensure that all records that include data that affect people's rights are suitably arranged and updated, and that, prior to the issue of informative calculations, data are verified to the extent that (except in exceptional cases, e.g. amendments to legislation, subsequently acquired data) the possibility of issuing another calculation that is less favourable to the person, and the possibility for the insured person to obtain different informative calculations for the same period from different regional units are ruled out.

Compatibility of pension and a gainful activity

We received several complaints due to disagreement with the provision of Article 406 of the Pension and Disability Insurance Act (ZPIZ-2) which stipulates that retired sole traders harmonise the attributes of insured persons by 31 December 2013, and anticipates their re-inclusion in insurance and thus the cessation of the payment of pension.

Complainants claimed that, as pensioners, their position is not equal, since a person who is in an employment relationship may also carry out an independent activity and be a sole trader, while pensioners have no such right or are obliged to waive at least half of their pensions if they wish to continue carrying out a gainful activity as sole traders. According to the media, the Pension and Disability Insurance Institute of the Republic of Slovenia (Institute) is to issue decisions on the establishment of the attributes of insured persons retrospectively to a number of pensioners who carry out independent activities as sole traders, despite the fact that the deadline determined for the harmonisation of the attributes of insured persons by Article 406 of the ZPIZ-2 has not yet expired, due to which they will have to return their pensions.

According to our assessment, the applicable arrangement which limits the right to pension for certain categories of pensioners in certain cases raises questions about the compliance of such an arrangement with the Constitution of the Republic of Slovenia, especially with the principle of the rule of law referred to in Article 2 and the principle of legal certainty or the principle of trust in law concerning the issue of protection of acquired rights (regarding the establishment of the attributes of insured persons retrospectively and regarding the halting of the payment of pensions), and the principle of equality before the law referred to in Article 14 concerning the issue of the justification of differentiation of pensions by determining conditions under which a certain group of pensioners may carry out a certain economic or gainful activity and still receive pension, while another group cannot. We believe that the emphasised problem should be arranged at the systemic level in a manner that is equal for all pensioners and eliminates what are, in our opinion, the unconstitutional consequences arising from the applicable legislation. This position was presented to the Minister of Labour, Family, Social Affairs and Equal Opportunities, and the prompt adoption of suitable legislative solution was proposed. The Ombudsman's potential decision as to whether to file a request for a review of the constitutionality of certain disputable statutory provisions also depends on whether certain solutions are adopted and what the solutions are.

Example:

Payment of funds to purchase insurance period is not possible

The complainant contacted the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) regarding the reimbursement of the contribution paid in 2011 to purchase the insurance period for the duration of military service. By taking into account the purchased period, the complainant would meet the conditions for retirement according to the old Pension and Disability Insurance Act (ZPIZ-1), while the new Pension and Disability Insurance Act (ZPIZ-2) does not take into account the purchased period without any deductions. Therefore, the complainant enquired at the Pension and Disability Insurance Institute of the Republic of Slovenia (Institute) about the reimbursement of the contribution paid. However, the reply received was negative and provided no explanation. The complainant requested the Ombudsman to provide explanations, since deductions he would be subjected to considering the applicable legislation represent a 14 per cent reduction in his pension (or EUR 89.68 per month), due to which he believed that his rights were violated.

The documents attached and the reply from the Institute show that the complaint was not founded, as the Institute provided the complainant with a legally correct reply. According to our assessment, the ZPIZ-2 provides no legal basis for the reimbursement of voluntarily paid contributions to purchase insurance period (similarly, there was no such basis in the previous ZPIZ-1). The fact that the decision of the Institute on the purchase of insurance period for the duration of military service was not issued *ex officio*, but on the basis of the complainant's request should also be taken into account. Even previous compulsory pension and disability insurance systems included no regulation that would determine that the insurance holder had to return the contributions paid in the case of a failure to exercise rights or exercise rights on another basis. The position of the Higher Labour and Social Court of the Republic of Slovenia is that pension and disability insurance is based on the principles of reciprocity and solidarity, and on the pay-as-you-go financing system. In principle, this means that the systemic arrangement does not facilitate the reimbursement of contributions, regardless of whether the right may be exercised at a later point on the basis of the payment of contributions or to what extent. Such a position was taken by the Higher Labour and Social Court of the Republic of Slovenia in judgements ref. nos. Psp 274/2001 of 7 March 2003 and Psp 244/2006 of 8 March 2007 confirmed by judgements of the Supreme Court of the Republic of Slovenia ref. no. VIII Ips 349/2007 of 23 February 2009 and Psp 198/2010 of 26 May 2010.

We informed the complainant of the aforementioned and explained to him that the period of voluntary inclusion in compulsory pension and disability insurance is now still taken into account, but only if the conditions for the acquisition of the right to early pension or the conditions for the acquisition of the right to old-age pension if a person is 65 years old are met. In both cases, this is also taken into account when calculating the percentage for old-age or early pension. However, the aforementioned period is not taken into account for the fulfilment of conditions for the acquisition of the right to old-age pension at the lowest required age. The purpose of the pension reform was to achieve later retirement. It is understandable that people who could retire sometime soon according to the previous arrangement suffer, as the time of their retirement is moving further away. 3.1-9/2014

Example:

Since there was no computer application, insured persons only received advance pension payment for a year

The complainant informed the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) that, as the statutory representative of her minor daughter, she had filed a request for the recognition of survivor's pension with the Pension and Disability Insurance Institute of the Republic of Slovenia (Institute) in April 2013. In May 2013, the Ravne na Koroškem regional unit of the Institute issued a decision on the advance payment of a survivor's pension, but not a decision on the final pension assessment. According to explanations by the Institute, the reason was that there was no computer programme for the calculation of survivor's pensions. The complainant believed that such a situation was unacceptable. Therefore, she asked the Ombudsman to intervene.

The Institute informed us that the complainant's daughter received advance survivor's pension, as, at the time the request for the recognition of the right to a survivor's pension, not all the data on the basis of which the pension could be assessed had been collected. In addition to the Pension and Disability Insurance Act (ZPIZ-2)

modifying the conditions for the acquisition of the right to all pensions, it also modified the manner of their assessment, which required suitable software applications. The latter were not available at the time when the complainant filed her request for the recognition of the right to a survivor's pension. Therefore, all beneficiaries received advance pension. The Institute also explained that the survivor's pension for the complainant's daughter was finally assessed in April 2014. Final assessments were also made for other beneficiaries who had been receiving advance pensions for the aforementioned reasons.

The ZPIZ-2 came into force on 1 January 2013. Nevertheless, suitable computer applications which facilitate final assessments of pensions had still not been produced more than a year after the introduction of the Act. The aforementioned shows that the Institute as the entity implementing the ZPIZ-2 was not sufficiently prepared for all amendments to the new Act, due to which the dissatisfaction of the complainant is understandable. The Institute did not provide any reasons for the delay in the production of computer applications in its reply. The reasons might also lie with the developers of the software. Of course, this is of little interest to insured persons who have a certain right recognised but have to wait to fully exercise it.

The complaint was deemed as partially founded, since the delay of the Institute in the provision of the computer application for final assessments of survivors' pensions was significant. On the other hand, the only way the Institute could act was by determining advance pensions for insured persons, the basis for which was provided by the ZPIZ-2. We also informed the complainant of the position of the Constitutional Court of the Republic of Slovenia which stated in its explanation of Decision no. U-I-181/02- 8 of 10 June 2004 that periods when a person receives an advance payment cannot be deemed as delays on the part of the Institute. The Institute only determines advance payment when it cannot conclude a procedure, i.e. when situations occur in the procedure for pension determination that are regulated by Article 260 of the Pension and Disability Insurance Act (now Article 180 of the ZPIZ-2). If a complainant believes that the Institute cause them damage when carrying out its activity or regarding its activity, the complainant may request compensation for damage on the basis of the first paragraph of Article 276 of the aforementioned Act (now Article 196 of the ZPIZ-2). The aforementioned means that an insured person may request compensation for damage from the Institute (only) with a suitable civil claim in civil proceedings at a court of general jurisdiction. 3.1-30/2014

Pensions of civil servants in former federal authorities

The Trade Union of Slovenian Diplomats (Trade Union) informed the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) of the problem of certain members who had been sent to work in Belgrade at the time of the former Yugoslavia whose pension and disability insurance contributions were paid to the Serbian institute. There had been no problems with the calculation of the pension base for persons who had wished to retire before the introduction of the social agreement with the Republic of Serbia in 2010. With the introduction of the agreement, significantly lower bases for the duration of pension insurance in Serbia are taken into account. These bases apply to any person who employed in Serbia for part of their insurance period. The Trade Union believes that this violates the Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia of 1991, which guaranteed equal rights as applicable to officials and civil servants in the state authorities of the Republic of Slovenia (Article 17) to all federal officials and civil servants seconded from the Republic of Slovenia.

The Ombudsman believes that the provisions of the Constitutional Act must be observed, and that retirement for the aforementioned affected persons must be facilitated under equal conditions as had been applicable before the introduction of the social agreement with the Republic of Serbia. A lower-ranking, subsequently adopted legal act cannot revoke or limit rights afforded by the highest-ranking legal act.

2.11.2 Disability insurance

Also in the field of the protection of disabled persons, we established that state authorities do not observe the regulations that imposed on them to prepare and issue implementing regulations. The amended Equalisation of Opportunities for Persons with Disabilities Act from 2014 determined a three-month period (from the introduction of the Act on 5 July 2014) to issue a regulation to regulate in more detail technical aids to overcome communication barriers. However, the Minister of Labour, Family, Social Affairs and Equal Opportunities has not yet issued such an implementing regulation. It must be emphasised that this regulation is extremely important, since it will define the conditions for disabled persons to acquire technical aids, for their duration and quality standards.

An example of best practice in the protection of disabled persons is the preparation of statutory amendments in the field of gaming. A non-governmental organisation which brings together disabled persons informed us of a letter sent to the Prime Minister of the Republic of Slovenia by the National Council of Disabled People's Organisations of the Republic of Slovenia, in which the latter points out the disputable provisions of the proposed Gaming Act. By enquiring at the Government of the Republic of Slovenia, we wished to establish how the provisions of the Resolution on Legislative Regulation (Official Gazette of the republic of Slovenia, no. 95/09) that require the participation of the interested public in the drafting of regulations was observed in the drafting of the aforementioned Act. We particularly wanted to acquire information about how the provision of the third paragraph of Article 4 of the Convention on the Rights of Persons with Disabilities (Official Gazette of the republic of Slovenia, no. 37/08) that requires each signatory to "carry out thorough consultations with disabled persons /.../ and actively include them through their representative disabled people's organisations" in the drafting and implementation of legislation and in other procedures was observed in the drafting of the aforementioned proposed Act.

The material regarding the Act published on the website of the Ministry of Finance did not show when the proposed Act was discussed by the Council for the Disabled (Council) or what position it took regarding the matter. Article 28 of the Equalisation of Opportunities for Persons with Disabilities Act (Official Gazette of the republic of Slovenia, no. 94/10) stipulates that the Council acts as a mandatory counselling forum on the issues of disability policy. We assessed that the provision of funds for disabled people's organisations which is also regulated by the aforementioned proposed Act is one such issue.

The reply of the Ministry of Finance surprised us, as it stated in detail when and how they had met representatives of disabled persons, and how they had coordinated comments to proposed solutions. However, it did not explain why the data on the participants at the public discussion had not been published.

Verification of occupational diseases

The issue regarding occupational diseases, in particular the process for their determination and verification (recognition), remains unregulated, since the previously applicable Pension and Disability Insurance Act (ZPIZ-1) did not establish any basis for regulating the procedure to determine and recognise occupational diseases by way of an implementing regulation (rules). Similarly, the list of occupational diseases has never been revised or amended. Since occupational diseases are not registered and their registration has been declining from year to year, there are no data on occupational diseases. The reasons for this lie in the current systemic arrangement, which stipulates that only employers who also pay for the services of authorised physicians/specialists in occupational medicine may 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 the new Pension and Disability Insurance Act (ZPIZ-2), which finally established a suitable legal basis for a more exact regulation of the procedure to determine, recognise and register occupational diseases (the second paragraph of Article 68). The drafting and the issue of the implementing regulation to regulate the aforementioned issues falls under the responsibility of the minister responsible for health who was expected to issue the regulation within twelve months of the introduction of the ZPIZ-2. Pursuant to the provision of Article 42 of the ZPIZ-2, the Minister should have adopted such a regulation by 1 January 2014. We alerted the Ministry of Health to this problem again.

The Ministry sent its reply only after we had urged it to do so. The Ministry explained that this was not a case of simple technical rules, but of the regulation of a very complex field with numerous obstacles and open issues, e.g. the manner of entering the discovery system, the manner of financing the discovery and conformation of occupational diseases, the status acquired by a person following the discovery of an occupational disease, consequences of such a discovery, supervision of the discovery of occupational diseases, etc. Therefore, the Ministry must reply to all open issues prior to drafting the rules in cooperation with numerous partners (e.g. representatives of social partners, the ZZZS, the ZPIZ). According to the Ministry, the aforementioned implementing regulation was in the Government's work programme for 2015.

In its reply, the Ministry of Health failed to explain which activities, if any, had been carried out to regulate occupational disease-related issues. The Ministry also failed to explain when it intended to commence drafting rules to regulate this complex field.

2.12

HEALTH CARE AND HEALTH INSURANCE

| Area of work | Cases considered | | | Resolved and founded | | |
|---|------------------|------------|--------------|----------------------|----------------|--------------------------------------|
| | 2013 | 2014 | Index 14/13 | No. of resolved | No. of founded | Percentage of founded among resolved |
| 12. Health care and health insurance | 140 | 144 | 102.9 | 125 | 31 | 24.8 |
| 12.1 Health insurance | 58 | 59 | 101.7 | 50 | 9 | 18.0 |
| 12.2 Health care | 82 | 85 | 103.7 | 75 | 22 | 29.3 |

The number of complaints in the field of health care is almost the same as in 2013, but their content has changed. Many more complaints referred to medicines and their replacement (more about this below), but we were astonished to see that we received very few complaints regarding waiting periods, despite the fact that the latter significantly extended in certain fields and exceeded the duration allowed by regulations.

In our report for 2012, we proposed to the Ministry of Health (MZ) that it prepare a proposal for urgent amendments to health-care legislation, which was approved by the National Assembly. However, the MZ did not do so. It also failed to realise the proposal we made the year before to prepare starting points for health care and health insurance, and organise a wide public discussion. The fact that the MZ was left without suitable management for most of 2014 does not justify the alarming situation in all fields which fall under its responsibility. Within its tasks, the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) cannot request the establishment of political responsibility for the frivolous management of the MZ, but the Ombudsman may point out that replacing the Minister several times and temporary management caused damage, as they profoundly affected the operation of the entire health-care system, and especially the prompt drafting of regulatory bases to facilitate the elimination of established shortcomings and further development.

The Ombudsman believes that the law should determine stricter conditions for legislative exceptions and prevent damage incurred by inappropriate management. No matter how good state administration is, it cannot carry out all administrative tasks for a long period without suitable political guidelines and instructions from the minister.

In 2014, the communication of the Ministry with clients (including the Ombudsman) was always delayed. The need to constantly alert the Ministry to promptly reply is by no means in accordance with the principles of professional, friendly and people-oriented administration. The Medical Ethics Committee, which should act as the supreme arbiter in various ethical dilemmas, even failed to reply to objections to its letters even after it had received two reminders from the Ombudsman. **Therefore, the Ombudsman repeats last year's statement that a prompt and substantively accurate reply may frequently prevent lengthy and expensive legal proceedings, and reduce the amount of work of other state authorities.**

The Ombudsman alerted the Minister of Health and her colleagues to the alarming situation in health care at a meeting at the end of 2014. In turn, the Ombudsman learned about the work plan of the Ministry, which anticipated first the drafting of a national programme and later the preparation of required statutory solutions. The Ombudsman believes that certain urgent improvements to the system could be agreed prior to the adoption of the national programme.

2.12.1 Health Services Act

Children's cardiac surgery programme at the Ljubljana University Medical Centre

The Ombudsman received several complaints regarding the issue of the children's cardiac surgery programme (Programme) at the University Medical Centre Ljubljana (UMCL), which also received great public exposure.

In the reply to our enquiry, the UMCL ensured us that the implementation of the Programme is in progress. The Ombudsman did not receive any complaints from parents indicating that their children were not provided with treatment. In none of the complaints did parents complain about the work of a specific doctor. Instead, the complaints referred especially to systemic problems (waiting periods, rescheduling of operations, post-operative complications, etc.).

The Ombudsman's efforts when handling complaints regarding the Programme focused particularly on providing the highest quality possible for children with congenital heart disease, regardless of whether they were operated in Slovenia or abroad. The Ombudsman did not wish to assess personnel solutions of health-care providers that treat congenital heart diseases in children or whether the financial consequences of the aforementioned providers would be good or bad, since this is not the Ombudsman's responsibility. We also assessed that communication is vital in such sensitive issues as the modification of the Programme. We proposed to the UMCL to establish suitable communication with both supporters and opponents of the reform of the Programme, and to publish its decisions with arguments for and against the reform of the Programme (at a press conference, in daily newspapers, etc.). We found that the UMCL clarified the aforementioned problem at a press conference soon after our enquiry.

Concessions for the provision of health care

We were alerted to the fact that medical treatment of adults with Asperger syndrome in Slovenia was inadequate. A complainant expected the assistance of the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) with the acquisition of a concession for a physician who had a concession for the treatment of children.

We alerted the Minister of Health to the issue of adults with autism when the Minister and her team visited us in December. We were assured that adults with autism may receive treatment within the network of health-care providers/psychiatry, and that the Ministry of Health (MZ) had not opened any vacancies for new providers which would be the legal basis for the granting of concession.

We informed the complainant that we could not establish any violations of patients' rights in the matter in question. In addition, we cannot intervene and require the granting of a concession in contravention of the law. The issue of the suitability of the network of health-care providers must be resolved through dialogue with the MZ.

Example:

Payment of an invoice for medical treatment of an intoxicated minor

The Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) received a complaint that the University Medical Centre Ljubljana (UMCL) issued an invoice to the complainant for medical treatment of his minor son due to intoxication. When the child was admitted to hospital, it was not explained to the

complainant that it would be a self-pay service. The complainant believed that the treatment was excessive and that his son was hospitalised only for profit. He filed a complaint about the invoice, but the handling of the complaint was not correct. The UMCL additionally charged him with interest, which he believed he did not have to pay, since the complaint had not been decided in the anticipated period. Regarding the matter, the complainant contacted the patient advocate, the Health Inspectorate of the Republic of Slovenia (ZIRS), the Market Inspectorate of Republic of Slovenia (TIRS) and the Medical Chamber of Slovenia, but was unsuccessful.

We explained to the complainant that the Ombudsman cannot assess the actions of physicians, since the Ombudsman is not competent to do so, and does not have suitable expert knowledge. The matter was handled by the competent professional medical committee at the Medical Chamber of Slovenia, which found no elements of a professional error in the actions of physicians.

Based on the submitted documents, we did not establish any irregularities in the actions of the ZIRS and TIRS. The second item of Article 25 of the Rules on compulsory health insurance explicitly stipulates that services that are not related to detoxification after acute alcohol intoxication do not fall within the rights arising from compulsory health insurance. In acute cases, it is impossible to fully observe the provision of the Patient Rights Act regarding information on costs prior to treatment. 3.4-7/2014

Conditions at the accident and emergency department of the UMC Ljubljana

In March, we were alerted to the intolerable conditions at the accident and emergency department of the UMCL, which put patients' health at risk, and in our opinion, also infringed patients' right to personal dignity.

The Minister of Health and the General Manager of the UMCL responded to our alert to the need for urgent actions in the set time limit. They clarified the reasons for the criticised situation and the plan to improve the situation, which would only be realised when a new accident and emergency department is constructed.

The Ombudsman established that the measures of the authorities which limit independence regarding employment in the public sector through administrative consents did not contribute to the more rational consumption of public funds, but only obscured responsibility for the arrangement of the critical situation and for the implementation of public health-care services. Therefore, **we supported the proposal of the Ministry of Health sent to the Ministry of Finance and the Ministry of the Interior for them to prepare amendments to the Republic of Slovenia Budget Implementation Act and the decree on the method of drafting human resource plans of indirect budget users.**

2.12.2 Patient Rights Act

In 2014, we handled several complaints regarding communication between health-care workers and patients. We informed all complainants of the option to exercise their rights arising from the Patient Rights Act and referred them to patient advocates. The latter may represent patients in all procedures, which enables patients to exercise their rights efficiently and at no extra cost. At the time of the preparation of this report, the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) did not have patient advocates' work reports at her disposal, but these are expected within the statutory time limit, i.e. by 15 March.

In addition to the aforementioned, all other issues which we pointed out in our previous reports, and which referred to the definition of the right to a second opinion, the use of special protection measures, and to the adjustment to the requirements of cross-border treatment remained unresolved.

In 2014, as in previous years, we wished to verify how hospitals care for patients when summer temperatures were highest. Fortunately, summer weather conditions were in patients' favour. Therefore, we did not carry out any measurements, but we did acquire information from the Ministry of Health (MZ) on the situation in this field. The MZ informed us that health-care institutions had successfully restored thermal insulation, and that

they would have the possibility to acquire European funds for reconstruction. However, there were no plans for new investments, except in the construction of the network of emergency centres. We received several complaints regarding the construction of the aforementioned network, which we referred to the Ministry of Health, since the Ombudsman cannot assess professional justifications of the proposed solutions. However, we assess that the public is not sufficiently informed of the planned construction and criteria for decisions on the locations of individual centres. At the time of the preparation of this report, open questions regarding the network of emergency centres are still being resolved.

One of patient advocates informed us that the MZ had not promptly appointed a new advocate to the vacant post and had not opened a call for applications for new advocates to replace advocates whose term was about to expire. After our enquiry, the MZ informed us of the timetable of individual activities regarding the appointment of advocates, but failed to explain the reasons for lengthy procedures. A public call for advocates whose term ended on 17 September 2014 was not published until 29 August 2014.

The Ombudsman cannot be satisfied either with the procedures carried out or with the reply from the MZ. Patient advocates are an important part of the health-care system. Therefore, the activities of the Government and the Ministry must facilitate their smooth operation. According to the Ombudsman's assessment, advocates' work in informing patients and exercising their rights in concrete procedures is extremely important. Halting the advocate appointment procedures merely because the Ministry was not managed by a minister is not a justifiable reason. Therefore, the Ombudsman emphasises that no government sector may remain without a manager for a long period.

2.12.3 Complementary and Alternative Medicine Act

The recommendation to the Ministry of Health (MZ) to study the regulatory framework of complementary and alternative medicine, and prepare suitable amendments to legislation was not realised. Similarly, all open questions that we pointed out in the past remain just that – open. Complementary and alternative medicine is still practised without supervision; a chamber was not established; some activities were not transferred to the field of the private sector; and patients remain unprotected and left to the different ethics of individual complementary and alternative medicine practitioners.

We should also mention the decision of the Medical Chamber of Slovenia, which sees no obstacles to physicians practicing homeopathy without risking their licence issued on the basis of the Medical Practitioners Act. This is merely the first step towards regulating homeopathy in a manner comparable to that in other EU Member States, since the MZ must prepare proposed amendments to the aforementioned Act, and only after the introduction of its amendments, will physicians be able to practice homeopathy without fear of the disproportionate consequences of losing their licence.

2.12.4 Health Care and Health Insurance Act

Our report last year included an extensive presentation of the problem of decisions issued by the Health Insurance Institute of Slovenia (ZZZS) regarding the exercising of the rights arising from compulsory health insurance. The quality of these decisions improved, but decisions are frequently not issued promptly, which poses a problem for insured persons. An insured person whose sick leave due to treatment has been approved frequently does not know, especially in the cases of complaints, until the last day whether their sick leave will be extended. If, doubting the success of the complaint, the insured person returns to work and receives a decision extending their sick leave at a later point, the issue arises as to how the employer should calculate the work performed, since the employee has two legal bases for payment at the same time. However, if the insured person believes that their sick leave will be extended and does not return to work, they risk being absent from work without a legal basis, which may result in the termination of their employment contract.

The issue of therapeutic groups of medicines

The Slovenian Lymphoma and Leukaemia Patient Association contacted the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman), and pointed out that the classification of certain medicines in the therapeutic groups of medicines with imatinib will constitute a violation of the patients' right to suitable, high-quality and safe health care as provided by the Patient Rights Act. With a decision of 28 January 2014, the Health Insurance Institute of Slovenia (ZZZS) determined that medicines in the therapeutic group had a common therapeutic indication of chronic myelogenous leukaemia (CML) treatment. The explanation of the decision published on the website of the ZZZS states that the therapeutic group of medicines with imatinib is a homogeneous group, since all the medicines included in it contain the same active substance with the same pharmacological effect.

After seeing the public data of the Public Agency for Medicinal Products and Medical Devices, we established that certain generic medicines in the aforementioned therapeutic group had only been registered **for adults in the blast phase and for children in all phases**, but there are only few such patients in Slovenia. Therefore, we asked whether it was even possible to prescribe medicines for CML in the initial phase of treatment or up to the blast phase. By registering it and by acquiring a marketing authorisation, the manufacturer assumed responsibility for the quality and efficiency of the medicine, but only within the limits that the manufacturer determined, which are supported by the public documents issued and stated in the instructions for the use of the medicine.

Generic medicines with imatinib have not yet been supported by patients' experiences. Therefore, patients are worried about potential side effects and efficiency, which has not been suitably verified, of such medicines.

The instructions for the use of Meaxin and Imatinib Tesa explicitly state that they are intended to treat CML in the blast phase. Therefore, the question arises as to whether haematologists can even prescribe the aforementioned medicines to patients who have not yet reached this phase. This also poses a question on the exercise of the patients' right to be informed, since patients will justifiably doubt whether their haematologist has withheld important information on their disease, which may be advanced, since there actually is a medicine for that phase of the disease.

The Ombudsman assessed that any second thoughts and fears of lymphoma and leukaemia patients were justified. Therefore, we proposed to the ZZZS to publish a suitable explanation and eliminate doubts on the suitability of the proposed solutions.

After our enquiry at the ZZZS, we received a letter from the Ministry of Health (MZ) in which they proposed to the Management Board of the Institute to revoke or modify the decision on the determination of the therapeutic group of medicines with imatinib. The MZ points out that **prescribing medicines outside their applicable indications is not in accordance with regulations and is not acceptable either from the professional or ethical position.**

We informed the Medical Chamber of Slovenia of the problem, as we wanted to know how physicians could justify prescribing medicines to treat a disease for which the medicine has not been registered, and who would be responsible for the potentially harmful effects of such treatment, since the instructions of the medicine manufacturer explicitly state the indications for which the manufacturer actually assumes responsibility. We assessed that physicians and the ZZZS, which supervises the release of medicines, will be under additional pressure from patients due to the new arrangement. Despite several reminders, we did not receive a reply from the Chamber.

The information on the procedures for preparing therapeutic groups of medicines that emerged in public differed significantly. Therefore, we proposed that the ZZZS include the interested public or patient associations in these procedures as much as possible. In our opinion, mutual persuasion as to who has credible information is unproductive if the only profession to provide objective and scientifically-supported information does not take an unambiguous position regarding these issues. Unilateral information and refusing to cooperate do not benefit anyone in health care or the health insurance system.

Health-related holidays for children

A non-governmental organisation and several individuals sent us complaints that children in the Goriška region were discriminated against when it came to inclusion in health-related holiday programmes, and that the principles of fairness and equal opportunities were violated. The complainants substantiated their belief with the fact that people in the Goriška region had been informed of modified “criteria for the granting of health-related holiday pay later than in other regions.

Following enquiries and on the basis of the materials attached, we could not establish that the Health Insurance Institute of Slovenia (ZZZS) had changed the conditions published in the tender for the co-financing of holidays for children. The conditions were the same for several years, and this time, the ZZZS explained individual requirements in even more detail, since the Institute had established certain cases of abuse in previous years (holidays for children which were not supported by medical reasons). We assessed that interpreting individual requirements in more detail did not signify a change in tender conditions, but it may point to the fact that the text of the tender was not accurate enough.

The manner of informing the public of the anticipated holidays for children should be defined in the contract concluded by the non-governmental organisation and the ZZZS. Therefore, it is our opinion that the non-governmental organisation should promptly respond to a reduced number of applications, and resolve potential ambiguities in tender conditions prior to the conclusion of the tender.

The Ombudsman did not establish discriminatory treatment of children when being referred for treatment, since the same criteria applied to all children in Slovenia. The only question is how individual paediatricians understood these criteria and issued referrals. Discrimination or violation of the principles of fairness and equal opportunities would have occurred if, with the same criteria, paediatricians intentionally refused certain individuals a right which children in other regions had no problems exercising. According to our assessment, notifications from the ZZZS neither created nor required such discrimination.

2.12.5 Restriction of the Use of Tobacco Products Act

We received a complaint regarding the actions of a municipality which did not observe the initiative of a resident to prohibit smoking on a children’s playground. The complainant believed that smoking on children’s playgrounds was harmful and should be restricted.

The Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) found no irregularities in the procedure. The resident’s complaint was also handled by the Municipal Council. Prior to that, the latter had acquired the opinions of certain state authorities, which could contribute to the resolution of the problem which the complainant pointed out.

Since the law facilitates the handling of wider issues relevant to the protection of human rights and fundamental freedoms, and to legal security of residents in the Republic of Slovenia, we attempted to establish whether the municipality, within its competences and tasks, could restrict smoking in a public area which is not included in the Restriction of the Use of Tobacco Products Act (Official Gazette of the Republic of Slovenia, no. 93/07 – official consolidated text). We were particularly interested in how a potential restriction of smoking on a children’s playground would affect people’s rights and freedoms.

Both the Municipal Council and the Ombudsman established that the Restriction of the Use of Tobacco Products Act provided no legal basis for the municipality to restrict smoking in certain public areas with its own regulation. With the aforementioned Act, the legislator merely wished to protect the health of residents by restricting certain rights of manufacturers and sellers of tobacco products, and of individuals as users of these products. Therefore, it is understandable that the law does not leave it up to municipalities, local communities and other legal entities to independently (but to a limited extent) regulate an issue that concerns all residents of the Republic of Slovenia.

We believe that options to legally arrange the issue under discussion should be sought in the Local Self-Government Act (Official Gazette of the Republic of Slovenia, nos. 94/07 – official consolidated text, 14/10 and 84/10 – Constitutional Court Decision), and in the Environmental Protection Act (Official Gazette of the Republic of Slovenia, no. 39/06). The second paragraph of Article 21 of the Local Self-Government Act determines the tasks of municipalities, and also includes care for air protection, and the promotion of sport and recreation development.

The Environmental Protection Act anticipates *inter alia* environmental protection programmes adopted by municipalities (Article 38), where, in our opinion, air pollution in areas intended for common use could be classified. In all fairness, we must admit that the programmes which we are familiar with do not anticipate such measures.

In our opinion, restricting smoking on children's playgrounds that are intended for the recreation of the youngest would be a step towards a legitimate objective to reduce air and environmental pollution. No one can claim the right to pollute air and the environment with disturbing cigarette smoke and stubs which, as waste, may pose a threat to the health of the youngest who encounter them.

We assessed that the municipality would regulate in more detail the right to a healthy living environment, as referred to in Article 72 of the Constitution of the Republic of Slovenia, by restricting smoking, which we believe would not constitute an excessive infringement of people's rights.

The municipality did not comply with our position, and insisted that prohibiting smoking on children's playgrounds would require explicit legal authorisation in the Restriction of the Use of Tobacco Products Act.

2.13

SOCIAL MATTERS

| Area of work | Cases considered | | | Resolved and founded | | |
|--------------------------------|------------------|------------|--------------|----------------------|----------------|--------------------------------------|
| | 2013 | 2014 | Index 14/13 | No. of resolved | No. of founded | Percentage of founded among resolved |
| 3. Social security | 285 | 287 | 100.7 | 242 | 67 | 27.7 |
| 3.1 Social benefits and relief | 109 | 114 | 104.6 | 99 | 32 | 32.3 |
| 3.2 Social services | 23 | 18 | 78.3 | 15 | 5 | 33.3 |
| 3.3 Institutional care | 46 | 52 | 113.0 | 41 | 7 | 17.1 |
| 3.4 Poverty – general | 33 | 19 | 57.6 | 17 | 4 | 23.5 |
| 3.5 Violence – anywhere | 17 | 17 | 100.0 | 13 | 4 | 30.8 |
| 3.6 Other | 57 | 67 | 117.5 | 57 | 15 | 26.3 |

The number of complaints regarding social security is almost the same as a year ago. However, the information that 27.7 per cent of complaints were founded is alarming, as it means that the rights of the especially vulnerable group of socially deprived persons were violated.

This year, we can repeat the finding that people are insufficiently informed of their rights and procedures in which they may exercise those rights. Perhaps (“just in case”) that is why they send their complaints to various entities which, however, cannot solve their problems, as they are not competent (e.g. the Human Rights Ombudsman of the Republic of Slovenia, the Commission for the Prevention of Corruption, the President of the Republic of Slovenia, etc.). This causes additional problems for individual authorities if they wish to observe regulations and send a letter to the competent authority within the set time limit, and notify the complainant of this. The Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) believes that people must be better informed and able to acquire all information on various options for exercising their rights at the “entry point” to the social security system. The Ombudsman proposed that the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ) enhance the personnel capacities of social work centres, and prepare suitable informative material (leaflets) which informs people of their rights in a simple and transparent manner. Transparent legislation which also legally uneducated clients could understand would no doubt improve public awareness, which we pointed out in last year’s report.

In our latest reports, we also alerted to the inefficient resolution of appeals against decisions on the rights to public funds, as the MDDSZ is still not deciding appeals within the statutory 60-day time limit. In fact, the number of unresolved complaints whose movement may be monitored on the website of the Ministry has significantly declined, but we will not be satisfied with the situation until the legislation is fully observed. Therefore, we emphasise again that unacceptable backlogs in resolving complaints are undermining the foundations of the social state and state governed by the rule of law.

The greatest problem in the field of social security remains the growing poverty of certain residents who do not have any kind of income except social relief. Non-governmental organisations have also been emphasising that certain people cannot live a decent life even with their assistance. Unfortunately, the Ombudsman does not have the funds to allocate to the most deprived people. Thus, we may only refer complainants to social work centres, the Red Cross, Caritas Slovenia or the Slovenian Association of Friends of Youth, which cannot satisfy all the needs for such assistance. We are occasionally alerted to the issue of the compulsory health insurance of social deprived people and especially of their children, whose compulsory health insurance should be unconditionally provided. According to the Health Insurance Institute of the Republic of Slovenia, the health insurance of children whose parents are unemployed or do not receive social relief should be arranged by the municipality where the child permanently or temporarily resides. In such cases, the municipality also files an application for inclusion in insurance. The Ombudsman informed the non-governmental organisation which alerted to the aforementioned problem several times about this option, but we believe may establish that social work centres should also be able to provide such information to people affected.

In 2014, we again addressed the problem of violence against elderly persons, which was also increasing due to the poorer social situation of certain families. Elderly persons are more and more frequently the only members of households with a regular income (pension) which they use to help their children's families survive. In last year's report, we proposed that the Government of the Republic of Slovenia adopt a comprehensive strategy to protect elderly persons against violence and all form of exploitation, which, however, remains an unrealised task. Therefore, the problem in this field remains the same as described on pages 283 and 284 in the Annual Report for 2013.

Example:

To find housing with the assistance of a social work centre?

During a visit of the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) outside the head office, a complainant informed the Ombudsman and a professional about the housing and social problems she and her daughter encountered. The complainant stated that she had been receiving monetary social relief and assistance from humanitarian organisations, but the social work centre (SWC) was not responding to her problems. Due to disorderly living conditions, her daughter was at a juvenile facility and visited her mother only at weekends. The complainant stated that she wished to put her dwelling in order so that she could live with her daughter again.

The Ombudsman enquired at the competent SWC regarding the complainant's statements. We wanted to know in what conditions the complainant was living, how the SWC helped her to resolve her housing problem, and what kind of assistance she had been offered in the previous two years. We were also interested in what other kind of assistance may be offered to her.

In its reply, the SWC explained that they had encountered this family's problems a few years before, after the daughter had been hospitalised due to depression following her father's death. At the time, the complainant and her daughter frequently argued, which required the assistance and intervention of the SWC. The daughter wished to be placed in a juvenile institution and spend weekends at home, to which the mother agreed. The SWC assessed that the placement of the daughter in a juvenile institution was to her benefit, which was later confirmed, as she made great progress there. In their opinion, the conditions for the mother and daughter to live together have not yet been met due to the continuing personal distress of the daughter and problems in her relationship with her mother.

In its reply, the SWC also explained that the complainant had been offered assistance in recent years in the form of counselling to resolve her personal and mental distress, and regarding her relationship with her daughter. The SWC claimed that they constantly encouraged the complainant to assume responsibility for actively resolving her situation. The SWC further stated that the complainant had managed to acquire a permanent residence permit in the Republic of Slovenia with assistance and encouragement from the SWC, taken a course in Slovenian, and exercised her right to monetary social relief and to child benefit, and also to extraordinary monetary social relief several times a year. With the assistance of the SWC, she also made contact with humanitarian organisations, which provided her material assistance, and with private donors, who gave her some furniture.

The SWC also offered to help the complainant with completing the application for the allocation of a non-profit dwelling, and for this purpose, provided its opinion on the social conditions in the family. The SWC claims that, in accordance with their competences, they provided the complainant with suitable assistance regarding her housing problem. It claims that, in its opinion, the complainant does not accept the fact that the SWC cannot arrange for her to rent a house with a garden, but it may provide assistance for her to apply for non-profit dwellings, and for this purpose, provide its opinion on social conditions in the family or provide her with information on the possibility of renting a flat or house on the private market. The SWC is aware that, in this case, they could not meet the complainant's expectations. Therefore, she probably felt that the SWC was ignoring her problems. Nevertheless, they have stated that they will further monitor this family, and provide assistance, support and counselling to the complainant if necessary and in accordance with their capacities and competences.

Following the receipt of our enquiry, the SWC invited the complainant for an interview, where they explained to her again that her expectations were excessive, and presented their competences. On this occasion, the complainant expressed her wish to have her own house with a garden, which, she believed, should be provided to her by the SWC, as a state institution, or the municipality.

The Ombudsman replied to the complainant that the reply from the SWC provided extensive information on the types and forms of assistance with which she and her daughter had been provided in recent years. We told her that the SWC helped us shed light on her housing problem, which was highlighted as the most pressing during our visit outside the head office. Considering the information referred to in the reply from the SWC, the Ombudsman assessed that the SWC provided the assistance to the complainant which is required and facilitated by its competences. We assessed its previous assistance as suitable, and expressed our belief that it would continue as such. We explained to the complainant that, regarding the acquisition of the desired flat, the Ombudsman agreed with the SWC that her expectations of state institutions were excessive. We told her that we could not agree with her opinion that the SWC had ignored her when she tried to resolve her housing problem. We emphasised that we understood her wish to have a new flat or even a house, but that the allocation of these was not in the authority of social work centres. The procedures for the allocation of non-profit dwellings are determined by regulations, and the SWC has been and will be assisting the complainant with their observation, but the SWC cannot grant her wish for a particular type of property if such a property is not available to be allocated to applicants. We assessed the complaint as unfounded. The complaint was included in the report as an example to show the amount of work certain unreasonable requests may require. Such unreasonable requests may be encountered in all fields of our work. 3.0-3/2014

2.13.1 Social benefits and relief

Automatic accounting of unjustifiably received public funds

The obligation to return unjustifiably received public funds is a burden for the most deprived people and their families, which poses an additional threat to their survival. The Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) is especially concerned about the automatic accounting of these funds with other public funds for which a person is eligible (the fifth paragraph of Article 44 of the ZUPJS), since the Ombudsman established that social work centres (SWC) withhold the payment of public funds in full until the debt arising from unjustifiably received public funds has been settled. The Ombudsman believes that such actions are in contravention of the provision that the right to public funds is monthly reduced, depending on the amount of unjustifiably received public funds and on the number of months until the right has expired. The ZUPJS allows the option (the sixth paragraph of Article 44 of the ZUPJS) that the SWC and a person conclude an agreement on the manner and time of the return of unjustifiably received public funds. In practice, as established by the Ombudsman, such agreements are not concluded, nor are beneficiaries informed of such an option. One of social work centres explained to the Ombudsman that, following the issue of a decision, this option could not be exercised in cases when funds are automatically accounted. In other cases (referred to in the fourth

paragraph of Article 44 of the ZUPJS), clients are informed of the option to conclude an agreement only if they contact a social work centre due to problems with the return of unjustifiably received public funds.

The Ombudsman alerted the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ) to the established shortcomings. The Ministry replied that it would amend the standard provisions with a note stating the option of an agreement. In addition, automatic accounting of one right with another right will commence with a 30-day delay (of the date of the final decision) or from 1 September 2014, with a 60-day delay (of the date of enforcement of the decision). Within this time limit, a client will be informed of the option to conclude an agreement on the manner and time of the return of unjustifiably received public funds or to file an application for full or partial write-off of the debt. The client will be able to conclude such an agreement or file an application for full or partial debt write-off. The MDDSZ, which does not find the current manner of automatic accounting of unjustifiably received public funds acceptable, replied that an agreement could also be concluded by dividing the client's debt into equal parts, depending on the amount, until the right to public funds expires.

Prohibition of alienation and encumbering of real estate of recipients of monetary social relief and pension support

Pursuant to the provisions of the Social Security Benefits Act (ZSVarPre), beneficiaries of pension support or permanent monetary social relief, and other beneficiaries of monetary social relief who, in the three years prior to filing an application, received monetary social relief at least 24 times are prohibited from alienating or encumbering the real estate they own by a decision on the eligibility for monetary social relief or pension support issued by a social work centre, which is for the benefit of the Republic of Slovenia.

In 2014, the Ombudsman noticed an increase in the number of complaints about this regulation, with complainants saying that they were giving up monetary social relief, as they could not agree with the entry of the prohibition of alienation and encumbering of real estate, which meant they could not dispose of their real estate.

The Ombudsman believes that the entry of the prohibition of alienation and encumbering of real estate in the land register carried out to secure a monetary claim arising from monetary social relief and pension support paid **is an excessive interference with peoples' rights. Therefore, the Ombudsman proposes that the State secure its claims in a different, more suitable, manner.** We also wish to point out that it is unacceptable that the Ministry of Labour, Family, Social Affairs and Equal Opportunities needs more than six months to inform a recipient who wishes to return monetary social relief and pension support on what their debt is and how they can refund it.

Example

Slow response from the Ministry of Labour, Family, Social Affairs and Equal Opportunities to a complainant's application

A complainant who was a recipient of pension support contacted the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman). The complainant had decided to return public funds received due to a notice on the prohibition of encumbering and alienation of real estate. Therefore, he addressed an application for the calculation of debt arising from pension support received to the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ) in August 2013. Since the MDDSZ did not respond to his application within eight months, he requested the Ombudsman to intervene. The MDDSZ replied to the complainant only after our intervention. We considered the complaint founded due to the time the MDDSZ took to reply. 3.6.-4/2014

Beneficiaries of funeral costs pursuant to social legislation

A family member of the deceased is entitled to extraordinary monetary social relief as assistance with the coverage of funeral costs under the conditions stipulated by the Social Security Benefits Act (ZSVarPre). The

ZSVarPre stipulates that family members of the deceased are as follows: (1) the spouse or a person who lived with the deceased in a partnership equal to a marriage in terms of legal consequences pursuant to the act regulating marriage and family relationships; (2) a person who lived with the deceased in a registered same-sex partnership; (3) children, step-children and parents; (4) a person with whom one of the parents lives in marriage or partnership – which is equal to a marriage in terms of legal consequences pursuant to the act regulating marriage and family relationships – or in a registered same-sex partnership.

Compared to the previous regulation, the ZSVarPre significantly narrowed the range of beneficiaries of funeral costs. The Ombudsman believes that the applicable regulation is unfair and impractical. Pursuant to the ZSVarPre, not even certain relatives who, in practice, (expectedly) take care of, and bear, funeral costs (e.g. brothers or sisters, aunts, uncles, nieces and nephews, grandchildren, etc.) have the right to extraordinary monetary social relief as assistance with the coverage of funeral costs, let alone a person who is not related to the deceased who arranges a funeral. We handled a case when the funeral of the deceased was arranged by his sister, who had lived with the deceased in the same household, and another case when the funeral was arranged by a nephew who had lived with the deceased and had taken care of her for several decades, since her legal capacity had been revoked. The application for extraordinary monetary social relief as assistance with the coverage of funeral costs of both of them was rejected with the explanation that they were not family members of the deceased.

Therefore, we proposed to the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ) to study the problem pointed out, and inform us of potential activities of the Ministry towards preparing suitable amendments to legislation.

The MDDSZ replied that it had been informed of the aforementioned problem. The Ministry agreed that the range of beneficiaries was determined too narrowly and that, considering family relationship, it should be expanded to nephews and nieces, brothers and sisters, and grandchildren (but not to persons not related to the deceased). The MDDSZ promised that it would consider the problem pointed out in the preparation of amendments to social legislation on the basis of an analysis and assessment of financial consequences. We draw attention to the fact that the reimbursement of funeral costs only to relatives of the deceased is an unacceptable discrimination of all persons who arrange funerals but are not related to the deceased. Family relationships cannot be the reason for elimination when enforcing relief offered by the State when a person passes away.

2.13.2 Institutional care

In 2014, we did not receive any special complaints regarding high temperatures in retirement homes, since summer temperatures outside rarely topped 30 degrees Celsius. Nevertheless, we enquired at the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ) to establish how institutional care providers were prepared for high temperatures and what measures had been taken to improve living conditions.

The MDDSZ explained that retirement homes solve the problem in different ways, depending on the circumstances that call for individual measures. Most retirement homes do not plan air conditioning in their rooms, since such devices affect residents too directly, putting a strain on them. Therefore, most retirement homes persist with the installed cooling systems.

Example:

Waiting to be included in the service of guidance, care and employment under special conditions for several years

The mother of a 27-year-old son with a severe mental disorder contacted the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman). She said that her son had been waiting to be included in the service of guidance, care and employment under special conditions for several years. Applications were filed with four occupational activity centres (OAC); her son was only admitted to one of them as a trial, but this centre was too far away for him to be included on a daily basis.

The Ombudsman enquired at three OAC where the complainant's son was still on the waiting list, and established that he was 11th (out of 45 persons waiting) on the waiting list at the time, 120th (out of 140 persons

waiting), and one of four candidates on the waiting list to be accepted as a priority since 2012, respectively. There are no real possibilities for the son to be accepted at one of these centres within a reasonable time. Users who are included in this service never actually leave it. Generally, a vacancy is only available if a person is relocated, excluded or dies.

Meanwhile, beneficiaries who spend several years training for such employment, which is the only possible form of employment for them, wait at home to be included in the service of guidance, care and employment under special conditions, and do not maintain and upgrade their skills. On the contrary, they lose such skills. Thus, they are also denied one of the important possibilities for them to be included and to participate in social life actively. The State should expand the capacities of OAC and provide the persons affected with a higher quality of life. 3.5-77/2014

Institutional care for adults with the most severe mental disorders and with several disorders

The parents of children with the most severe mental disorders who are included in CIRIUS Vipava contacted the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman). The parents pointed out their concern for their children who lose the right to stay at an education institution when they turn 26. They stated that the Obalno-kraška, Notranjska, Goriška and the Northern Primorska regions do not have a centre to meet the needs of these persons when they grow up or for life. They believe that CIRIUS Vipava should at least maintain and expand the activity of institutional care for adults, since they have sufficient and suitably qualified personnel. Children with the most severe mental disorders and with several disorders require especially health care. Therefore, their parents believe that occupational activity centres are not appropriate for them when they are adults.

While handling the complaint, the Ombudsman visited CIRIUS Vipava and the newly-constructed residential unit Vipava of the Ajdovščina-Vipava occupational activity centre (Vipava OAC). CIRIUS Vipava commenced implementing the programme of institutional care for adults in 1999, when the institution was faced with a large generation of students, who, for various reasons, could not be included in other social institutions or go home. When they concluded the elementary school programme, they proceeded with social programmes at the same institutions, and all of them received a comprehensive rehabilitation programme. The number of persons included in the programme of institutional care for adults had been growing. In 2008, social security legislation was amended. Education institutions could no longer provide social security services. According to CIRIUS Vipava, preparations commenced at that time of users and certain employees in CIRIUS Vipava by the Vipava OAC for them to take over the programme of institutional care for adults. On 1 January 2014, 19 previous users of the programme of institutional care for adults in CIRIUS Vipava who met the conditions to be accepted at the OAC, and a few employees, including health-care personnel, were taken over. According to the Vipava OAC, providing health care for them should not pose a problem, but the question still arises as to whether the Vipava OAC could, within the applicable personnel norms, accept persons who require (particularly) as demanding health care as also required by certain children who are included in CIRIUS Vipava.

The Ombudsman also visited the Stara Gora unit of the Nova Gorica OAC, since this OAC is one of the options where children may be included following the conclusion of the programme at CIRIUS Vipava.

To get a more in-depth insight into the problem pointed out, the Ombudsman met non-governmental organisations which operate in the field of adults with special needs. At this meeting, waiting periods (several years) in occupational activity centres and poor meeting of needs in certain regions, especially in Primorska, were highlighted as problems. In this regard, we supported the construction of the Centre for training, work and care Draga Ig in Debeli rtič as soon as possible, which, according to the Ministry of Labour, Family, Social Affairs and Equal Opportunities, would include three residential groups for 24 adults with moderate, severe and profound mental disorders.

The Ombudsman believes that the accessibility of the institutional care for adults with moderate, severe and profound mental disorders, and with several disorders should be improved, and even regional meeting of needs should be striven for.

2.14

UNEMPLOYMENT

| Področje dela | Cases considered | | | Resolved and founded | | |
|---------------|------------------|------|-------------|----------------------|----------------|--------------------------------------|
| | 2013 | 2014 | Index 14/13 | No. of resolved | No. of founded | Percentage of founded among resolved |
| Unemployment | 46 | 44 | 95.7 | 37 | 13 | 35.1 |

In 2014, almost the same number of initiatives (44) was handled in the field of work under the heading of unemployment as in 2013 (46). 35.1 per cent of solved complaints were considered founded.

At first sight, it seems that there are not many complaints in relation to unemployment. But the aforementioned is especially the result of recording complaints by the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman). Many complaints expressing the complainants' problems with unemployment are closely related with other fields of our work (social problem, employment relationships, housing matters, social benefits). Therefore, they are shown in numbers in these thematic sets. We especially established violations of the right to personal dignity and safety referred to in Article 34 of the Constitutions of the Republic of Slovenia, and the right to safety at work referred to in 66 of the Constitutions of the Republic of Slovenia.

Realisation of the Ombudsman's recommendations made in the Annual Report for 2013

The Employment Service of Slovenia (ZRSZ) informed all its organisational units that there were no legal barriers to establishing the fulfilment of the conditions for the recognition of the right to unemployment benefit and making a decision on that right on the basis of the employment relationship, regardless of an incomplete procedure of excluding the worker from social insurance. This was agreed at a meeting of the Ombudsman and acting Director General of the ZRSZ Mavricija Batič in June 2014.

We are satisfied with reports from the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ) on the active role of the ZRSZ in monitoring its own efficiency, and on measures taken to improve the situation.

We also welcome the amended Rules on the implementation of active employment policy measures (Official Gazette of the Republic of Slovenia, no. 28/2014), since it facilitates the payment of travel expenses twice monthly to unemployed persons who attend the service of lifelong career orientation carried out by concessionaires with a granted concession to provide services for the labour market. Prior to the amendment, travel expenses were paid once annually. Regardless of the explanation of the MDDSZ – that advance payment of travel expenses to unemployed persons to attend educational activities, as proposed in our last year's report, would be a great barrier, since, following concluded activity, unjustifiably received funds would have to be calculated for each participant – we recommend again to consider our proposal. We cannot ignore the fact that unemployed persons are a very vulnerable group and many of them cannot provide funds to pay for travel expenses. Employees at the ZRSZ or the concessionaire are paid from budgetary resources, and therefore, their potential additional work with calculating travel expenses cannot be the reason for not introducing a system of advance payment of travel expenses to unemployed persons.

Example:

Acquisition of unemployment benefit

On pages 299 and 30 of the Annual Report for 2013 of the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman), we wrote about problems with the acquisition of unemployment benefit in cases when employers do not exclude workers from social insurance. We provided a separate report on this matter. Last year, the problem arose again. Only three months following the meeting between the Ombudsman and acting Director General of the ZRSZ, where it was explicitly stated that such problems would no longer occur, a complainant contacted us and requested assistance with exclusion from insurance. He submitted extraordinary termination, but the employer did not exclude him from social insurance. Therefore, he could not acquire unemployment benefit. He filed an application to establish the attributes of insured persons with the Health Insurance Institute of Slovenia (ZZZS) which has not been concluded yet. At the Institute, he received the information that he could not apply with the ZRSZ and acquire unemployment benefit until he was excluded from social insurance. Regardless of this information, the complainant took our advice and registered in the register of unemployed persons with the ZRSZ and filed an application for the recognition of the right to unemployment benefit. A civil servant explained to him that the application would be decided only after they received a decision from the ZZZS, which would be the basis for exclusion from insurance.

In view of the aforementioned agreement with the acting Director General of the ZRSZ, this information came as an unpleasant surprise. We enquired at the ZRSZ and requested an explanation. We believe that the ZRSZ could enter the complainant in the register of unemployed persons immediately, and decide on the application for the recognition of the right to unemployment benefit without waiting for the procedure to be completed by the ZZZS and for the exclusion of the person from compulsory insurance, since this procedure is lengthy and the person has no income.

In its reply, the ZRSZ explained that, following our meeting in June 2014, it informed its employees of what we had agreed, but obviously the message did not reach all those it should have, which they sincerely regretted. They assured us that the concrete case would be resolved promptly. At the same time, they would present the problem and solutions again with a special notification to persons authorised to manage employment and social security so that similar cases did not occur again.

The complainant's application for the recognition of the right to unemployment benefit was indeed immediately decided. However, the situation grew complicated again, since the ZRSZ did not take into account the income received by the complainant from supplementary work when calculating the amount of benefit. The complainant filed an appeal against the decision, which was referred to the MDDSZ to resolve it.

Since the appeal was not decided within a two-month instruction period as stipulated by the General Administrative Procedure Act, we enquired at the MDDSZ. The MDDSZ replied promptly, and informed us of a decision with which they had granted the complainant's appeal, set aside the decision of the first-instance authority, and remitted the case to the ZRSZ. At the time of the preparation of this report, the ZRSZ has not yet decided on the case, but we expect that to happen within the set deadlines.

The complaint was considered founded and our intervention successful. With our assistance, the complainant received unemployment benefit approximately two months after filing an application for the establishment of the attributes of insured persons with the ZZZS (the ZZZS made a prompt decision on this appeal due to our intervention, which is not mentioned here in more detail). The question is when the complainant would have received unemployment benefit if he had not contacted us. However, even after three additional months, he still does not receive the appropriate amount of benefit. All authorities reacted speedily to our enquiries and made suitable decisions on complaints. However, as mentioned before, the complainant still does not receive the benefit to which he is entitled even after six months following the extraordinary termination of his employment contract by the employer. The battle with the authorities (tilting at windmills) is a lengthy one. Hopeless? The powerlessness of people when fighting state institutions is obvious, and comes at a time when they are most vulnerable and need their assistance the most. It seems as if civil servants are not aware of their obligations and the privilege of being employed in the public sector, and carrying out work legally, professionally and with due diligence. All institutions did react speedily and appropriately to our enquiries, but if the complainant had not contacted the Ombudsman, who knows what the situation would be like today. We

can only hope that we do not have to mention the same problems, which “everybody knows no longer exist”, in our next report. 4.1-98/2014 and 4.2-5/2015

2.14.1 Work of employees at the Employment Service of Slovenia

Many complainants addressed criticisms of the work of employees at the Employment Service of Slovenia to the Ombudsman. They believed that their work was unprofessional, their knowledge of regulations insufficient; they could not provide assistance to unemployed persons, and they were not counsellors but merely mediators between employers who publish job vacancies at the ZRSZ and unemployed persons. But they definitely do not help unemployed persons to seek a job. The work organisation in certain regional units of the ZRSZ is equally unsuitable. Persons invited to mandatory interviews with counsellors must wait in halls and in this way, they are unnecessarily exposed to meeting other people, which is especially painful in small local communities. Human dignity is affected.

2.14.2 Other

Many complaints referred to issues regarding unemployment benefit. The complainants wanted to know when and for how long they were entitled to benefits, what the amount of the benefit was, and what would happen if they found a job or carried out public works while receiving the benefit.

Frequently, employees also sought information related to active labour market policy measures, and had questions about the deadlines within which the ZRSZ must decide on applications for the acquisition of unemployment benefit at the first instance, and the Ministry of Labour, Family, Social Affairs and Equal Opportunities in the complaint procedure.

2.15

CHILDREN'S RIGHTS

| Area of work | Cases considered | | | Resolved and founded | | |
|--|------------------|------------|-------------|----------------------|----------------|--------------------------------------|
| | 2013 | 2014 | Index 14/13 | No. of resolved | No. of founded | Percentage of founded among resolved |
| 15. Children's rights | 474 | 464 | 97.9 | 403 | 179 | 44.4 |
| 15.1 Contacts with parents | 45 | 59 | 131.1 | 51 | 7 | 13.7 |
| 15.2 Child support, child benefit, child property management | 48 | 53 | 110.4 | 51 | 21 | 41.2 |
| 15.3 Foster care, guardianship, institutional care | 25 | 35 | 140.0 | 33 | 13 | 39.4 |
| 15.4 Children with special needs | 47 | 52 | 110.6 | 45 | 20 | 44.4 |
| 15.5 Children in minorities and vulnerable groups | 0 | 1 | - | 0 | 0 | - |
| 15.6 Family violence against children | 31 | 30 | 96.8 | 28 | 11 | 39.3 |
| 15.7 Violence against children outside family | 22 | 20 | 90.9 | 16 | 5 | 31.3 |
| 15.8. Advocacy of children | 81 | 87 | 107.4 | 66 | 58 | 87.9 |
| 15.9 Other | 175 | 127 | 72.6 | 113 | 44 | 38.9 |

The number of cases regarding children's rights did not grow for the first time in several years. However, the information that the number of cases regarding particularly vulnerable groups of children who are in foster or institutional care, and of children with special needs increased is alarming. More advocacy cases may be attributed to the greater promotion of a project which has been running for eight years and is coordinated by the Ombudsman. The information on the above-average number of founded complaints is also interesting. It shows that the activities of all competent authorities in this field must be enhanced to create a situation for children ensured to them by the Constitution, the Convention on the Rights of the Child, and legislation.

The problems in this field remain the same, since the legislation was not amended in 2014. We still do not have a suitable division of competences between social work centres and courts, and Slovenia has not yet prohibited the corporal punishment of children. In this regard, an action brought against Slovenia in 2013 for not complying with the European Social Charter, which we wrote about in last year's report, was decided by the European Committee of Social Rights of the Council of Europe in May 2015 which established a violation of Article 17 of the European Social Charter.

We repeat the criticism of the State made last year that the State finds it incredibly easy to sign an international convention, but during the procedure of its ratification, establishes various barriers that require amendments to legislation (as if this were a major problem) and even more frequently, changes in established practice. The Ombudsman emphasises that all proposals for international documents must be monitored throughout their preparation and promptly reacted to by at the competent international authorities and within the State, instead

of simply signing commitments just to create the impression of a well-regulated democracy. On page 304 of the Annual report for 2013, we pointed out that the National Assembly, when discussing our report for 2012, decided that “competent ministries should establish actual and legal obstacles to the ratification of treaties in the field of children’s rights, and prepare everything required to ratify these treaties as soon as possible”. The decision of the National Assembly remains unrealised. Therefore, **we propose that the Government of the Republic of Slovenia to establish who is responsible for this, and to take suitable actions.**

We expect the Optional Protocol to the Convention on the Rights of the Child, about which we wrote in last year’s report, to be adopted in 2014. **We propose to the Ministry of Foreign Affairs to analyse cooperation in the preparation and signing of the aforementioned Protocol, and assess the reasons why all the problems that have prevented the ratification of the Protocol were not clarified during the preparation and signing of the Protocol.**

In 2014, we continued to regularly cooperate with non-governmental organisations within the scope of the ZIPOM centre, and we occasionally met various associations and interest groups which deal with the protection of children’s rights. In November 2014, on the occasion of the 25th anniversary of the adoption of the Convention on the Rights of the Child, we organised a very popular conference on the participation of young people together with the National Assembly and the ZPMS. We published the proposals and positions of young people on the World Wide Web, and next year at this time, we plan a new conference where the realisation of individual proposals and requirements of young people will be established. The requirement to include more topics of civic education in the programme for elementary schools was discussed by the Committee on Education of the National Assembly.

In 2014, cooperation with child advocates in other countries was carried out within the ENOC and CRONSEE networks. We discussed in particular how national austerity measures have affected the position of children and their rights. Other countries face similar problems and attempts to reduce funds for rights exercised by vulnerable groups, while financial investments in the banking sector have been disproportionately increasing, which results in social stratification.

As we do each year, we actively participated in discussions at regional children’s parliaments and at the national children’s parliament organised by the Slovenian Association of Friends of Youth also in 2014. We assess that children’s parliaments are a valuable acquisition, since they enable children to make adults actually hear their opinion on all issues they are interested in or which involve them in some way. We believe that the State should stimulate all forms of children’s participation also through suitable financial support for non-governmental organisations that carry out such programmes.

2.15.1 Advocate – A Child’s Voice Project

in 2014, since the Government of the Republic of Slovenia **has not yet realised the decision of the National Assembly on the drafting of a special act**, the pilot Advocate – A Child’s Voice Project was also implemented under the auspices of the Ombudsman. Currently, 42 active advocates (while there are over 80 qualified advocates) are involved in the project, and an advocate has been assigned to over 450 children since the project commenced.

In 2014, we received 63 initiatives to appoint an advocate, who was appointed in 41 cases for 61 children. The appointment of an advocate was initiated by social work centres in 26 cases (of 41 appointments), by courts in five cases and by one of the parents in ten cases.

An advocate was appointed by a decision of a social work centre in three cases, a decision of a court in five cases, and with the consent of parents in other cases.

In 2014, we introduced a selection procedure (interviews with applicants) and included 19 applicants for advocates in training. 48-hour training was concluded by 18 applicants.

We also carried out two two-day expert consultations for the participants in the project, and the Ethics Committee, which addresses violations of the Code of Advocacy, commenced its operation. With this, we wish to establish best practice in this field.

Since our desire is to conclude the pilot project and regulate advocacy institutionally, we attempted to determine, in agreement with the Faculty of Social Work at the University of Ljubljana, options to expand the training for advocates in terms of content and to formalise it to make it state-approved. Unfortunately, the accreditation requirements for such a programme exceed the framework of the pilot project. However, this issue will have to be resolved when deciding on the institutionalisation of advocacy.

2.15.2 Family relationships

We pointed out last year that the lack of solutions brought by the Family Code that had been rejected at a referendum could be increasingly felt. Therefore, we propose that the Ministry of Labour, Family, Social Affairs and Equal Opportunities speed up the drafting of a new act in this field.

The Ombudsman intends to be intensively included in the preparation of new legislative solutions. Prior to the preparation of new legislation, the Ombudsman will be especially committed to the issue that was pointed out at the end of 2014 by a group of fathers who assessed that current arrangement, especially the practice regarding custody, discriminates against fathers and privileges mothers. For this purpose, a consultation is planned for May 2015 where experts from various fields will attempt to highlight all the problems each child whose parents no longer wish to live in a partnership must face. Proposals made during the consultation will be included in discussions on required legislative amendments and establishment of best practice with the competent ministries.

Example:

A father could not acquire enrolment certificates for his children

The complainant wanted to acquire enrolment certificates for his two children. The children's parents are divorced, and the custody of the children was given to the mother. The school did not want to issue the certificates to the complainant, since the mother of the children prohibited any issue of certificates or documents referring to the children without her knowledge and permission.

We requested the school to provide a legal basis for the position that they would not submit enrolment certificates to the father. In its reply, the school explained the complexity of the relationship between the parents and how they were causing problems for one another, as well as the mother's prohibition. The school provided no legal bases.

Several days after our enquiry, the complainant informed us that the school had sent the certificates to him. We submitted our position to the school that each decision to prevent one of the parents from seeing information about the child's schooling must have an explicit legal basis. Otherwise, this constitutes an interference with the rights of both parents and children. Similarly, any child-related prohibition made by the parents must have a suitable legal basis. If not, it cannot be observed, especially in relation to the other parent whose parental rights are not restricted. In our opinion, the aforementioned dilemmas should be resolved by the law, which we proposed in last year's report. 11.0-17/2014

Example:

The existence of cohabitation as a preliminary issue

When deciding on the right to public funds, a social work centre (Centre) decided that the applicant lived in cohabitation and made a decision on this basis. An appeal was filed against this decision, which was rejected. At a later point, an action was brought before the Social Court. The Centre decided that, pending the Court's

decision, it would not decide on **other** applications of this person where the existence of cohabitation was relevant to the decision.

In accordance with the provision of Article 147 of the General Administrative Procedure Act (ZUP), an authority may decide to suspend a procedure pending the resolution of a preliminary issue by the competent authority if the matter cannot be resolved without resolving the preliminary issue; such an issue is an independent legal whole that falls under the jurisdiction of the court or the competence of any other authority.

We assessed that the decision to suspend the procedure constitutes an interference with the complainant's rights for the following reasons:

The Social Court may address the issue of the existence of cohabitation by establishing whether cohabitation existed at the time that is relevant to the filing of the application which initiated the issue of the decisions that are being contested before the Court. Regardless of the findings of the Social Court, their decision will not resolve the existence of cohabitation in another period. The Social Court is not an authority competent to establish the existence of cohabitation such that it which would make its decision binding on all other authorities. Article 148 of the ZUP stipulates that a procedure must be suspended if a preliminary issue refers to the establishment of the existence of marriage. However, we believe that the existence of marriage is a significantly different situation, which means that this issue cannot be marked as preliminary, which could be the basis for the suspension of the procedure. Marriage is a form of partnership that may be established. Such a situation applies until divorce. However, none of the aforementioned applies to cohabitation, which may be established for a precise period, but based on its existence, no assumptions may be drawn about the previous relationship between the partners.

The Centre accepted our position, and resumed the suspended procedures. 11.2- 362013

2.15.3 Rights of children in kindergartens and schools

In 2014, the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) handled a slightly lower number of complaints related to general problems at kindergartens and schools than in 2013.

We did not receive any complaints regarding the admission of children to kindergartens. It seems that the measures taken by the MIZŠ and municipalities in this relation were suitable. Parents are better informed of vacancies, admission rules and related rights. We assess that parents are also better informed of the competences of individual supervisory authorities and referred directly to them.

There is a problem of ensuring the desired food in kindergartens and schools due to religious or other beliefs. Parents are obliged to submit an appropriate medical certificate to the kindergarten or school, i.e. that a child may only eat a certain type of food. Not all doctors are comfortable with issuing such certificates, since they believe that there are no reasons a child should always eat lunches without pork or only vegetarian food. Understanding these wishes still overly dependent on the management of institutions and organisers of school meals.

We handled an interesting complaint regarding the provision of a special diet in schools. The parents required such a diet, but when measuring the pupil's blood sugar on Mondays or after the holidays, the school established that the parents did not observe medical restrictions and the prescribed diet during weekends and holidays, when the girl ate all her meals at home. The school conditioned the preparation of diet meals by the school with the observation of the diet at home. Regarding the complaint, we merely explained to the parents their rights and also pointed out their obligations.

Certain complaints reflected dissatisfaction with work organisation in schools, e.g. granting of a longer annual leave to a teacher during the school year, and dissatisfaction with surveys among pupils on the work of individual teachers and their well-being at school and at home. Following the review of questions in the survey submitted by the parents, we assessed that some of them may excessively interfere with the autonomous sphere in families, which we pointed out to the school.

We replied to questions from several parents regarding the competences and tasks of counselling services in schools. They complained that counsellors assumed too many rights when dealing with their children. We referred the parents to the MIZŠ to acquire substantive replies to their questions – what are the tasks of counselling services in schools; in what manner and in which cases may a counsellor question children – should a counsellor acquire a parent's consent in this case or speak to children only in the presence of their parents; may the counsellor submit the information collected, including the child's name, to a teacher; is a counsellor obliged to show a transcript of the discussion with a child to the parents at their request. We explained to the parents that the fundamental document for the work of counselling services in schools is the Programme Guidelines for Counselling Services at School adopted at a session of the Expert Council for General Education in 1999. These Guidelines are a document for the organisation and operation of counselling services in schools. On their basis, each school prepares a description of the work and tasks of individual counsellors, and discussions with pupils in various cases and situations are certainly included in their tasks (e.g. in disputes among pupils). The Ombudsman believes that counsellors in school may be pupils' confidants, to whom they turn when they are in distress, even in distress brought on intentionally or unintentionally by teachers or other employees. We explained that it was not wrong if counselling services asked pupils about teachers' behaviour towards pupils and teachers' actions. In our opinion, such discussions do not require the consent or presence of parents. The latter would be necessary if a child were questioned by police officers or criminal police officers who wanted to take an official statement from them (which might be used in an investigation procedure or potential judicial proceedings) about an event that happened at school (among pupils or between employees and pupils) and may have elements of a criminal offence.

We again handled several complaints regarding public exposure of individual pupils (in front of the class or in school canteens), and consequently their stigmatisation when parents did not settle the costs of school meals. We alerted schools to the inappropriateness of such actions.

We explained to the headmistress of a school how to react to a request from the mother of a former pupil to issue a copy of his certificates and the final certificate. The boy was in the custody of his father, and the school had never had any contact with the mother. We advised the headmistress to establish whether the mother's parental rights had been revoked with a court decision, and whether the court had decided to prohibit contacts between the mother and her child, her other responsibilities and obligations to the child, and the rights that had been potentially restricted. If the court has never decided on this matter and has not prohibited contacts between the mother and her child, we believe that there is no reason for the school not to give the mother her son's certificates.

We handled a complaint in which the headmistress of a kindergarten requested our opinion on whether a more than 9-hour stay of a child at kindergarten constitutes a violation of the child's rights. An hour-long extension of the child's stay at kindergarten was requested by a company that had decided to extend working hours for employees from eight to nine hours per day for a fixed period (one and a half months) due to an increased number of orders. We explained to the headmistress that nine-hour care is a period which small children may spend daily outside their family and environment. Therefore, this period is justified from both the professional and legal aspect. If extended workdays for employees at a company are determined for a fixed period (for six weeks in the concrete case), we could hardly deem it a violation of children's rights. Our assessment is undoubtedly influenced by the current economic situation in numerous families, since losing a job by refusing an employer's request to adjust hours for a fixed period would push them into an even more difficult situation.

School violence

Most complaints regarding school violence were complaints from individual parents about teachers' actions when disciplining restless and overly boisterous pupils who disrupted lessons. We handled the same number of complaints in this field (18) as in 2013. We referred the complainants to the competent bodies in schools, and to the Inspectorate of the Republic of Slovenia for Education and Sport. Three complaints pointed out the problem of peer violence, and one of them mentioned the violent behaviour of pupils towards their peer at Deskle Elementary School, which is described in the "Social activities" chapter in more detail. This chapter also includes more information on children's rights exercised by parents in kindergartens and schools in various administrative procedures.

In 2014, we did not handle any complaints regarding the so-called initiation of newcomers to secondary schools about which we wrote on page 310 of our Annual Report for 2013. Obviously, the circular by the Ministry of Education, Science and Sport that we proposed fulfilled the intended purpose.

2.15.4 Problems of children with special needs

In 2014, the number of complaints in this field increase by two in comparison with 2013. We handled 44 complaints, compared to 42 in 2013. The complaints from which problems were summarised were considered founded, since the position of these children is still not satisfactory, despite improvements at the systemic level.

Parents of children with special needs (SN) complained about the organisation and reimbursement of travel expenses for transport to suitable institutions, the employment of assistants of children whose decisions on placement require it, the reduction of the number of assistants for children who are included in institutions, the adjustment of lessons, and knowledge testing and assessment of children with problems in certain areas of learning, and about decisions issued on the placement of a child in a suitable institution when parents did not agree with such a placement. Certain complaints referred to the right to a higher child care allowance and the right to partial payment for lost income, which depend on the opinion of the medical commission regarding the type and level of a child's disability. In a few cases, the parents did not agree with this opinion. In these cases, we merely informed the parents about their options to appeal.

One complaint had a problem when exercising the right to partial payment for lost income which the complainant wanted to exercise as a cohabitant of the child's mother. The complainant was neither the child's father, nor guardian or adopter, but considering the fact that, as he claimed, he cared for the child with special needs, he would like to exercise that right. Based on the reply from the MDDSZ to our enquiry, we explained to the complainant the restrictions related to the exercising of this right, which are determined with regulations, and the procedures he should carry out to exercise this right.

When handling complaints related to assistants of children with special needs, we established that there was a problem appointing assistants of children with severe physical and mental disorders who are placed in adapted programmes with lower educational standards. Our finding was also confirmed by the MIZŠ. An assistant of such children cannot be appointed on the basis of the Placement of Children with Special Needs Act (ZUOPP). In the reply to our enquiry, the competent authorities ensured us that the proposed amendment to this section of the ZUOPP had been drafted and was waiting for the new Government and National Assembly of the Republic of Slovenia to commence operation in autumn 2014. In July 2014, an amendment to the Rules on norms and standards for the implementation of educational programmes for children with special needs was adopted. Article 12 of transitional and the final provision of these Rules stipulates that schools may classify the job of an assistant of children with physical disabilities for children who have acquired this right with a decision on placement issued prior to 1 September 2013. The Rules entered into force on 1 September 2014. Even according to this regulation, assistants of children with severe physical and mental disorders who are placed in adapted programmes with lower educational standards could not be appointed. However, the competent authorities replied to the Ombudsman that they were attempting to positively solve all requests from schools for assistants of children with physical disabilities who need them urgently, and that they would strive to continue to act in this manner.

In 2014, we monitored the problem of an elementary school with an adapted programme – Dr. Ljudevit Pivk Elementary School in Ptuj – that, despite the unwillingness of certain neighbouring municipalities to co-finance it, continued to construct new facilities, particularly thanks to the understanding of the competent ministry.

We were alerted to open questions regarding the construction of the training centre for persons with special needs on the coast by parents who must drive their children from the coast inland on a daily basis. In its reply, the MDDSZ promised that the construction would start in accordance with the validity of the building permit. It seems that the construction of the aforementioned centre will commence in 2015, despite certain non-governmental organisations opposing the construction, as they are striving for deinstitutionalisation and the introduction of other forms of assistance. The Ombudsman does not oppose the construction, but highlights that certain children and their parents are in urgent need of services that will be available to them at the new centre.

In 2014, we organised a meeting of representatives of non-governmental organisations (NGOs) whose programmes also extend to the field of children with special needs. Most organisations accepted the Ombudsman's invitation. They pointed out the following problems which we believe are justified:

- The lack of comprehensive early treatment of children with severe and profound mental disorders, including children with Down syndrome and autism, since such treatment is not systematically organised for the entire country. Within the scope of operation of this assistance, the problem, according to NGOs, is an excessively (or merely) medical approach. Certain NGOs, e.g. Sožitje - the Slovenian Association for Persons with Intellectual Disabilities, are attempting to develop wider treatment (also pedagogical treatment, physical therapy and others), but are faced with a shortage of personnel and finance. They believe that early treatment should exist as a multidisciplinary programme in several centres around the country (like the former developmental clinics, which were abolished). A draft programme for the operation of such centres is ready, and the legal basis for the operation is seen in the Equalisation of Opportunities for Persons with Disabilities Act (ZIMI).
- There should be a state register of children at risk, which should be managed by the Paediatric Clinic. There used to be a concept of 21 developmental teams with head offices in health-care centres (HCC). HCCs received funds for the operation. However, since there was no clearly established programme about early treatment, the funds were used for other purposes. Parents also do not have an organised counselling office for parents. They propose the adoption of the Early Treatment Act, drafted by Sonček - the Cerebral Palsy Association of Slovenia several years ago. Obviously, the issue is that nobody assumes responsibility for comprehensive early treatment, since therapists who should participate in the programme do not receive regular training on the basis of new trends. Another problem is the profession. The medical profession should be the leader which should attract other professions (rehabilitation, pedagogy, neurology, physical therapy) to participate. Representatives of NGOs emphasised the increasing number of complaints due to the rejection of the right to partial payment for lost income with the explanation that the cases do not include the most profound physical and mental disorders. They pointed out that special education institutes are only one of the solutions for these children. Their placement and training are costly, since the costs for one child are several thousand EUR per month. If parents decide not to place their child in an institute, the child remains at home; the parents may exercise the right to partial payment for lost income (slightly more than EUR 500), child benefit and child care allowance.
- When organising "one school for all", schools that decide to accept children with special needs should have the option to employ a health-care expert. NGOs proposed that the curricula of most elementary and secondary schools be amended with topics from the field of children with SN.
- NGOs emphasised the problem of waiting periods for admission to occupational activity centres. They believe that there should be a "secondary" programme for adults after the age of 26. The field could also function more appropriately for children with deficits in certain areas of learning if it were not for frequent changes (at ministries). The problem is the wide gap between applicable regulations and their implementation.
- Certain implementing regulations have not yet been adopted. Frequently, providers of additional professional assistance do not have suitable knowledge and experience. The deficit is especially large in secondary schools where there is virtually no one to work with students with SN.
- A reform of tax policy should be carried out so that NGOs receive at least minimum tax relief if their services extend to fields that are the responsibility of the State.
- Efforts should also be made to include as many children with Down syndrome as possible in majority schools with their peers.

We handled complaints from parents of adolescents with Down syndrome who were concluding various adapted programmes and were facing a dilemma about where to include their children after schooling. They do not feel current occupational activity centres are an appropriate solution. In addition, waiting periods for admission are frequently measured in years. They presented an idea to us on the establishment of a day care centre that could

be organised in one of the existing educational institutions (e.g. in the Blind and Partially Sighted Youth) where children could stay during the day and be included in various activities, perhaps even work.

In 2014, the Ombudsman handled several complaints in which parents and representatives of schools alerted to problems with the inclusion of children with emotional and behavioural disorders. On the one hand, these children are not accepted by parents of other children, since parents are convinced that dealing too much with such children who frequently disrupt lessons with their behaviour constitutes a violation of their children's right to education and security. They put pressure on the management of schools for such pupils to be relocated to another school or a suitable institution. But on the other hand, representatives of schools and expert workers are often left to themselves when handling such problems, even if they seek professional advice and assistance at the MIZŠ and the National Education Institute. They asked us what to do and how to act to protect the rights of all children, including children with special needs who is enrolled at a school and has the right to education together with their peers. They have problems accepting our explanations that the Ombudsman is not the authority to provide advice regarding the application of work methods in classrooms, or propose or even decide on where it would be more appropriate for children with emotional and behavioural disorders to be educated. These questions are for experts, but the lack of expert authorities in all fields of special and rehabilitation pedagogy seems obvious. We should again highlight the problem that no options for the speedy and suitable treatment of children and adolescents who also have psychiatric disorders and are frequently aggressive or even dangerous to themselves and others are available in Slovenia. More on this can be found in the "Visits of the NPM in juvenile facilities" chapter.

Protocols of conduct in emergency situations

We handled an issue about how juvenile facilities should act if they include children and adolescents with emotional and behavioural disorders who have received decisions on placement from social work centres or courts if they have been issued an educational measure of committal to a juvenile facility. In 2014, the country was affected by a storm which triggered an emergency situation in several areas. In Notranjska, the most affected area, there are two institutions for care and education of children and adolescents with emotional and behavioural disorders: Planina Residential Treatment Institution (Planina RTI) and Logatec Education and Training Institution (Logatec ETI). Both institutions include *inter alia* adolescents subject to court decisions who have been issued an educational measure of committal to an institution, which means that they are perpetrators of minor or serious criminal offences. According to our information, the Planina RTI was closed for a week. Most children and adolescents remained at home (with parents, grandparents, foster carers or guardians), while certain children and adolescents were placed in the Malči Belič Youth Care Centre and crisis centres. The actions of the responsible representatives (the headmistress of the Planina RTI and the headmaster of the Logatec ETI) in cooperation with the MIZŠ regarding the relocation of adolescents was appropriate or at least logical, since staying at the institution without electricity, water and heating would have put the adolescents and employees at risk. Therefore, we sought information at the MIZŠ about whether there were any rules for actions in crisis situations. We were interested in whether any instructions had been given to institutions about appropriate actions, and whether the competent authorities were considering the preparation of a protocol of conduct for cases of natural disasters and informing employees in institutions, social work centres and the competent courts about such protocol. In their reply, the competent authorities explained that there were no written instructions, but that they were in contact with the management of both institutions on a daily basis, and together they coordinated activities to provide the most suitable and safe conditions for the temporary relocation of children and adolescents from the aforementioned institutions. They ensured us that they would study the Ombudsman's report together with the institutions, and prepare a special protocol of conduct for such situations.

Cooperation with non-governmental organisations

In 2014, we met representatives of the Union of Association of the Deaf and Hearing Impaired of Slovenia, the Association of the Deafblind of Slovenia "Dlan", and students and teachers at the Institute for Deaf and Hard of Hearing people Ljubljana which we visited at the end of the year. We were informed of the problem of deaf and hearing impaired children, adolescents and adults, as well as of deaf and blind persons. The core

of the problem is still the right of deaf children and adolescents to use sign language at institutions for deaf persons and majority schools (elementary and secondary schools, and higher education institutions) when deaf persons are enrolled in them. The problem in institutions for deaf persons is that many teachers do not use sign language in communication with deaf children and adolescents because they do not know it. Future teachers in schools for personnel (at pedagogical faculties) do not learn sign language to be able to use it. In majority elementary and secondary schools, and higher education institutions, the problem is that, according to the Act on the Use of Slovene Sign Language, any school where deaf students are educated should provide interpreters for them, which requires certain additional funds to be provided to such institutions by the State. In addition to the aforementioned problems, representative of NGOs in this field also emphasised the problem of the recognition of physical impairments. They want deaf persons to be classified as 100 per cent physically impaired. They also pointed out the problem regarding the acquisition of technical aids (light-signalling devices) to make life at home and at work easier for them.

At the end of the year, the forecast abolition of payment for additional professional assistance in schools and general reduction of funds for interest activities and out-of-school classes caused quite a stir. Therefore, we handled several complaints regarding this issue. We formed a position, which was published on our website.

There is also an unresolved problem from 2008 regarding the inequality of the treatment of children with special needs which arises from the type of the institution where a person is educated: a special education programme at an educational or special social care institution. Therefore, this problem is again pointed out by the Ombudsman.

2.15.5 Children in judicial proceedings – forcible removal of a child from an elementary school

We received a complaint from an elementary school from which a child was removed in an enforcement procedure. The school believes that the procedure was not carried out in the best interest of the child. A chronological report on information the elementary school (complainant) had at its disposal when the child was removed, and a description of the event (the execution of a decision to remove the child) as seen by the form teacher and deputy headmistress were attached to the complaint.

The Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) enquired regarding the complainant's statements at the competent social work centre (SWC). We requested the SWC to describe and explain the preparation and implementation of the removal of the child. We requested information on the people present at the removal, the assistance they provided to the child and on how they prepared the child for the removal. We also wanted information on all measures taken by the SWC to protect the child's rights and best interests.

The SWC submitted to the Ombudsman a summarised chronological review of activities of the SWC regarding the enforcement, and a photocopy of the minutes of the hand-over of the child prepared by the enforcement officer, with which all the people present agreed.

In its reply, the SWC explained that the family situation had been monitored prior to the enforcement. The child's mother filed the enforcement proposal and a proposal for an expert worker from the competent SWC to be present at the enforcement with the local court. Following the reception of the decision on the permitted proposed enforcement, the SWC discussed the case at the professional board meeting, where the emphasis was placed on determining the tasks of expert workers witnessing the enforcement which would protect the child's best interests during the procedure. The SWC coordinated the enforcement by phone with the headmistress of the school (time, place, and the person who would bring the girl). The SWC states that the headmistress was informed of the enforcement beforehand by the enforcement officer and a lawyer. Coordination by phone was also carried out with the mother's lawyer and the enforcement officer, who had been informed of the father's position that he had not intended to expose his daughter to a coarse execution of the enforcement, but he also had not intended to leave his daughter to her mother until it was certain that he had to hand the daughter over. Prior to the enforcement, the expert worker from the SWC informed the headmistress in a private conversation of important information on the girl's family situation, and the role and competences of the SWC in the enforcement. The headmistress informed the SWC of the plan agreed with the enforcement

officer. Prior to the hand-over the child to her mother, all persons present agreed on the details regarding the roles and tasks of individual participants.

The SWC explained that the child initially was not willing to go with her mother. Therefore, the expert worker from the SWC carried out a separate private discussion with the child. In this discussion, the worker explained the procedure to the child in an age-appropriate manner, and the child had the opportunity to express her experience of the procedure and consequences, her concerns and fears regarding her parents and move. The mother and her child then had the opportunity to meet in private for a short period, and when they exited the office in an embrace, the expert worker assessed that the procedure could proceed and the hand-over of the child to the mother could be carried out.

In its reply, the SWC described the methods and efforts to protect the child's rights and best interests from learning about the case to the enforcement.

The Ombudsman assessed the statements in the report and compared them to the statements of the school. However, no violations that could be a basis for the Ombudsman's potential further action in the removal procedure were established. The Ombudsman noticed no irregularities in the implementation of the measures, and cannot claim that the SWC did not comply with regulations. However, the Ombudsman cannot assess whether a professional error was made during the removal of the child.

Based on the statements in the report of the SWC and of the elementary school, the Ombudsman establishes that the procedure could have been carried out in a manner that would have affected the child and her classmates who witnessed the event less. Since, upon the hand-over, the child was told that she was only going to talk to her mother, but was then ordered to take her school bag, winter jacket and shoes, the child could have anticipated what would happen and therefore resist leaving when other children were around. We believe that it would have been more appropriate if the child had not been burdened with this, and that her personal belongings could have been picked up by her mother's lawyer, while the child and her mother talked in a separate room. In this way, a traumatic situation and the distress of the child could have been avoided prior to the hand-over to the mother. The unpleasant experience could also have been avoided for other children who witnessed the event.

The Ombudsman also believes that **schools are not an appropriate place for enforcements**, especially if the latter may be carried out in another place and do not harm the child. The main decision-making principle must always be the best interests of the child. Arising from the latter, we cannot claim that the enforcement in the school was not suitable, but it should have been carried out without other children being present. The complaint was assessed as partially founded. 11.0-18/2014

2.15.6 Right to participation

On the occasion of the 25th anniversary of the adoption of the Convention on the Rights of the Child on 13 November 2014, we organised a conference on the participation of children and adolescents in cooperation with ZIPOM, the Students' Organisation of Slovenia and the National Assembly at the premises of the National Assembly of the Republic of Slovenia. At the conference, approximately 100 children and adolescents from around the country spoke with representatives of state authorities, deputies of the National Assembly, and representatives of the expert and other interested public on the possibilities of exercising their rights which is rarely discussed in practice. The participants at the conference pointed out that the competent state authorities should listen to, and observe, the opinions of young people more frequently. In 2015, the competent authorities will be asked about potential barriers to their realisation, and a new consultation will be organised in November. The participants especially supported the proposal to study the suitability of the legal regulation of the right to vote acquired by young people at the age of 18. All proposals and requirements adopted at the conference were published on the Ombudsman's website.

2.15.7 Children in the media

The Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) established that the content of disputable publications of photos and other personal data of children in the media has changed. Up until now, we have been pointing out the problem of the additional stigmatisation of children as victims of particularly criminal offences and in divorce procedures. However, there are more and more media announcements that wish to improve the material situation in families or solve their financial distress, to provide treatment, therapies, etc. by informing the public. The Ombudsman's position regarding such publications was described on page 316 in the Annual Report for 2013.

The Ombudsman emphasises that good intentions do not relieve the media from the obligation to thoroughly consider all circumstances of individual cases and, decide on this basis to publish a child's personal data (with consent from the child's parents or guardians). In cooperation with the centre of non-governmental organisations ZIPOM (the Centre for Advocacy and Information on the Rights of Children and Youth), the Slovenian Association of Friends of Youth and the Ministry of the Interior, we issued Guidelines on Reporting about Children in May 2014 to provide assistance to journalists and editors with such decisions. We also published the Guidelines on our website. At the time of the preparation of this report, we were cooperating with non-governmental organisations that organised a string of workshops where basic open questions regarding the publication of personal data of children are presented to the media.

Example

Including pictures and names of children in the satire section

In relation to the photo of children of a Slovenian politician published in the media, the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) filed a complaint to the Journalists' Ethic Council (JEC) at the Slovenian Association of Journalists and the Slovenian Union of Journalists regarding a violation of Article 19 of the Code of Ethics of Slovene Journalists (Code) which stipulates that special consideration must be shown when collecting information, reporting and publishing photos, and communicating statements about children and adolescents, persons who have suffered an accident or a family tragedy, persons with physical and mental disorders, and other disabled or sick persons.

The aforementioned photo was published in the satire section. The nature of satire, which is sharp and taunting by definition, generally does not allow special tact when collecting information, reporting and publishing photos, and communicating statements about the aforementioned categories of persons. We assessed that commitment to special tact referred to in Article 19 of the Code would be completely overlooked if the photo were published. We believe that the context of the photo, i.e. the text on the similarities and differences between a convicted Nazi criminal and a Slovenian deputy, was not the main element in the violation of the Code. The nature of the satirical approach (excluding its sharpness and taunting) in the media requires the exclusion of photos and other information or statements that refer to specially protected categories of persons as per Article 19 of the Code from the satirical content. The aforementioned applies even more to persons who may be identified on the basis of the feature.

The JEC agreed with our position and established a violation of the provision of Article 19 of the Code. It especially emphasised that publishing such a photo and personal data about children was not acceptable, regardless of the potential consent of parents or the circumstances in which the photo was taken. 11.0-34/2011



3

INFORMATION ABOUT THE OMBUDSMAN'S WORK

3.1 Legal bases for the Ombudsman's work (competences and powers)

Chapter VII of the Constitution of the Republic of Slovenia, which discusses constitutionality and legality, also regulates the function of the Human Rights Ombudsman (Ombudsman). The constitutional organisation assigns a constitutional category to this institution and also great significance. The subjects of protection are human rights and fundamental freedoms. The Ombudsman supplements the protection of human rights in relation to the authorities. With its operation, the Ombudsman restricts the independent decisions of authorities when they interfere with human rights and fundamental freedoms. The Ombudsman's actions are not only restricted to direct violations of the human rights and fundamental freedoms stated in the Constitution of the Republic of Slovenia, but may also act in cases of violations of any human right by authorities. Therefore, considering the nature of their informal operation, the Ombudsman may also act in cases of indecent or inappropriate behaviour by the authorities. The Ombudsman supervises good management. The procedure before the Ombudsman is confidential, informal and free-of-charge for parties involved. The Ombudsman must conduct procedures impartially and acquire the positions of all the affected parties in each case. As the holder of the function, the Ombudsman draws its strength from its reputation and position in society. Therefore, the method of electing the Ombudsman is very important. The Ombudsman is elected by the national Assembly at the proposal of the President of the Republic. A two-thirds majority of all deputies is required for the election. 82 deputies of 86 deputies present voted for Vlasta Nussdorfer to be elected the Ombudsman.

The fundamental legal acts for Ombudsman's operation are the Constitution of the Republic of Slovenia (Article 159) and the Human Rights Ombudsman Act (ZVarCP). The legal basis for the Ombudsman's work is also the Act ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Optional Protocol) that entered into force on 1 January 2007. The Act stipulates that the Ombudsman also carries out the tasks of the National Preventive Mechanism against torture and other cruel, inhuman or degrading treatment or punishment (NPM). The Ombudsman carries out these tasks in cooperation with non-governmental organisations selected on the basis of a tender. The tasks of the NPM have been carried out by the Ombudsman since 2008. When carrying out tasks and powers of the NPM, the Ombudsman visits all places of deprivation of liberty in the Republic of Slovenia and thus monitors the treatment of persons deprived of liberty on the basis of an act by the authorities. The purpose of the execution of these tasks is to enhance the protection of persons with limited freedom of movement against torture and other cruel, inhuman or degrading treatment or punishment. In the role of the NPM, the Ombudsman provides recommendations to the competent authorities to improve the conditions and treatment of people, and eliminate inappropriate treatment. The Ombudsman issues annual reports on the execution of tasks of the NPM. The report for 2014 will be the seventh since the adoption of the Act.

The legal framework for the Ombudsman's work is also provided by other acts, e.g. the **Constitutional Court Act** that stipulates that the Ombudsman:

- may initiate a procedure for the review of the constitutionality or legality of regulations or general acts issued for the exercise of public authority if they deem that a regulation or general act issued for the

exercise of public authority unacceptably interferes with human rights or fundamental freedoms (Article 23a). In 2014, we filed one request, which is described below in more detail;

- may file a constitutional complaint in relation to a case they have been handling (the second paragraph of Article 50) on the conditions stipulated by this Act. In 2014, we did not file any constitutional complaints.

The Ombudsman's work is determined by other acts: the Integrity and Prevention of Corruption Act, Patient Rights Act, Defence Act, Consumer Protection Act, Environmental Protection Act, Personal Data Protection Act, Criminal Procedure Act, State Prosecutor Act, Courts Act, Judicial Service Act, Equal Opportunities for Women and Men Act, Police Tasks and Powers Act, Attorneys Act, Enforcement of Penal Sentences Act, Administrative Fees Act, Classified Information Act, Infertility Treatment and Procedures of Biomedically-Assisted Procreation Act, Civil Servants Act, Public Sector Salary System Act, Passports of the Citizens of the Republic of Slovenia Act, and the Rules on Service in the Slovene Army. The summaries of all the sections of these acts that refer to the Ombudsman's work were presented in the publication issued by the Ombudsman in December 2013 on the occasion of the 20th anniversary of the adoption of the Human Rights Ombudsman Act (ZVarCP). The publication is available on the Ombudsman's website: www.varuh-rs.si.

Since 2007, the Ombudsman has been carrying out a pilot project **Advocate – A Child's Voice Project** (Project). The project was designed in 2006, and was supposed to be carried out in 2007 and 2008. Due to the inefficient response of the State and failure of the Family Code at the referendum, the implementation of the Project was extended from 2014 to the end of 2015 in accordance with a recommendation of the National Assembly of the Republic of Slovenia of 8 May 2013 and Decision of the Government of the Republic of Slovenia no. 07003-1/2014/4 of 12 June 2014, which means that the Ombudsman also carried out the Project in 2014. The partner in the Project is the Ministry of Labour, Family, Social Affairs and Equal Opportunities, which provides financial support to the Project. In 2014, the Ministry provided EUR 15,000 for the smooth implementation of the Project. These funds were allocated for the fixed-term employment of one worker (trainee) to work on the Project. Most funds for the implementation of the Project have been provided by the Ombudsman throughout. A partner institution in the implementation is the Faculty of Social Work at the University of Ljubljana.

Article 1 of the ZVarCP stipulates that the function of the Ombudsman is established with this Act for the protection of human rights and fundamental freedoms in relation to state authorities, local self-government bodies and holders of public authority. The Ombudsman's competences and powers are also determined.

In their work, the Ombudsman complies with the provisions of the Constitution and international legal acts on human rights and fundamental freedoms. While intervening, the Ombudsman must invoke the principles of fairness and good management. The Ombudsman does not have the authority to make rulings and cannot impose legally binding decisions sanctioned by means of legal force. The Ombudsman's actions and acts are not authoritative, and are not used to make rulings. Individual acts are not issued in the form of a decision, judgement, decree or order, i.e. in forms that emphasise authority in the execution of powers. The Ombudsman is an additional means for the extra-judicial protection of individuals' rights. The Ombudsman's work involves informal supervision of the legality and conformity of authorities' treatment of individuals. The Ombudsman's task is to establish and prevent violations of human rights and other irregularities, and to eliminate their consequences. In their work, the Ombudsman is independent and autonomous.

State authorities, local community bodies and holders of public authority (authorities) must provide all information from their competence, regardless of the level of confidentiality, to the Ombudsman at their request, and facilitate the implementation of an investigation. The Ombudsman may address proposals, opinions, criticisms or recommendations to the authorities that must deal with them and reply within the deadline set by the Ombudsman. When dealing with acts and actions of local self-government bodies, the Ombudsman must observe the special features of their position, especially the manner of decision making.

The procedures carried out by the Ombudsman are confidential, and regulated in detail in Chapter IV of the ZVarCP, and Chapter III in the Rules of Procedure on the Ombudsman's work. The Ombudsman must conduct procedures impartially and acquire the positions of all the affected parties in each case. The Ombudsman informs the public and the National Assembly of all findings and measures.

The Ombudsman carries out all tasks by resolving individual complaints sent by complainants in which they claim that their human rights have been violated. Anyone who believes that their human rights or fundamental freedoms have been violated by act or action of a state authority, local self-government body or holder of public authority may initiate a procedure. **The Ombudsman may initiate a procedure of their own accord.** If a procedure is initiated of a person's own accord (or filed in the name of the person affected), the consent of the person affected is required to initiate the procedure. **The Ombudsman may also address wider issues relevant to the protection of human rights and fundamental freedoms, and to the legal security of residents in the Republic of Slovenia.** This enables the Ombudsman to open and consider systemic and current issues that may not be perceived by complainants. The latter also enables the Ombudsman to implement preventive and promotional activities in the same way as it is done by national institutions for the protection of human rights established on the basis of the Paris Principles adopted by the UN.

The Ombudsman does not handle cases subject to court or other legal proceedings unless they involve unduly delays in proceedings or obvious abuses of power. The Ombudsman does not initiate proceedings if the action or the last decision of the authority took place over a year ago unless they assess that the complainant missed the deadline for objective reasons or that the case is so important that this justifies the Ombudsman's action regardless of distance in time. In relation to their work, the Ombudsman has the right to access all information and documents pertaining to the competence of state authorities. The regulations on the confidentiality of data are binding on the Ombudsman, their deputies and workers.

The Ombudsman or person authorised by the Ombudsman may enter the official premises of any state authority, local self-government body or holder of public authority. They may carry out inspections of prisons, other premises where persons deprived of their freedom are held, and other institutions with limited freedom of movement, and have the right to hold conversations with persons in these institutions without the presence of other persons. The Ombudsman submits to the National Assembly and the Government initiatives to amend acts and other regulations under their jurisdiction. State authorities, institutions and organisations with public authority are sent proposals for the improvement of their operations and treatment of clients. Also relevant to the Ombudsman's work is Article 46 of the ZVarCP, which stipulates that the President of the National Assembly, the Prime Minister and ministries must see the Ombudsman in person at the Ombudsman's request within 48 hours.

The Ombudsman has certain powers stipulated by the ZVarCP with regard to all state authorities, local self-government bodies and holders of public authority. They may submit their opinion to any authority on the protection of human rights and fundamental freedoms in a case under consideration, regardless of the type or level of procedure before these authorities. All state authorities must provide suitable assistance to the Ombudsman in the implementation of any investigation.

In relation to their work, the Ombudsman has the right to access all information and documents pertaining to the competence of state authorities. The regulations on the confidentiality of data are binding on the Ombudsman, their deputies and workers. All officials and workers at authorities referred to in Article 6 of the ZVarCP must respond to the Ombudsman's request to participate in an investigation and to provide explanations. The Ombudsman may invite anyone as a witness or an expert for a discussion in a case under consideration. The invited person must respond to the invitation.

The Ombudsman as defined in the Constitution of the Republic of Slovenia and the ZVarCP does not have any direct powers in relation to the courts. They may only handle cases regarding unduly delays in proceedings or abuses of power.

The only exceptions are the Ombudsman's competences in relation to the Constitutional Court of the Republic of Slovenia, which are stipulated by the Constitutional Court Act (ZUstS), not the ZVarCP. Article 23 of the ZUstS includes among proposers – who may initiate a procedure for the review of the constitutionality or legality of regulations or general acts issued for the exercise of public authority – also the Human Rights Ombudsman if they deem that a regulation or general act issued for the exercise of public authority unacceptably interferes with human rights or fundamental freedoms. Prior to the introduction of amendments to the ZUstS, which entered into force on 15 July 2015, the Ombudsman filed a request for the review of the constitutionality or legality of regulations regarding the individual cases they were handling. In practice, the Constitutional Court

occasionally insisted that a case handled by the Ombudsman had to be directly in relation to the challenged regulation. Therefore, such a regulation constituted in practice a restriction of access to the constitutional review of regulations. This obligation was abolished with the introduction of amendments to the ZUstS in 2007. The Ombudsman may initiate a procedure with a request if they believe that a regulation or general act unacceptably interferes with human rights or fundamental freedoms. This greatly expanded the Ombudsman's ability to file a request, especially by taking into account the provisions of the ZVarCP that enable the Ombudsman to handle cases of their own accord and wider issues relevant to the protection of human rights and fundamental freedoms, and to legal security of residents in the Republic of Slovenia. The amendment is also relevant in view of amendments to the entire ZUstS, which significantly restricted access to the Constitutional Court for complainants. Restricting the public interest in filing requests for the review of the constitutionality of regulations particularly limited options for individuals.

In March 2014, on the basis of Article 23.a of the ZUstS, we filed a request for the review of the constitutionality of the third indent of the eighth paragraph of Article 4 of the Real Property Tax Act (Official Gazette of the Republic of Slovenia, no. 101/2013; ZDavNepr) which stipulates the tenant/former occupancy right holder of denationalised real estate to whom the real estate has been rented out as a person liable for the payment of this tax. We believe that such a regulation is in contravention of the principle of equality referred to in the second paragraph of Article 14 of the Constitution of the Republic of Slovenia. Since the Constitutional Court fully abrogated the ZDavNepr with Decision no. U-I- 313/13 of 21 March 2014, the Ombudsman's request for a review of constitutionality was dismissed with Decision no. U-I- 69/14-4 of 22 April 2014 by taking into account the second paragraph of Article 47 of the ZUstS (the contested section of the regulation ceased to apply during proceedings before the Constitutional Court, but no consequences of its unconstitutionality or illegality arose).

The second option provided to the Ombudsman by the ZUstS is **to file a constitutional complaint** due to the violation of human rights or fundamental freedoms of a person or legal entity by an act of a state authority, local self-government body or holder of public authority. The Ombudsman may file a constitutional complaint only with the consent of the person affected and under the conditions stipulated by the ZUstS. A constitutional complaint may be filed after all ordinary and extraordinary legal remedies have been exhausted within 60 days of the submission of the latest act. The Ombudsman rarely utilises this option, since they do not wish to act as an additional legal remedy when all possibilities of appeals are exhausted. More frequently, we submit our opinion to the Constitutional Court from the aspects of human rights and fundamental freedoms in the role of an *amicus curiae*, which is facilitated by Article 25 of the ZVarCP (the Ombudsman may submit their opinion to any authority from the aspect of human rights and fundamental freedoms in a case under consideration, regardless of the type or level of procedure before these authorities).

3.2 Forms of the Ombudsman's work

Accessibility of institutions

By resolving complaints, we help eliminate concrete violations and prevent potential future violations. These frequently overlap. Therefore, it is essential that the Ombudsman be accessible to all who wish to contact them. Various solutions regarding the method of the Ombudsman's work follow this principle. Therefore, during working hours, a complaint may be submitted and complainants may speak to an employee, who communicates information referring to the Ombudsman's work. During working hours, this employee received 9,982 phone calls in 2014, most of which referred to issues connected with alleged violations of human rights and procedures for resolving complaints sent to the Ombudsman.

The Ombudsman, deputies and advisers hold discussions on the basis of a preliminary sign-up. In other cases, expert workers are available for complainants. During meetings outside the head office, the Ombudsman speaks to complainants and receives new complaints. Soon after the institution opened, we introduced a toll-free telephone number (080 15 30), where callers may receive explanations, advice and information on complaints filed. Complaints may also be filed via e-mail (to: info@varuh-rs.si) or via the Ombudsman's website (www.varuh-rs.si).

The Ombudsman is also available at numerous other occasions: during meetings with civil society, ministers and representatives of various institutions; at expert conferences, round tables, press conferences; in communication with various types of public on a daily basis; during meetings with complainants; in participation with faculties and schools; via the Ombudsman's website and website for children, and Facebook, where we have been receiving complaints or only desires to communicate with the Ombudsman.

Meetings outside the head office

The Ombudsman wants people to know their work as much as possible. Therefore, they strive to be more accessible for persons living in remote places. We introduced meetings outside the head office as a regular form of work whose main purpose is to enable people to speak directly to the Ombudsman and their deputies. Thus people may have direct contact and talk in their home environment.

The nature of the institution of the Ombudsman does not facilitate the establishment of organisational units in other towns. Therefore, this form of work enables us to operate around Slovenia. In addition to personal contact with the Ombudsman and their deputies, this form of work saves time and funds for people, which is nowadays very important. Another advantage of meetings outside the head office is that certain problems related to the unsuitable work of state and local authorities in the town visited may be at least clarified if not eliminated through interventions during visits. Visits from the Ombudsman affect the work of state and local authorities in the town visited preventively. Visits are also important for the promotion of the institution and informing people about the Ombudsman's competences.

We carried out 206 interviews in person. On this basis, we opened 52 new complaints and reactivated 18 complaints. In 36 reactivated complaints, we merely provided the complainants with explanations, so these complaints remained concluded. We carried out 14 conversations in cases we had already been handling. In 86 conversations, the complainants received replies during the conversation itself, and therefore, we recorded them in a collection of official notes.

Prior to visiting, visits were **announced in local newsletters** and on the Ombudsman's website, so that the interested persons could sign up for a meeting in time. We invited anyone who wished to speak to the Ombudsman to inform us of their intention. Thus we could set the time for meetings and avoid unnecessary overcrowding and waiting. People responded in all the towns we visited. We received the greatest response in Murska Sobota, where 51 meetings were carried held. On the basis of the discussions, we opened 20 new complaints, which means that these complainants pointed out problems that required consideration from the Ombudsman.

Each visit was carefully planned and took place in three parts. First, **the Ombudsman and her co-workers spoke to mayors of the municipalities visited.** Occasionally, representatives of the social work centre, the Employment Service of Slovenia, humanitarian organisations and other authorities or organisations who could present the situation in their local communities. were present at these discussions. This was the case in Maribor and Murska Sobota. During discussions, the Ombudsman always highlighted topics such as: housing issues, residential units; assistance for homeless residents; social distress; municipal aid; unemployment; public works (also in companies where the municipality is the (co)founder); care for socially endangered persons; care for disabled persons (including architectural barriers); property law matters; problems in the field of pre-school and elementary school education; availability of the mayor (conversations with residents); public health care services; social security; friendliness of the municipality towards elderly persons and children; spatial planning; environmental issues; ownership relations connected with the categorisation of roads (the manner of resolution, purchases, expropriations, disputes, etc.); municipal inspection services; free legal aid and mediation. These topics were followed by problems arising from the handling of concrete complaints regarding the work of the municipality. These discussions are extremely important, since they may clarify issues arising from concrete complaints, and at the same time, we are informed about the systemic problems that local communities and their residents face. Such problems, e.g. delays in post-earthquake reconstruction, the complexity of spatial planning procedures, the cleaning of watercourses, may be emphasised by the Ombudsman when meeting ministers and competent authorities. Certain municipalities pride themselves on the prompt resolution of problems: Lendava and Zagorje ob Savi – no evictions; Ormož and Brežice (and others) – on the availability of the mayor; Bovec – residents' hour; Murska Sobota – interactive programme where residents may pose

questions which are answered in 48 hours; Hrastnik – the mayor has not determined any dates for discussions, since he is always willing to receive residents for a discussion. Many municipalities visited in 2014 had organised free legal aid for their residents, e.g. Bohinj, Hrastnik, Murska Sobota, Zagorje ob Savi.

This is followed **by personal discussions with complainants** (each of whom is given half an hour) which form the main part of the visit. The discussions are attended by persons who have filed an application with the Ombudsman and wish to present it in more detail or only need information about the handling of their complaint. Many only need advice. Approximately a quarter of complainants contact the Ombudsman about their problems for the first time. The structure of problems presented to us by people during conversations outside the head office is similar to the structure noticed in complaints sent to our address. Especially, problems regarding delays in resolving cases before courts and administrative authorities; dissatisfaction with court decisions; and violations of workers' rights (non-payment of salaries, non-payment of social security contributions, overtime and other income, mobbing – complainants frequently stated that they feared talking about their problems as they were afraid of losing their jobs, so they preferred to keep silent) stand out. Many complaints refer to procedures regarding rights arising from social transfers, delays in this field and decisions of social work centres that are difficult to understand. Several complainants emphasise insufficiently effective or even ineffective supervision in numerous fields, and the need for efficient free legal aid for socially weak persons. Complainants also point out that only people with money succeed in court, since they can afford (high-quality) legal aid. Environmental problems are also frequently emphasised. Resident's awareness of the right to a healthy living environment is increasing.

During meetings outside the head office, special **attention is paid to the media**. Therefore, we always organise a press conference in the place we visit, where we draw attention to cases of violations of human rights stated in the complaints we receive during our visits. The Ombudsman usually gives several statements or interviews to the media. During meetings outside the head office, we publish news of the visit on the Ombudsman's website.

At this time, the Ombudsman frequently utilises time to hold **other meetings** in addition to meetings with complainants. We carried out a field inspection in Murska Sobota, and held a discussion with the Hungarian minority in Lendava, visited the Primorska Legal Centre in Izola, while in Metlika, the Ombudsman met fifth grade pupils from the Metlika Elementary School. In Hrastnik, we visited a degraded environment in Zasavje together with Eko Krog (Society for Nature Conservation and Environmental Protection). In Zagorje ob Savi, we organised a presentation of the Advocate – A Child's Voice Project and visited Zagorje ob Savi Administrative Unit during our visit.

Evening with the Ombudsman

In April 2013, the Ombudsman commenced the **Evening with the Ombudsman** project. In cooperation with the Faculty of Social Sciences in Ljubljana, we organised four meetings in 2013, and prepared and carried out six evenings in 2014, whose main purpose was to raise awareness and inform citizens of the European Union from the most remote and rural regions on fundamental rights as set out in the EU Charter of Fundamental Rights. In addition, the objective of the project was to enhance the feeling of common European values among citizens, and to promote their active participation in raising awareness of the importance of democracy and the rule of law. These evenings were carried out during meetings outside the head office in **Lendava, Hrastnik, Maribor, Brežice, Ilirska Bistrica and Izola, where we were from morning until late evening**.

Consideration of complaints

In 2014, the Ombudsman decided that complaints received would be handled in departments established in fields of work which are under the professional responsibility of the Ombudsman's deputies. Fields of work are determined in Article 11 of the Rules of Procedure of the Ombudsman, except the tasks of the National Preventive Mechanism (NPM) carried out by the Ombudsman since 2008 pursuant to the Act ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, or in cooperation with non-governmental organisations selected at a tender. Each field is the professional responsibility of one of the Ombudsman's deputies. A more detailed division of individual fields

is determined by the Ombudsman by taking into account substantive connections between problems, the organisation and type of procedures of state and other authorities for which they are authorised, and the cohesion of professional fields. The Rules of Procedure determine that deputies have all the powers provided to the Ombudsman by the law in the fields under their responsibility.

Currently, the Ombudsman's work is divided into the following fields:

- constitutional rights; discrimination and intolerance; protection of personal data; citizenship; remedy of injustices; international cooperation; these fields are the professional responsibility of **Jernej Rovšek, Deputy Ombudsman**;
- protection of children's rights; social security; social activities; scholarships; Advocate – A Child's Voice Project; these fields are the professional responsibility of **Tone Dolčič, Deputy Ombudsman**;
- environment and spatial planning; administrative matters; labour law matters; housing matters; public utility services; unemployment; these fields are the professional responsibility of **Kornelija Marzel, Msc, Deputy Ombudsman**;
- restrictions to personal freedom; court and police proceedings; National Preventive Mechanism; these fields are the professional responsibility of **Ivan Šelih, Deputy Ombudsman**.

Each deputy is responsible for several fields. The latter are also the basis for the classification of complaints received.

Anyone who believes that their human rights or fundamental freedoms have been violated by an act of an authority may initiate a procedure with the Ombudsman. The procedures carried out by the Ombudsman are confidential, informal and free of charge. Nevertheless, the ZVarCP and the Rules of Procedure of the Ombudsman stipulate the conditions that must be met by a complaint in order for it to be considered. All complaints addressed to the Ombudsman must be signed and marked with the complainant's personal data. They must contain circumstances, facts and evidence regarding the complaint in order to initiate the procedure. The complainant must also state whether legal remedies have been used in the matter, and if any, which ones. The procedure may be initiated in written form. Formality or a lawyer's assistance are not required to submit a complaint. Persons deprived of their freedom have the right to send a complaint to the Ombudsman in a closed envelope. In urgent cases, we also accept complaints by telephone or during a face-to-face discussion. Certain complaints are received by Ombudsman's representatives during discussions with prisoners when visiting prisons or detention facilities, psychiatric hospitals, social care institutions and other institutions, and with persons who are in some way deprived of their freedom of movement.

When the Ombudsman receives a complaint, all the required enquires are carried out. On this basis, the Ombudsman decides whether the matter will be considered by a short procedure, start an investigation or reject the complaint, or does not consider it as it is anonymous, late, offensive or constitutes an abuse of the right to complain. If the Ombudsman rejects a complaint and does not consider it for the aforementioned reasons, the complainant must be notified as soon as possible. The reasons for the rejection must be explained, and the complainant must be informed of other ways of resolving the matter.

The Ombudsman decides on the matter by a short procedure (the first item of the first paragraph of Article 28 of the ZVarCP), especially when the current situation and positions of the parties affected are evident from the documentation accompanying the complaint.

In 2014, we received 290 complaints, or 11.2 per cent less than in 2013. **From 1 January to 31 December 2014, we opened 3,081 complaints** (3,371 in 2013, and 3,167 in 2012). Most complaints were received directly from complainants in writing, i.e. 2,753 or 89.4 per cent of all complaints received. We received 52 complaints during meetings outside the head office, three by phone and 26 from official notes. Of her own accord, the Ombudsman opened 36 complaints (cases when the Ombudsman initiates a procedure of their own accord or a complaint is filed in the name of the person affected – in such cases, the consent of the person affected is required to initiate the procedure), and 23 complaints were handled as wider issues (these are issues relevant to the protection of human rights and fundamental freedoms, and to legal security of residents in the Republic of Slovenia). We received courtesy copies of 119 complaints and 66 anonymous complaints, and three complaints were forwarded to the competent authorities.

Certain complaints are incomplete, as they do not include all facts relevant to the problem or not all the required documents are attached. Regardless of the type of shortcomings, we ask complainants to supplement their complaints or we contact the competent authority with an enquiry if the complaint clearly indicates the type of procedure and the competent authority. Certain complaints are found not to be within the Ombudsman's competence or the conditions for their handling are not met. In such cases, we advise complainants on who to contact if there are other options available, or which legal remedies to use before complaints can be handled by the Ombudsman. Complaints which are not within the Ombudsman's competence frequently involve disputes between individuals which cannot be solved in any other manner than amicably, and if this is not possible, before the court.

Employees have daily morning meetings, where we are informed of the problems pointed out in phone and personal contacts with complainants, other problems arising from complaints received, and other contents and events in relation to the Ombudsman's work. Regular meetings with employees enable all employees to be informed on the content and methods of work, as well as events at the institution. Professional dilemmas and open issues related to the resolution of complaints are addressed by the board of the Ombudsman at weekly meetings led by the Ombudsman. In addition to the aforementioned, there are weekly meetings of the expert service, led by the director of this service. Regular meetings with employees enable all employees to be informed on the content and methods of work, as well as events at the institution.

Communication with state and local authorities

To clarify all circumstances regarding complaints handled, we generally acquire an opinion from the other party, since, as aforementioned, the Ombudsman must lead procedures impartially and acquire the positions of all the affected parties in each case. Therefore, we carry out enquiries at the authority to which the complaint refers. The matters considered are very diverse, so the methods of performing enquiries are also very diverse. We usually write to the competent authority with a short summary of the alleged irregularity or a description of the problem, and request detailed information. Sometimes, e.g. when it is claimed that a procedure is taking too long, we express our opinion by assuming that the complainant's statements are completely true. We also determine a deadline for a reply, which depends on the urgency and complexity of the matter; this deadline cannot be longer than 30 days or shorter than 8 days, in accordance with the ZVarCP. If an authority does not send the Ombudsman explanations or information in the requested deadline, the authority is warned and informed in accordance with the second paragraph of Article 33 of the ZVarCP that they must explain to the Ombudsman why the request was not met. The Ombudsman can notify the authority directly about a missed deadline. A refusal or disrespect for an Ombudsman's request is considered obstruction to the Ombudsman's work. In such cases, the Ombudsman may send a special report to the competent working body of the National Assembly or the National Assembly, or notify the public.

When an authority avoids responding to questions, we review the entire file of the complaint. As stated before, the Ombudsman has the right to review data and documents which are in the competence of other state authorities. If a wider issued need to be clarified, the head or representative of the authority is invited for an interview. When persons in detention or prisoners complain about inappropriate administrative procedures or inappropriate living conditions, we have a discussion with the management and visit the detainee or prisoner. We act in the same way when the Ombudsman is contacted by persons in other institutions with limited freedom of movement. When we have collected all the required information, we decide on further procedure. Sometimes, the authority's reply resolves the complainant's problem, e.g. data on when a procedure which the complainant believes has been unreasonably delayed will continue and conclude. In such cases, the procedure is concluded and the complainant is invited to contact us if the authority does not fulfil its guarantees with regard to the procedure in question. When a complaint is founded, we continue to work on disputable issues until they are resolved.

We are aware that it is most important for a complainant to obtain a solution to his/her problem. This is the starting point for our decision making regarding the use of the most appropriate measure from among those we are authorised to use. When a procedure is overly lengthy, we act to accelerate the matter if the rational or legally determined deadline for taking a decision has been exceeded and if this does not violate the order in which matters are considered.

We propose a solution to the problem in an amicable manner to any given authority if this is also agreed by the complainant. If irregularities cannot be eliminated, it is proposed to the authority that it apologise to the complainant. The Ombudsman sends the National Assembly and the Government initiatives to amend acts and other regulations within their competence. State authorities, institutions and organisations with public authorisations are sent proposals for the improvement of their operations and treatment of clients. The initiatives for amendments to regulations are usually proposed in recommendations in annual reports, which are assumed by the National Assembly after consideration.

The Ombudsman's findings when handling complaints or wider issues important to protect human rights and fundamental freedoms are presented during discussions with representatives of state and local community authorities. We present findings, expectations and the Ombudsman's recommendations to eliminate established violations of human rights and fundamental freedoms. **In 2014, there were 60 such meetings** (excluding meetings with local authorities) which were generally attended by Ombudsman Vlasta Nussdorfer her Deputy responsible for the field, and an expert worker who handles cases in the field that were the subject of discussion.

Communication with non-governmental organisations and civil society

In 2014, Ombudsman Vlasta Nussdorfer held 84 meetings with representatives of various non-governmental organisations and civil society groups. In addition to state and local authorities, the centre of the Ombudsman's operation, cooperation and striving for the exercise of human rights and fundamental freedoms are civil society organisations and groups (the non-government sector). The last few years were especially marked by problems in relation to increasing poverty. According to statistical data (for 2013), 20 per cent of people were at high risk of being socially excluded. The non-government sector is that part of society that responds to problems and distress of people most swiftly, and provides them with direct assistance. It detects the efficiency or inefficiency of the response and operations of state and local authorities when solving people's problems, and calls for the entire society to raise their social sensitivity. With its operations, the Ombudsman strives to draw attention to these very deficiencies of the authorities and eliminate established problems. Therefore, the non-government sector is an important source of direct information on the situation in society, and an ally of all those who strive for the rule of law and a social state. For various reasons, the impact of civil society is limited. Therefore, the Ombudsman enhances its efforts with every analysis of concrete cases when it establishes that the authorities are not performing their function in a manner that ensures the exercise of people's human rights and welfare.

3.3 Media and the public 2014

Human Rights Ombudsman Vlasta Nussdorfer and her team realise priority tasks set at the beginning of the term of office: the publicity and transparency of the Ombudsman's work, enhanced cooperation with the media, availability for people, and the analysis of the ombudsman's initiatives and recommendations regarding the exercise of human rights and fundamental freedoms. More information on the latter may be found in the second part of this Report, while a few words are included on the first two points below.

People often turn to the media with their problems. Therefore, the Ombudsman regards information from the media as an indicator of possible violations. Such information is assessed and studied to see if it presents a basis for initiating a complaint and conditions for us to take action. With their mission, the media as a channel between the public and the Ombudsman facilitate the dissemination of knowledge about rights, work, best practices and the Ombudsman's findings. They put pressure on those who do not respect rights, and enable the Ombudsman to exercise the right of the public to be informed.

The Ombudsman takes care to ensure a qualitative and fair response to initiatives from the media and their questions. The Ombudsman responds publicly when she deems it necessary from the point of view of her role and powers. The Ombudsman responds to individual cases when all the relevant data from competent authorities have been collected and when an opinion is formed on the basis of the information. Due to the principle of confidentiality in the procedure, the Ombudsman always acquires the consent of complainants

prior to disclosing any details about an individual case. Without such consent, only general opinions are provided about a certain problem.

The recognisability and swift responsiveness of Human Rights Ombudsman Vlasta Nussdorfer marked relations with the media in 2014.

The interest of journalists in certain issues related to human rights has not decreased. We recorded approximately 330 questions from journalists related to certain topics, and requests for the Ombudsman or her Deputies to participate in broadcasts. We also recorded approximately 350 letters in relation to the media, which is the same as in 2012 and 2013. Since the Ombudsman is extremely responsive, she gave at least twice as many statements on numerous occasions in 2014. We have been noticing a change in the content of the questions, since many questions in 2013 were logically connected with the change in the term of office, the work of the institution and plans of both Ombudsmen. In 2014, we continued to regularly cooperate with *Pravna praksa* (Legal Practice Journal). The Ombudsman continued to publish a two-week column on the legal portal IUS INFO. She wrote 26 columns. We also continued to cooperate regularly with Radio Europa05, and responded to invitations to programmes such as *Odmevi*, *Studio ob sedemnajstih* and others.

The Ombudsman and her co-workers held 21 press conferences – six at the Ombudsman's head office and 15 during meetings outside the head office. This does not include statements after meetings with ministers or other guests, although an in-depth presentation of certain issues is possible in such cases and statements are structured as press conferences. The greatest interest was received by conferences upon the first year of operation and the submission of the Annual Report for 2013.

Interest of journalists in individual substantive fields of the Ombudsman's work

In 2014, most questions from journalists were from the field of children's rights and constitutional rights (approximately 40), followed by personal freedom (29), social matters (14), justice (8), health care and employment relationships (6), pension and disability insurance (5), administrative matters (4), the environment (3), police procedures, housing matters (2), and discrimination (1).

The most popular were the following topics:

Suspected torture at the forensic psychiatry unit in Maribor

The Ombudsman was not informed of indications of torture, and she did not establish any such circumstances during her visits as the National Preventive Mechanism.

Keys for meals

In a Slovenian elementary school, supervision of non-payers for school meals was carried out by introducing keys. If the parents or guardians did not pay for a child's meals, the device beeped when the child tried to register with a key, which made public the information that the meal had not been paid, exposing and stigmatising the child. However, the device sometimes beeped even for children whose meals had been paid. The Ombudsman expressed her understanding that schools wished to increase supervision and recover material costs due to increasing problems with constantly decreasing funds for material costs. However, the Ombudsman established that the system was not appropriate, since adults are responsible for the payment of the costs. Therefore, we proposed to the headmistress to rearrange the system so that pupils were not publicly exposed. The headmistress followed the Ombudsman's proposal. An open discussion was stimulated by this case as to how to adequately carry out enforcement.

Children's cardiac surgery

The case aroused discussions in the public about the operation of the Paediatric Clinic in Ljubljana in the field of surgery for children with heart problems. We received complaints in which the complainants expressed their agreement with the current situation and complaints in which the complainants expressed their desire for the system to improve. The Ombudsman learned of all aspects of the situation in the treatment of children with congenital heart disease, and received a report of a potential violation of rights due to allegedly inappropriate

operations at the UMC Ljubljana. The Ombudsman supported solutions that are in the best interests of children and their health. We even received a question about this problem from a journalist who doubted the Ombudsman's activity, which is described below under the heading "Crisis communication".

Referendum on archives

The referendum on archives made issues regarding amendments to Protection of Documents and Archives and Archival Institutions Act (ZVDAGA) very relevant. The Ombudsman pointed out that the applicable act on archives does not respect its provisions in practice, and that its realisation also depended on the instructions and decisions of individual decision makers regarding archives. Efficient supervision of the (non)-implementation of the applicable act was not undertaken. The legislator observed the Ombudsman's recommendation for the Archives of the republic of Slovenia, the competent inspector from the Media Inspectorate of the Republic of Slovenia, and the Ministry of Culture to ensure consistent implementation of the third paragraph of Article 65 of the ZVDSAGA. Therefore, the Ombudsman assessed that a referendum was unnecessary from the aspect of human rights provided by the Constitution and the observation of principles of the rule of law.

Removal and return of seven children

Various comments and information in relation to the findings of the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) regarding the decision of the Ministry of Labour, Family, Social Affairs and Equal Opportunities to return seven temporarily removed children to their families emerged in public. We explained the Ombudsman's actions to the public, including that we had opened our own complaint based on information, and that in view of indications and reservation that the removal of the children could be disputable, decided to initiate the procedure. The latter is not the Ombudsman's usual practice, since it is not an inspection authority for verifying the correctness and legality of the work of expert and independent state authorities and holders of public authority. Therefore, social work centres (SWCs) do not have to inform the Ombudsman of procedures for the removal of children.

However, in the concrete case, the Ombudsman wanted to establish whether the alleged irregularities were such that they could have constituted an abuse of power by a SWC.

The issue of hunger strikes

We usually explained to the media that hunger strikes were not and could not be a means to attain any objectives. The latter may only be attained by using suitable legal remedies according to the procedure and manner stipulated by individual relevant acts. It is up to individuals to decide whether to go on hunger strike. By doing so, they only put their own health and life at risk, but can in no way influence the competent authority to make a different decision. The Ombudsman has always visited all hunger strikers, advised them about such strikes, and attempted to find ways for them to end their suffering.

The case of the burial of a stillborn child

In the middle of July, a stir was caused by the case of parents who wanted to bury their stillborn daughter. We received numerous questions on this matter. Due to the complexity of the case, we could not provide the media with a simple reply. We opened a complaint of our own, entitled "Dignity and the protection of personal rights (treatment of a dead foetus)". Through research, we concluded the case and made recommendations. The Ombudsman determined that any hindering of the parents' wish to bury the dead foetus would be contrary to their human rights. The Ombudsman also expected that the adoption of the new Funeral and Cemetery Services Act will eliminate legal impediments to the burial of a dead foetus.

Protection of children during the search of premises

Several questions from journalists were addressed to the Ombudsman concerning how she would respond to the public call to protect children in procedures, more specifically during searches of their parents' premises. We provided an extensive general explanation to the public that any search of premises is a severe infringement of a person's privacy, and constitutes a limitation of the right to the inviolability of dwellings protected by the Constitution. It is also unpleasant because it arouses suspicions and stigma in the public eye. Therefore, any infringement of a right ensured by the Constitution is only admissible if all conditions are met, and if such infringement is proportional to the objective it pursues. Tactful treatment in such procedures is especially required if the procedure involves persons who need additional attention, assistance or care, e.g. children, minors, elderly persons, disabled persons, pregnant women and victims of family violence.

A case of mobbing of a ten-year-old boy in Deskle

The Ombudsman received several questions regarding the case of peer violence against a ten-year-old boy at an elementary school in Deskle, which disturbed the public at the end of the year. In the last ten years, no one has contacted the Ombudsman regarding a violation of a children's right merely on the basis of their nationality. Complainants rarely stated that a potential reason for the latter is the fact that their children are of a different nationality and the problems of accepting a pupil in a class also lie in this fact, but they never highlight it as the main issue. The Ombudsman assessed that the incident that had taken place at school is reprehensible, and required thorough and responsible consideration by representatives and other expert workers in that school, and especially by the parents of the children involved. The Ombudsman also stated several measures to be taken by the school's bodies.

The case of a boy named Rene

The Ombudsman did not receive a complaint. Nevertheless, she monitored the case. Publicly and at a regular press conference on 13 May 2014, the Ombudsman expressed her understanding of the actions of the mother who sought help outside Slovenia. The Ombudsman assessed that the Health Insurance Institute of Slovenia had acted in accordance with statutory provisions, but she was surprised at the contradictory information received from various experts, who had not made the mother's decision any easier. Therefore, the Ombudsman pointed out that the duty of the authorities and the profession is to thoroughly inform people and guide them when making decisions.

An obvious violation of the rights of a blind person who had gone to a job interview at a renowned company, but had been treated disrespectfully and discriminated against on the basis of their special condition was severely condemned by Deputy Ombudsman Jernej Rovšek.

The activity of parents of children with cerebral palsy and the initiative from **Vesele nogice (Happy Feet Association)** to facilitate different treatment for these children, particularly with more frequent therapy and a greater share of the ZZS in the payment of therapies was very popular.

A heated discussion took place regarding the **proposal that prisoners would co-finance their stay in prison**. The Ombudsman supported the discussion, but pointed out that experience from other countries should be taken into account and experts consulted when making a decision. She again spoke in favour of convicts working during their prison sentence, and emphasised that there was not enough work for all convicts, which was the responsibility of the State.

We also received several questions **regarding threats to public officials** (specifically to the Director of the Slovenian Competition Protection Agency Andrej Krašek, former Information Commissioner Nataša Pirc Musar, and former Ombudsman Dr. Zdenka Čebašek – Travnik). The Ombudsman again publicly condemned all forms of threats and intolerance. Death threats are not acceptable, and the Ombudsman believes that, especially when threats are aimed at public office holders, the state authorities should investigate them. Therefore, the Ombudsman submitted a complaint to the Ministry of Justice and Public Administration (MPJU).

Regarding the **sale of Mercator to Agrokor**, we received a question from a journalist as to whether Croatian Agrokor, by purchasing Mercator, would become the owner of the personal data of holders (a few hundred thousand) of Mercator Pika cards. Who is (will be) responsible in the Republic of Slovenia for the potentially negligent use of personal data of Slovenian card holders or for transfer of the data base of holders outside Slovenia? What guarantees must the new owner make to protect this information, if any? The Ombudsman replied that Mercator d. d. was the manager of personal data which are legally at its disposal and must protect the information on the basis of the ZVOP-1, regardless of the change of ownership. The transfer to a potential contractor or the transfer of information out of the country is regulated by law. It is considered that the level of protection of personal data in all EU Member States is harmonised with the Community acquis or the Data Protection Directive. Supervision of the observance of the aforementioned rules in the Republic of Slovenia is carried out by the Information Commissioner of the Republic of Slovenia in accordance with the law.

In the light of the decision of the European Court of Human Rights which upheld **the ban on wearing a burqa** in France, the Ombudsman received a request for our opinion. We informed the journalist that we had not handled any complaints in which a person affected had contacted the Ombudsman due to the ban on

wearing the burqa. The Ombudsman's position in principle regarding this issue is that wearing the burqa is an expression of a (religious) belief which is protected by the Constitution, at least with the general freedom of actions guaranteed by Article 35 of the Constitution of the Republic of Slovenia. A ban on wearing a burqa in public would constitute a limitation of this human right. Human rights may only be limited if such a limitation protects other constitutional rights or values (e.g. protection of people and property, and of public order) and if the limitation is determined by law. The legislation of the Republic of Slovenia contains no statutory provision banning or limiting the wearing of the burqa. Therefore, a ban on wearing the burqa could only be determined by an act that the legislator adopted by thoroughly considering the values protected by the Constitution of the Republic of Slovenia. Until then, the burqa is permitted if special regulations do not limit it (e.g. for safety at work), while the recent judgement of the ECHR does not have a direct impact on Slovenian legislation.

A question regarding the privacy of children on Facebook was assessed as complex. Therefore, we could not provide an unambiguous reply. We pointed out that the Ombudsman's task is to protect the rights of individuals in relation to the State and its authority. Therefore, the Ombudsman is not competent to solve problems arising from interpersonal relationships. We expressed our belief that every child has the right to the protection of privacy, which includes the publication of their photos online, in the media or elsewhere in public. The rights of minors are generally exercised by their parents, who also assess what is in their child's best interests. In this process, parents decide freely, but must not put their child at risk. If a child is at risk, the State may (must) intervene to protect the child. The issue becomes additionally complicated in cases when parents' opinions regarding their child's best interests differ. The Ombudsman assessed that a decision on the publication of photos of children in public is, in principle, their parents' decision, but it must be unanimous.

The Ombudsman's reply to the **question regarding discrimination when purchasing tickets for a football match** which, on the basis of security requirements, could only be bought by Slovenian citizens was that restricting the purchase of tickets only to Slovenian citizens could constitute discrimination. The latter is prohibited by the Implementation of the Principle of Equal Treatment Act (ZUNEO) – the aforementioned case could involve unequal treatment on the basis of citizenship when accessing goods and services available to the public.

In addition to various complaints we received, a question of a journalist regarding **the transfer of real estate to minors** showed that people resort to various forms of "self-aid", or defy the system when they have problems. Due to the crisis and the new real property tax, parents are more and more frequently transferring their real estate to their children, even minors. This is not disputable *per se*, since the property of children increases in this manner. However, there are cases when parents manage to transfer to a child real estate that is already mortgaged. This can happen despite the fact that social work centres do not consent to such legal transactions in order to protect the child's rights.

Following the example of other countries, we hear stories about events that make the life of underprivileged persons even more miserable in Slovenia too. We received **a question regarding barriers for homeless persons** under the overhanging roof of a Mercator shop. A journalist wanted to know whether the Ombudsman found it suitable to erect a physical barrier to solve the problem of poverty and homelessness. On the basis of information from the media, the Ombudsman assessed that the purpose of erecting a fence was not to solve poverty and homelessness, but to protect property and public order. We understood from the media that a fence had been erected under the facility with the consent of the co-owners and residents of the facility who had been affected by the mess.

We also received **a question regarding the family life of mothers serving a prison sentence**. The Ombudsman explained that she handled several complaints referring to visits of children of detained persons. A detainee informed us that the presiding judge did not permit visits by his four-year old son during his detention, even though he is very close to his son. The judge discussing his criminal case assessed that a visit to his father in an environment where detainees' human rights are limited would be harmful for such a small child. The presiding judge also supported her decision with the Constitution of the Republic of Slovenia, according to which children are subject to special protection, and with international conventions on children's rights protection. The judge also considered circumstances from data in the file on the detainee's previous convictions. The Ombudsman did not fully agree with the court's decision. The Ombudsman cannot interfere with a concrete court decision. However, we disagree with the position of the court (which was also noted in other cases) that the child's right

to have contact with both parents should be limited solely in the child's interests because prison premises are unsuitable for visits.

We received **a question on the position of elderly persons in prisons** for the first time. We pointed out that the State must ensure that all prisoners serve their sentence in conditions suitable for their (remaining) physical capacity. If the State deprives a person (e.g. an elderly person) of their liberty, it must also ensure that the deprivation of liberty and enforcement of penalty are conducted in a way that respects human personality and dignity. The position of persons affected by their age or health problems and/or disability must be taken into account even more. If not, the case may involve inhuman or degrading treatment, and thus a violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Journalists were also disturbed by **the conditions at Ptuj Retirement Home, Koper Unit**. When visiting the institution, the Ombudsman as the National Preventive Mechanism (NPM) established deficiencies and prepared a report on the visit. The report includes recommendations to improve the conditions at the secure unit of the institution.

Despite several new interesting topics, we encountered certain regular features which journalists are interested in. There were fewer questions from journalists regarding police work, and slightly fewer questions regarding the rights of persons with special needs and of disabled persons.

In 2014, we received more questions from the field of constitutional rights related to **the arrangement of conditions for Roma** and access to basic goods. We noticed a significant decline in the number of questions regarding homosexuals. More specifically, the **question of blood donation from homosexuals** resurfaced. 2014 being an election year, the interest in **speeches of politicians and important employees in public administration** slightly increased. The Ombudsman assesses such statements as inappropriate, and emphasises that certain cases may involve hate speech, which may only be identified as such by state authorities. The Ombudsman requires civil servants to conduct non-discriminatory, respectful and highly ethical discourse. For the same reason, we received **questions regarding the abuse of children and elderly persons for pre-election purposes**. The Ombudsman did not establish any abuse in the two cases. We again stated our position on questions regarding initiatives made by relatives of **persons killed after World War II**. We gave a statement for the television about whether this was a violation of the rights of material victims of World War II who had not yet received any compensation in lengthy proceedings. We have been noticing interest in relation to **refugees** in Slovenia. Only the aforementioned case of the Somali girl caused a stir. In the field of the ethics of public speaking and the protection of children's rights, we again received **a question on the suitability of certain literary works** which contain elements of child pornography, animal torture and detailed descriptions of violent acts.

In the field of the protection of children's rights, we received several general **questions about children's rights**, unaccompanied children, child trafficking, child support, the rights and obligations of children and teachers, schooling and marks, advocacy, abuse of children for pre-election purposes, children with special needs, etc.

Questions in relation to **employment relationships** are also regular. In this regard, we received questions about amendments to the Labour Inspection Act, violations of the rights in the workplace, dismissal of persons with mental disorders due to lengthy sick leave, the work of labour inspectors, etc.

Numerous questions are related to **people's social problems**, e.g. a question of spouses who had been left with nothing about their options; about returning social relief; the rights of people in need, etc. The interest in reducing violence in society does not subside: we received many questions regarding the signing of the Istanbul Convention, and violence against women, and a question about the treatment of elderly persons at a retirement home, and the psychological abuse of women, family violence and even suspected sexual abuse at an elementary school in Ljubljana. In the summer months, questions appear about high **temperatures** in various situations; characteristic of some of them is the limited movement of persons accommodated in hospitals, prisons, psychiatric hospitals, retirement homes, etc..

Prior to a decision of the Constitutional Court of the Republic of Slovenia on the Ombudsman's request for a review of constitutionality, we received several **questions regarding fine enforcement by imprisonment**. People were interested in why the Constitutional Court had not decided to handle the Ombudsman's request as a priority, and why the Court had not made a decision yet, although the request was filed over two and a half years ago. The Ombudsman did not assess the latter, but merely referred the journalist to the Constitutional Court.

In **the field of housing**, we encountered questions related to problems of non-payment for heating costs in energy-consuming residential facilities, and a question on whether we would file a request for a review of constitutionality of the Real Property Tax Act. We decided against the latter.

In our relation to the media, we noticed that the Ombudsman was not satisfied with the situation regarding the resolution of housing matters, since the Ombudsman saw no progress in the systematic adoption and realisation of measures to resolve housing problems in the country and local communities. Some of the Ombudsman's recommendations remain unrealised from year to year. We added that the Ombudsman had been noting the urgency of immediately adopting a new national housing programme for several consecutive years. The National Housing Programme for the 2000–2009 period is outdated and did not meet expectations.

Press conferences

The Ombudsman and her co-workers held 21 press conferences: six at the Ombudsman's head office and 15 during meetings outside the head office.

On 25 February 2014, Human Rights Ombudsman Vlasta Nussdorfer focused on socio-economic rights at a press conference on the occasion of the first anniversary of her work. She pointed out the unregulated status of blood donors and volunteer fire-fighters; mentioned problems with ministries when inter-ministerial coordination is required; expressed dissatisfaction that people had to spend their precious time on arranging irregularities regarding their real estate; and articulated her doubts that the Surveying and Mapping Authority of the Republic of Slovenia would be able to carry out things planned in time.

At a press conference on 18 March 2014, the Ombudsman and her Deputies focused their attention on certain current cases in the protection of children's rights (including the case of beeping keys), and emphasised, on the occasion of the upcoming Down Syndrome Day and Autism Awareness Day, the non-realisation of the rights of persons with special needs. She also spoke about the case of a radon-contaminated kindergarten in Črni Vrh nad Idrijo, and informed journalists that she had appealed to Minister of Finance Dr. Uroš Čufer to justly tax certain contaminated land. She announced that the Ombudsman was preparing children-friendly rooms.

At a press conference on 13 May 2014, the Ombudsman, her Deputies and the Secretary General informed the public that the Ombudsman had been officially included in the network of safe points which provide shelter for children in need. She highlighted cases of user-unfriendly legislation and problems with entries in the register of births in cases of home birth. Deputy Ombudsman Tone Dolčič presented the problem of the so-called therapeutic groups of medicines, while Deputy Ombudsman Ivan Šelih pointed out the delay of the Ministry of Health in the preparation of a normative framework for the operation of a forensic unit in Maribor. Deputy Ombudsman Ivan Šelih also spoke about the Ombudsman's response to proposed amendments to the Legal Aid Act (ZBPP-C) which anticipated the elimination of the institute of the first legal advice, which, the Ombudsman believes, would be a step back in this field, rather than a contribution to access to free legal aid. The Ombudsman informed the public that she would soon meet the National Electoral Commission to alert it about the urgency of polling stations being accessible for all disabled persons. She also spoke about the case of a boy named Rene and about Silvo Mesojedec's hunger strike.

At a press conference on 17 June 2014, we pointed out the delays in the resolution of complaints at the Ministry of Labour, Family, Social Affairs and Equal Opportunities, the incorrect establishment of the material situation of families requesting public funds, and also the fact that the Social Security Benefits Act enabled the State to prohibit the alienation and encumbering of real estate of recipients of monetary social relief and pension support.

At a press conference on 18 March 2014, the Ombudsman and her Deputies spoke about the highlights of the Annual Report for 2013 that was submitted to the President of the National Assembly, Janko Veber, on the day of the press conference. More information on the submitted report of the National Preventive Mechanism was provided by Deputy Ombudsman Ivan Šelih. The Ombudsman emphasised that political parties running for office should take a stand regarding the problem of human rights in the pre-election period. She stated that the Report was user-friendly. Using transparency and artistic highlights, we attempted to make certain our recommendations and alerts would not go unnoticed. The Ombudsman pointed out that people are frequently alone before the mighty and frequently closed door of the State. Therefore, in accordance with the principle of good management, she appealed to everyone who works for people to remember that we were above all people, not mere rigid readers, since showing kindness to a person in need and attempting to find a solution are the bases for the protection of human rights. The Ombudsman invited all state institutions and local authorities to unconditionally respect the human rights and fundamental freedoms set out in the Constitution of the Republic of Slovenia, the European Convention on Human Rights and Fundamental Freedoms, and other treaties binding on the State in their work and when making decisions.

At a press conference on 25 November 2014 the Ombudsman and her Deputies presented certain violations of human rights in the field of health care. They pointed out International Day for the Elimination of Violence Against Women, informed the public of the planned celebration of Human Rights Day, and spoke about the problem of the introduction of a digital radio system (GSMR) on the Slovenian railway network. Deputy Ombudsman Kornelija Marzel, MSc, presented the current problem of registering residence, and the cruel consequences of losing a home (loss of health insurance, inability to apply for a tender for non-profit dwellings).

Use of the media?

Last year, we noticed particularly an increase in **the use of the media** and authorities for the promotion of interests of individuals and groups. We noticed that, through questions of journalists, people attempted to encourage the Ombudsman to state her position regarding certain events and to take sides in disputes. We could not avoid the feeling that these were attempts to give one side in a dispute greater value, if not even legitimacy. When responding to such cases, we examined the relevant information even more thoroughly, and considered and formed guidelines for future cases more soundly.

We encountered various issues whose nature indicated their purpose was to verify the efficiency of the Ombudsman's operations, which is a legitimate objective of the media who as supervisors of the Ombudsman's work. However, we could not ignore our impression that such verification serves only the interests of certain groups. In the guise of assessing the Ombudsman operations, we encountered tendentious articles about the Ombudsman's income, which we refuted with arguments. However, it is difficult to banish all doubts about readers after reading such articles.

At the end of the year, we even received **"criticism of our spending"** upon our modest reception held at Brdo Castle on the occasion of the 20th anniversary of the Ombudsman's operations. One of media outlet had no intention of informing the public that, with this event, the Ombudsman especially wanted to support the efforts of children with special needs, and to thank everyone who cooperated with the Ombudsman to improve the system on the occasion of the jubilee. Experts working in public relations emphasise that communication with the public is all the more important in crises, since only communication can calm down heated passions, resolve disputes which are not in a critical phase, and thus enhance the feeling of security in all those who are informed or can communicate. Receptions are a form of communication, and may be even more efficient than other forms, due to the personal contact and emotional components. In this case too, we could not avoid the feeling that by listing only certain guests who were defined as members of one political side in Slovenia was used to reduce the value of the Ombudsman, whose voice may be very powerful when it comes to human rights, in the eyes of the other side.

The development of technologies and various networks has made communication with the public more complex. In this regard, we follow the principles of the profession, and attempt to communicate in places and at times when information, questions, calls to the Ombudsman and other contents appear. To prevent crisis situations, the prompt discovery of publications that are not in favour of the Ombudsman and focus

particularly on **discrediting the institution and the work of its holders** is essential. We follow such articles with the assistance of **a company for media analysis, Observer Genoin Clipping, and the application for media supervision, Google Alert**, and we attempt to actively follow posts on certain networks. Information on our approach to such information in 2014 is provided below.

We have been monitoring for years how, in cases which generate general dissatisfaction, one of **those responsible for the dysfunctional system is the Ombudsman**. Posts on forums mainly from the tabloids and blogs include volumes of unjustified accusations which indicate especially the anger and frustration of people with the system, and the lack of knowledge of the Ombudsman's work. Such cases are a challenge for us and encourage us to present the institution of the Ombudsman even better. At the same time, we are aware that the nature of the Ombudsman's work is extremely complex. Even if we managed to present the institution to all stakeholders in an excellent and concise manner, rational arguments and facts cannot compete with the emotional states of disappointment and anger in certain cases. However, the challenge does exist.

In the case of children's cardiac surgery, we received a question on **whether the Ombudsman had succumbed to the interests of lobbies** in one of the groups that contacted them. We explained that anyone who believes that their, or their close family members', rights have been violated can contact the Ombudsman. During such meetings, the Ombudsman (or their co-workers) is informed of individual problems. If the Ombudsman detects a suspected violation of rights by the authorities that the Ombudsman supervises, they may appeal to the complainants to file a complaint or the Ombudsman files a complaint of their own accord. When handling complaints, the Ombudsman acquires information in various manners and on its basis, establishes whether the case involves a violation of rights. In their work, the Ombudsman is independent and autonomous. The Ombudsman never forms a final position on the basis of a single side involved in a story, but acquires a wide range of information.

Meetings with the Ombudsman, hundreds of which take place in one year, are a form of acquiring information and do not correspond to the definition of lobbying as defined by the Commission for the Prevention of Corruption (KPK). According to the KPK, persons being lobbied are decision makers whom lobbyists attempt to influence to achieve a solution they desire. The Ombudsman IS NOT a decision-maker. The Ombudsman is a supervisory institution that verifies whether state authorities, local community authorities and holders of public authority respect human rights. The Ombudsman's only interest is to achieve respect for human rights by the authorities they supervise. The aforementioned case involved our supervision of the UMC Ljubljana. We attempted to establish whether it violates human, especially children's, rights. When handling complaints, the Ombudsman never makes decisions regarding the operation of an authority, but merely voices an opinion or recommendation from the aspect of the protection of human rights, which is determined in the Constitution of the Republic of Slovenia and the Human Rights Ombudsman Act (ZVarCP). In the specific case of the parents of children with congenital heart disease, the Ombudsman does not participate in "the adoption of regulations and other general acts" which could be "used by lobbyists to achieve a certain result" (the source of quotes: the website of the KPK).

The Ombudsman is in contact with interest groups that wish to attain their objectives on a daily basis. However, when handling their complaints, the Ombudsman always pursues the respect for human rights defined in the Constitution, acts and international acts. The Ombudsman's only tool is language, and the manner of attaining objectives is to argue. To present the issues we deal with in-depth to the expert public, **we publish professional articles in the Pravna praksa Journal** that are written by the Ombudsman, her Deputies or advisers.

Ombudsman's communication on social networks

On the **Publishwall** portal, we encountered an outraged article about the Ombudsman doing too little for her (according to the author) high salary, since a friend of the author had allegedly been waiting 90 days to receive a reply from the Ombudsman. In this case, we decided for the first time to communicate through a forum via a generalised and tendentious post. The Ombudsman managed to minimise the negative impact of the statement with a respectful and substantiated dialogue (discussion). We requested that the author of the statement send us the name and surname of the friend affected, so that we could investigate what had really happened in her case, and whether she had indeed contacted us regarding her problem. We offered

our assistance to investigate potential clumsiness or error. We managed to find the reason for, and source of, the statement disclosed, and the person whose story had been abused and used in a tendentious manner to discredit the Ombudsman visited the Ombudsman for a discussion. We established that our intervention in the discussion had been well accepted, but that we needed additional personnel for crisis communication. Similar to 2013, we can establish that, in view of the increased quantity and complexity of communication interactions of the institution with the public, we require more personnel.

The Ombudsman continues to publish her thoughts on human rights in her regular bi-weekly column that has been published for years on **the IUS INFO website**, which has many readers, and whose visibility and readership are also enhanced through social networks. We have 1,843 followers on Facebook. Like all institutions of this kind (also in other countries), the Ombudsman is faced with the dilemma of how to be present on the web and at the same time, maintain the confidentiality of procedures, and achieve this with limited resources (human and financial). Therefore, **the Facebook profile** has not yet been widely promoted, but for years, we have been increasingly following blogs and sites relevant to the Ombudsman's work. **On the Ombudsman's website**, the public is especially interested in employment possibilities at the Ombudsman, and in the Ombudsman's work, and in the e-news they receive and, consequently, browse press releases. Regular weekly announcements of the activities of the Ombudsman's employees, and a section on the website, which allow a concise overview of the activities, introduced in 2013, have been successful and regularly followed also through e-news. Through e-news, the Ombudsman weekly informs 270 individuals and 479 journalists. The Ombudsman's website still contains weekly publications of the Ombudsman's cases in order to inform the public about the Ombudsman's findings regarding alleged violations of human rights, and raise public awareness of possible ways and solutions in cases that are potentially similar to theirs. The cases also receive more attention from the expert public. In 2014, 59 cases were published.

The Ombudsman's publishing activity

The main publication prepared in 2014 was the **19th Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2013**. It was issued in June and comprises 384 pages. The Report is designed differently from previous reports. The Ombudsman's Report is a collection of complex and legally justified findings that certain readers may find difficult to understand. However, its innovative and fresh approach to the preparation of the extensive Report, with its clear and quickly readable structure, and highlighted content (notes), are very convincing, reader-friendly and transparent. Throughout the Report, artistic solutions and short highlighted texts speedily and comprehensibly convey whether a state institution is being praised, reprimanded or has received a recommendation. The Report was presented to the National Assembly, the National Council, the Government and the President of the Republic of Slovenia. Readers especially emphasised the high quality of the Report's design, which convinced us that we had selected a good provider of visual communications.

The Report was also forwarded to all deputies of the National Assembly, ministers, central state institutions, local authorities and all public libraries in Slovenia. Many institutions were only informed that the Report is available in electronic form on the website www.varuh-rs.si. On 2 July 2014, Ombudsman Vlasta Nussdorfer personally submitted the 19th Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2013 together with the Report on the implementation of the tasks of the National Preventive Mechanism (NPM) for 2013 to the President of the National Assembly of the Republic of Slovenia, Janko Veber, at the National Assembly. Both reports were submitted to the President of the Republic of Slovenia, Borut Pahor, and Prime Minister Alenka Bratušek on 4 July 2014. Both reports were discussed by committees, the Commission for Petitions, Human Rights and Equal Opportunities, commissions of the National Council, and at a plenary session of the National Assembly of the Republic of Slovenia. The Ombudsman attended a discussion about the Report at the session of the Government of the Republic of Slovenia on 9 October 2014. The final discussion about the Report was held on 21 November 2014 at a whole-day session of the National Assembly, where recommendations to state and local authorities were adopted.

We also prepared **a shorter version in English of the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2013**. The shorter version was sent to state authorities, all representative bodies of the Republic of Slovenia abroad, permanent representative bodies of the Republic of Slovenia in international

organisations, embassies of foreign countries in Slovenia, all ombudsmen in Europe, and selected addressees around the world.

The 6th Report of the Ombudsman on the implementation of the tasks of the National Preventive Mechanism (NPM) according to the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment was prepared in Slovenian and English. In the publication, we published this Report, a table review of all visits with institutions and other activities of the NPM, the Convention and the Protocol, and the Act ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the legal basis for the operation of the NPM).

At the end of 2014, we issued a special publication, **20 years of the operation of the Human Rights Ombudsman of the Republic of Slovenia /1994–2014/**. The publication presents the path we followed, and efforts we made to exercise human rights and freedoms in the Republic of Slovenia. In addition to current Ombudsman Vlasta Nussdorfer, contributions were made by Ivan Bizjak, MSc, the first Ombudsman, Matjaž Hanžek, the second Ombudsman, and Dr. Zdenka Čebašek – Travnik, the third Ombudsman in the 20-year history of the operation of this institution. Deputy Ombudsman Jernej Rovšek presented efforts to establish the institution of the Ombudsman. Former and current Deputy Ombudsmen presented the work in individual substantive fields (Aleš Butala, Kornelija Marzel, MSc, Ivan Šelih and Tone Dolčič). The General Secretary of the Ombudsman Bojana Kvas outlined the path from the beginning to the present. We were especially happy that their vision of the place and role of the institution in our society were presented by Borut Pahor, President of the Republic of Slovenia, Dr. Milan Brglez, President of the National Assembly of the Republic of Slovenia, Dr. Miro Cerar, Prime Minister of the Republic of Slovenia, Mitja Bervar, President of the National Council of the Republic of Slovenia and Miroslav Mozetič, MSc, President of the Constitutional Court of the Republic of Slovenia. Mayors of certain municipalities emphasised the significance of cooperation with the Ombudsman: Bojan Kontič, Mayor of the Municipality of Velenje; Anton Štihec, former Mayor of the Municipality of Murska Sobota; Mohor Bogataj, former Mayor of the Municipality of Kranj; Zoran Jankovič, Mayor of the Municipality of Ljubljana; Matej Arčon, Mayor of the Municipality of Nova Gorica. Through all these years, Ombudsmen especially strove for good cooperation with non-governmental organisations and civil society movements. This was written about by: Katarina Bervar Sternad, Legal Information Centre for NGOs; Katja Zabukovec Kerin, Association against Violent Communication; Boris Šuštar, coordinator Civil Society Initiative from Celje; Uroš Macerl, President of Eko krog; Tea Jarc, President of the National Youth Council of Slovenia; Darja Groznik, President of the Slovenian Association of Friends of Youth. In the publication, we particularly presented all the Ombudsman's requests for the review of constitutionality made so far, public relations from the beginning to present (Nataša Kuzmič), and the Ombudsman's work in numbers (Kristijan Lovrak).

A special **report on the Advocate - A Child's Voice Project** was prepared by the Ombudsman in February 2013, and published on the website (www.varuh-rs.si). In 2014, this report was then printed as a publication (in A4 size).

In 2014, the Ombudsman and ZIPOM (the Centre for Advocacy and Information on the Rights of Children and Youth) that operated within the Slovenian Association of Friends of Youth (ZPMS) prepared and issued a **brochure on children's rights**. The selection and adaptation of the text on children's rights was prepared by Ombudsman Vlasta Nussdorfer, while the illustrations and design came from Alenka Trotošek. The same text was also used for the calendar issued by the ZPMS at the end of 2014.

All the above publications and publications from previous years are available on the Ombudsman's website (www.varuh-rs.si).

3.4 Access to public information at the Ombudsman

The first paragraph of Article 1 of the Access to Public Information Act (ZDIJZ) defines the procedure which enables anyone free access and re-use of information of a public character held by state authorities, bodies of local authorities, public agencies, public funds and other public legal entities, holders of public authority, and entities implementing public services (bodies). The purpose of this Act is to ensure public and transparent functioning of the bodies and enable the exercise of the rights of natural and legal persons to obtain public information. In order to achieve the purpose of this Act, the authorities should strive to ensure that the public is

informed of their activities to the greatest possible extent. Pursuant to Article 9 of the ZDIJZ, the Ombudsman has appointed two officials from among her employees to be responsible for providing public information.

In 2014, we received four requests for information according to the ZDIJZ, and in one case, the applicant requested that the Ombudsman inform them of their own information. A brief summary of three cases is given below.

Request for public information 0106-10/2014

The applicant P. R., who was a prisoner at the Dob pri Mirni prison, **requested information on numerous complaints** received and handled by the Ombudsman, including complaints from convicts. An official at the Ombudsman's office established that the Ombudsman did not have any information that the complainant wished to acquire, since the Ombudsman did not keep any records from which information could be acquired, not even a record on the number of complaints from convicts and their justification. The applicant complained to the Information Commissioner against the negative decision of the Ombudsman. In our reply to the complaint, we stated to the Information Commissioner that legal provisions did not determine that the Ombudsman should keep special records of the fulfilment of individual legally prescribed tasks of the Ombudsman. However, we agreed with the opinion of the Information Commissioner that it would be reasonable to keep such records to improve the transparency of the Ombudsman's operation. Therefore, the Ombudsman commenced preparations to urgently update the information system.

Request for public information 0106-16/2014

The applicant requested information "that points to problems or potential problems at our address". He requested that we explain "our motives that might have appeared in the organisation or among employees at the Ombudsman's office" for not replying to written complaints received within the deadline, or not replying at all, although one would expect professional and efficient resolution of problems from the Ombudsman, and replies sent to the sender's address, in this case a convict or prisoner. We replied to the applicant in writing, stating that we were somewhat surprised at his application. We explained to him, (also) in writing, the Ombudsman's role and competences, and options when handling complaints. In 2014, we carried out 19 phone conversations with the applicant, during which he was informed of the handling of his accusations regarding the serving of a prison sentence.

Request for public information 0106-17/2014

The applicant requested information about how the Ombudsman handles his personal data. We informed the applicant that he provided his personal data to the Ombudsman when he filed a complaint, but the Ombudsman does not have any other information about him (from other sources) at her disposal. We also stated that the Ombudsman had entered the information in the database of personal data when handling the complaint, that the information was only used in relation to the handling of the complaint, and that the information was not forwarded to anyone outside the institution of the Ombudsman. The applicant was referred to Article 8 of the Human Rights Ombudsman Act, which stipulates that the Ombudsman's procedures are confidential. Only the Ombudsman's employees may see the entire database of such information. A list of employees is publicly accessible on the Ombudsman's website.

3.5 International participation

In international relations, the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) strives for the active exchange of experiences and best practices in the operations of Ombudsmen as supervisory mechanisms for exercising human rights and fundamental freedoms in individual countries. Legal bases and the competences of Ombudsmen and their methods of work in the European area are similar in many respects. However, there are specific features and examples of best practice that should be known, assessed

and perhaps exercised. Our mode of operation in the field of tasks and powers held by the Ombudsman as the National Preventive Mechanism (NPM) is very interesting for other Ombudsmen in Europe and beyond. By being entrusted with the tasks and powers of the NPM, the Ombudsman became an integral part of a generally applicable system under the auspices of the United Nations (UN), which enforces (additional) mechanisms for the prevention of torture and other forms of ill-treatment of people deprived of liberty at international and national levels. This system is particularly based on regular visits to places of detention. These are preventive visits, the purpose of which is to prevent torture or other ill-treatment before it occurs. A special feature of the Slovenian model is that non-governmental organisations (NGOs) registered in the Republic of Slovenia, and organisations that have acquired the status of a humanitarian organisation also participate in supervision carried out in places of detention and the examination of the treatment of persons deprived of their liberty. The reputation of the successful Slovenian model has spread, and therefore, representatives of the Ombudsman frequently present the Slovenian model abroad at international conferences, workshops and meetings organised by Ombudsmen in cooperation with the UN, EU or the Council of Europe. On 26 March 2013, the NPMs from the South-Eastern Europe formed a network entitled South-East Europe NPM Network (SEE NPM Network) in Belgrade (Serbia) in order to establish better cooperation, exchange experience, and implement numerous joint activities to improve the efficiency of performing the tasks and powers of the NPM. In 2014, the presidency of this Network was taken over by the NPM Slovenia from the NPM Albania. During its presidency, the NPM Slovenia organised a meeting of members of the network in Ljubljana on 26 and 27 May 2014.

The model of the NPM operation is only one of special features and best practices of the Human Rights Ombudsman of the Republic of Slovenia presented by the Ombudsman's co-workers abroad. Particularly important for the Ombudsman are forms of connections and regular meetings of ombudsmen which are organised by the FRA (Fundamental Rights Agency), AOM (Association of Mediterranean Ombudsmen), EOI (European Ombudsman Institute) and the IOI (International Ombudsman Institute), each of which has a different main topic. Discussions and conferences on the introduction of adopted, and the formation of new, international standards of human rights protection are organised by various working bodies of the Council of Europe, EU and the UN that regularly present progress on the introduction of international legal acts on human rights and fundamental freedoms (conventions). These meetings are attended monthly by the Ombudsman, her deputies or advisers.

The Ombudsman's international participation in 2014 is presented below (in chronological order).

Regional conference of child advocates

On 20 and 21 January 2014, Deputy Ombudsman Tone Dolčič participated at a regional conference of child advocates and competent parliamentary working bodies in Danilovgrad in Montenegro. They discussed the protection of children against all forms of exploitation. The conference was organised by the Parliament of Montenegro and the delegation of the Parliament of Montenegro at the Parliamentary Assembly of the Council of Europe.

Presentation of the Ombudsman's work to Czech students

On 22 January 2014, the Ombudsman's advisers Miha Horvat and Robert Gačnik received students from the Faculty of Social Studies, a member of Masaryk University in Brno in the Czech Republic. These students were in Slovenia within the Erasmus exchange programme at the Faculty of Criminal Justice and Security in Maribor. They were interested in the operation of the institution of the Ombudsman, the position of minorities in Slovenia, and the Ombudsman's cooperation with the police and civil society. Both advisers described fields and forms of the Ombudsman's work, and spoke about the Ombudsman as the National Preventive Mechanism.

Meeting with representative of the Office of the United Nations High Commissioner for Refugees

On 24 January 2014, Deputy Ombudsman Jernej Rovšek received Montserrat Feixas Vihe, representative of the Office of the United Nations High Commissioner for Refugees (UNHCR) in Central Europe at the Ombudsman's premises.

Meeting with the Dutch Ambassador

On 5 February 2014, Ombudsman Vlasta Nussdorfer and her deputies Kornelija Marzel, MSc, and Jernej Rovšek received the Ambassador of the Kingdom of the Netherlands, His Excellency Pieter Jan Langenberg, at an introductory visit at the Ombudsman's premises. The Ambassador was informed of the work, competences

and key topics the Ombudsman handles. They also discussed the problem of corruption, the rule of law, ethics, living conditions of Roma and the erased.

Ombudsmen from the south-eastern region on the exchange of practices and cooperation opportunities

On 10 February 2014, ombudsmen from the south-eastern region met at the Slon Hotel in Ljubljana. The event was organised by the Central European Initiative (CEI) and the Regional Cooperation Council (RCC) from Sarajevo. Initially, they discussed priority tasks, models, barriers in their work and other issues relevant to the (co)operation of ombudsmen in the region. In thematic working groups, they considered: workers' rights and socio-economic rights in the public and private sectors with special emphasis on mobbing in the workplace and the protection of whistle-blowers; combating the discrimination of vulnerable groups; gender equality; legislative initiatives of ombudsmen; requests for reviews of constitutionality; the protection of transparency and democracy in procedures; and the right to a fair trial. The meeting was attended by representatives from Albania, Bosnia and Herzegovina, Montenegro, Croatia, Kosovo, Macedonia, Slovenia and Serbia. The participants concluded the conference with a joint statement and decision to establish a regional ombudsmen network which would be based on the so-called Sarajevo statement on cooperation and would have a rotating secretariat, commencing in Albania.

Slovenian NPM model introduced to colleagues from Kazakhstan

On 11 February 2014, representatives of the Slovenian National Preventive Mechanism (NPM), Deputy Ombudsman Ivan Šelih, the Ombudsman's advisers Robert Gačnik in Miha Horvat, and representative of the Legal Information Centre for NGOs Katarina Bervar Sternad received a visit from their colleagues from Kazakhstan. At the Ombudsman's premises, the latter were presented the operation of the Slovenian NPM, whose best practice of cooperation with the non-government sector is a model for establishing similar institutes in other countries. On 12 February 2014, the guests from Kazakhstan also participated in the inspection of the Koper Prison unit in Nova Gorica.

With the Finnish Ambassador on the NIHR and the Ombudsman's operation

On 14 February 2014, Deputy Ombudsman Jernej Rovšek and General Secretary of the Ombudsman Bojana Kvas, MSc, received His Excellency Pekko Metsa, the Finnish Ambassador, and Deputy Head of Mission Sirpa Oksanen. They discussed the experience of Finland when establishing a state institution for human rights on the basis of the Paris Principles (NIHR) and possibilities of exchanging experience about this. The Ambassador closely monitored the development of the NIHR in Finland when he was responsible for human rights at the Ministry of Foreign Affairs.

The National Preventive Mechanisms meet in the Czech Republic to discuss the rights of elderly persons

From 19 to 21 February 2014, Deputy Ombudsman Ivan Šelih and the Ombudsman's adviser Jure Markič attended a conference entitled "Protection of the Rights of Elderly People in Institutions, with an Emphasis on People with Dementia" in Brno in the Czech Republic. At the conference, Ivan Šelih presented the experience of the Slovenian NPM, and dilemmas and open issues that arise when monitoring the operation of retirement homes and the position of persons in them. He also presented the operation of the South-East Europe NPM Network.

Presentation of Slovenian experiences in Belgrade

On 24 and 25 February 2014, Deputy Ombudsman Ivan Šelih attended a regional conference entitled "Implementing commitments to improve peoples' lives" in Belgrade. He presented the position of the Slovenian NPM in Slovenian legislation, its powers and operation. He also emphasised that the Ombudsman in Slovenian handles complaints from prisoners from the aspect of verification and respect for human personality and dignity, and that the Ombudsman operates at two levels: eliminating concrete violations and acting proactively to prevent violations from occurring.

The Ombudsman receives the Ambassador of the United States of America,

On 27 March 2014, Human Rights Ombudsman Vlasta Nussdorfer and her Deputy Jernej Rovšek received the Ambassador of the United States of America, His Excellency Joseph A. Mussomelli, and his Deputy David Burger. The Ambassador informed the Ombudsman of the preparation of a report by the State Department on the situation regarding human rights in Slovenia. They also discussed certain current issues related to the protection of human rights.

Reception of the President of the Czech Republic

On 3 April 2014, Human Rights Ombudsman Vlasta Nussdorfer attended the reception of the President of the Czech Republic, His Excellency Miloš Zeman.

Reception of the Ambassador of Egypt

On 3 April 2014, Human Rights Ombudsman Vlasta Nussdorfer received the Ambassador of Egypt, Her Excellency Heba Sidhom at the Ombudsman's premises.

Recommendations of NPMs regarding the extent of human rights

On 9 April 2014, Deputy Ombudsman Ivan Šelih and member of the NPM Katja Sodja from SKUP – Community of Private Institutes attended a consultation of the National Preventive Mechanisms on the operations of the police and prevention of torture. At this meeting, he discussed the prevention of torture in Tajikistan and Slovenian practice with representatives of the Tajik supervisory group of detention facilities. Representatives of the National Preventive Mechanisms drew certain conclusions addressed to the countries that participate in the Organization for Security and Co-operation in Europe (OSCE).

European Network of Ombudsmen

From 26 to 30 April 2014, Deputy Ombudsman Jernej Rovšek attended the 9th meeting of Liaison Seminar of the European Network of Ombudsmen.

Study visit from Latvia

From 6 to 8 May 2014, Human Rights Ombudsman Vlasta Nussdorfer, her Deputy Ivan Šelih, and the Ombudsman's advisers Miha Horvat and Robert Gačnik received a delegation from Latvia for a study visit at the Ombudsman's premises. The delegation included Oksana Kulakova, Renāte Rūse, Laura Šileikiste and Ilvija Pūce. The delegation was presented the operation of the Slovenian NPM and ombudsman's experience in enhancing protection against torture and inhuman treatment. Within the scope of the programme, the participants also visited Ig Prison.

Communication between human rights institutions

On 13 and 14 May 2014, the Ombudsman's adviser Liana Kalčina attended a meeting in Vienna organised by the Fundamental Rights Agency (FRA) to enhance existing communication channels between institutions that make efforts for human rights to be observed, and seek new manners of cooperation and mutual support in communicating human rights and fundamental freedoms at the national and European levels.

Meeting the Austrian Ombudsman

On 16 May 2014, Human Rights Ombudsman Vlasta Nussdorfer, her Deputy Jernej Rovšek, and General Secretary of the Ombudsman Bojana Kvas, MSc, visited their Austrian colleagues in Vienna (The Austrian Ombudsman Board). The same day, the Ombudsman presented the situation regarding human rights in Slovenian and the work of the Slovenian Ombudsman at the Slovenian evening organised by the Institute of Slavic Studies Vienna.

Presentation of the Ombudsman's work for young Nepalese and Bangladeshi people

On 22 May 2014, the Ombudsman's advisers Barbara Kranjc and Miha Horvat presented the Ombudsman's work to twenty participants of a study visit (within the PASLET project) at the Ombudsman's premises. PASLET (Participation in Action, Sharing, Learning and Evolving Together) is carried out together with the organisations of DEMO Finland and DEMO Nepal (they deal with the promotion of democracy), and Odhikar from Bangladesh (it deals especially with human rights). The project transfers best practice in the field of conventional and unconventional political participation from Europe to third-world countries.

Against racism and intolerance at the local level

On 22 and 23 May 2014, Deputy Ombudsman Jernej Rovšek attended a seminar in Strasbourg organised by the European Commission against Racism and Intolerance (ECRI) for specialised national bodies. They discussed the role of these bodies in the support of local bodies to fight racism and intolerance.

Meeting of the South-East Europe NPM Network

On 26 and 27 May 2014, the Human Rights Ombudsman of the Republic of Slovenia, whose powers extend to the function of the National Preventive Mechanism (NPM) against torture and other inhuman treatment,

hosted members of the South-East Europe NPM Network. At the meeting, organised by Deputy Ombudsman Ivan Šelih as President of the Network in 2013 and his co-workers, most attention was paid to the objectives and drafting of the annual report of the NPMs. They discussed the further operations of the Network. The event was held at the Plaza Hotel in Ljubljana. The participants were greeted by Human Rights Ombudsman Vlasta Nussdorfer. Deputy Ombudsman Ivan Šelih expressed his satisfaction at the fact that the meeting was attended by representatives of eight NPMs, from Croatia, Bulgaria, Macedonia, Austria, Montenegro, Serbia, Hungary and Slovenia. He also expressed his regret that Serbian Deputy Ombudsman Miloš Janković could not attend the meeting due to floods, and emphasised the special role of the NPM in Serbia in the aftermath of this natural disaster. The NPM Serbia was visiting centres where people affected by the floods were staying temporarily. The participants discussed annual reports, their preparation and dissemination. They decided that even more systematic promotion of the work of NPMs was urgent, and that more attention should be paid to the analysis of the impact of reports on decision makers in individual countries. On the second day of the meeting, the participants visited the detention rooms used by police units in Ljubljana.

Reception by the Ambassador of Italy

On 2 June 2014, Human Rights Ombudsman Vlasta Nussdorfer attended a reception at the City Museum of Ljubljana, organised by the Ambassador of Italy, Her Excellency Rosselle Franchini Sherifis, on the occasion of a national holiday in the Republic of Italy.

Meeting with constitutional judges from Kosovo

On 5 June 2014, Human Rights Ombudsman Vlasta Nussdorfer and her Deputies Jernej Rovše and Kornelija Marzel, MSc, received the President of the Constitutional Court of the Republic of Kosovo, Prof. Enver Hasani, and other members of the delegation, and the President of the Constitutional Court of the Republic of Slovenia Miroslav Mozetič, MSc, and his co-workers.

Visit from representative of the Office of the United Nations High Commissioner for Refugees

On 6 June 2014, Deputy Ombudsmen Ivan Šelih and Jernej Rovšek, and the Ombudsman's advisers Andreja Srebotnik and Petra Komel received representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR). They discussed the position of applicants for international protection who find themselves in prosecution or even criminal proceedings.

Meeting with representative of the Embassy of the Republic of Serbia

On 10 June 2014, Human Rights Ombudsman Vlasta Nussdorfer, and her Deputy Jernej Rovše met the Consul at the Embassy of the Republic of Serbia in Slovenia, Stana Končarevič, at the Ombudsman's premises.

The occasion of a holiday in the Russian Federation

On 10 June 2013, Human Rights Ombudsman Vlasta Nussdorfer accepted the invitation of the Ambassador of Russia in Slovenia, and attended a reception on the occasion of a holiday in the Russian Federation.

Children in media

From 25 to 27 June 2014, Deputy Ombudsman Tone Dolčič attended the 8th meeting of the Association of Mediterranean ombudsmen where they discussed *inter alia* children in the media.

On the right to freedom of expression in Vienna

On 3 and 4 July 2014, Deputy Ombudsman Jernej Rovšek attended an OSCE conference (Supplementary Human Dimension Meeting) in Vienna entitled "Promotion of Freedom of Expression: Rights, Responsibilities and OSCE Commitments". The Chairperson of the Permanent Council of the OSCE, Thomas Gremlinger, presented the commitments and positions of the OSCE and other international organisation regarding freedom of expression and the media. The United Nations High Commissioner for Human Rights Navanethem Pily expressed the positions of the UN. The participants emphasised several times that freedom of expression also included obligations and responsibilities of all actors in this field, including the obligations of countries to contribute to the realisation of freedom of expression and the media by playing an active role, instead of passively monitoring events and not acting in cases of violations of these fundamental rights. They emphasised that countries should promote self-regulation and freedom of expression, democratic standards and case law (ECHR). The need to decriminalise offences in the field of the protection of honour and good name was highlighted again. Deputy Ombudsman Jernej Rovšek presented the operation of the Human Rights Ombudsman of the Republic

of Slovenia in the field of the ethics of public speaking and the manner of cooperation with non-governmental organisations in this field. /Published on the Ombudsman's website: www.varuh-rs.si – News/ Operation and events, on 7 July 2014/

On the occasion of a holiday in France

On 14 July 2014, Human Rights Ombudsman Vlasta Nussdorfer attended a formal reception of the Ambassador of France, His Excellency Pierre-François Mourier on the occasion of a holiday in the Republic of France.

Association of Mediterranean Ombudsmen on numerous current topics

On 26 and 27 July 2014, Deputy Ombudsman Tone Dolčič attended a conference entitled “Strengthening Democracy: which partners as Ombudsmen?” in Tirana in Albania. It was hosted by the Albanian ombudsman. There were approximately 100 participants from most member states of the Association of Mediterranean Ombudsmen (AMO). The conference provided an opportunity to exchange experience of best practice, and certain open issues, especially the Ombudsman's ability to influence legislative solutions. In the first part of the conference, the relationship between the ombudsman and legislators was addressed. Deputy Ombudsman Tone Dolčič presented the method for handling the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia and participating in the legislative procedure. The participants received the Joint Declaration on the Abduction of Nigerian Schoolgirls. In the declaration, they expressed deep concern about the unacceptable and lengthy abduction of over 100 schoolgirls in northern Nigeria, together with the African Ombudsman and Mediators Association (AOMA), Association of Ombudsmen and Mediators of la Francophonie (AOMF), and the Conseil International Permanent sur la Prévention et la Médiation des Conflits et des Guerres (CIPM). They requested their immediate release and return to their homes and schools, and confirmed their commitment to the values of peace, dialogue and peaceful resolution of disputes.

On the occasion of Constitution Day in the Republic of Kazakhstan

From 27 to 31 August 2014, Deputy Ombudsman Kornelija Marzel, MSc, attended an international conference in Astana, the capital of Kazakhstan, which was organised on the occasion of Constitution Day in the Republic of Kazakhstan (30 August 2014). She lectured about sovereignty and human rights, and the work and challenges of the Human Rights Ombudsman of the Republic of Slovenia.

Deputy Ombudsman receives the Ambassador of the Kingdom of Belgium

On 10 September 2014, Deputy Ombudsman Jernej Rovšek received the Ambassador of the Kingdom of Belgium, His Excellency Paul Jansen. They discussed the preparation of Slovenia's second periodic report within the United Nations Human Rights Council. The Ambassador was interested in the issues of the erased and in living conditions of Roma, as well as issues regarding the German minority, the so-called “new” minorities, and the position of the LGBT community in Slovenia.

Discussion on Human Rights Centre in Helsinki, presentation of Slovenian experience in Tallinn

On 16 September 2014, Human Rights Ombudsman Vlasta Nussdorfer and her Deputy Jernej Rovšek visited the Human Rights Centre (HRC), which has been operating under the Finnish Ombudsman since 2012. The Finnish Ombudsman, HRC and an independent consulting body is comprised of 40 representatives of non-governmental organisations, experts on human rights, academics and representatives of independent authorities (a separate Ombudsman in Finland) all representing a state institution for human rights on the basis of the Paris Principles adopted by the UN in 1993. The operation model of the HRC is interesting for Slovenia, and similar to proposals made by the Ombudsman (also in the Ombudsman's Annual Report for 2011) for the establishment of a human rights centre under the Ombudsman to continue the work of the Information Commissioner that ceased to be financed by the Council of Europe. During the visit, the Ombudsman and her Deputy held a working discussion with the Director of the HRC Kristina Kouros and her co-workers, and was received by the Finnish ombudsman Petri Jääskeläinen. The Ombudsman and her Deputy attended the General Assembly and a conference of the International Ombudsman Institute in Tallinn in Estonia. /Published on the Ombudsman's website: www.varuh-rs.si – News/ Operation and events, on 18 September 2014/

CRONSEE Conference: Services for Children Have (Not) Survived. What Do We Do?

On 18 and 19 September 2014, Deputy Ombudsman Tone Dolčič and the Ombudsman's adviser Lan Vošnjak attended a conference of Children's Ombudsmen Network in South-East Europe (CRONSEE) entitled “Economic Crisis: Services for Children Have (Not) Survived. What Do We Do?”. “Economic Crisis: Services for Children Have

(Not) Survived. What Do We Do?”. The meeting was organised by CRONSEE, Save the Children Organisation, and the Protector of Citizens of Republic of Serbia – Ombudsman, and attended by members of CRONSEE and representatives of the non-government sector in Serbia. The Ombudsman’s adviser Lan Vošnjak presented the situation in Slovenia, and entitled his feature “Economic Crisis: Services for Children Have Been Saved.”. He established that, despite the poor economic situation, the position of children in Slovenia is quite good. However, there are more and more cases when bureaucratic procedures put children under great stress, as the competent authorities are not willing to ease off and seek potential solutions to problems. /Published on the Ombudsman’s website: www.varuh-rs.si – News/ Operation and events, on 22/09/2014/

On asylum and migration policy

On 24 September 2014, Deputy Ombudsman Jernej Rovšek attended a meeting in Vienna of the EU Agency for Fundamental Rights (FRA), the Council of Europe, national human rights institutions, equality bodies, and the institutions of Ombudsmen on asylum and migration policy. The meeting was organised by the EU Agency for Fundamental Rights.

The role of Ombudsmen in EU integration processes

From 24 to 27 September 2014, Deputy Ombudsman Ivan Šelih attended workshops on the role of Ombudsmen in EU integration processes organised by the Albanian ombudsman within the Taiex programme.

The Ombudsman is informed of the EU project on the reception of unaccompanied minors

On 29 September 2014, the Ombudsman’s advisers Brigita Urh and Gašper Adamič received Liedewij de Ruijter de Wildt from the Dutch organisation NIDOS and Elisabeth Melin from the Swedish Association of Local Authorities and Regions. They discussed the EU project on the reception of unaccompanied minors and their placement in foster families. This is a problem of the accommodation of foreign unaccompanied minors, especially minors under the age of 14. In Norway, minors may live in an institution or are included in the family life of a host family. In 2013, 65 asylum seekers were under 18, of whom 26 were unaccompanied in Slovenia. But they do not contact the Ombudsman.

Slovenian experience with torture and inhumane treatment presented at a conference in Vienna

On 6 and 7 October 2014, the Ombudsman’s adviser Miha Horvat attended a conference entitled “Strengthening the effective implementation and follow-up of recommendations by torture monitoring bodies in the European Union”. The conference was organised by Ludwig Boltzmann Institute and the Human Rights Implementation Centre at the Diplomatic Academy of Vienna. They discussed who should be responsible for the actual realisation of recommendations of preventive authorities against torture and inhuman treatment, and what relations with the media, civil society, politics, court, the CPT, the SPT and the EU should be like.

Conference of the European Network of Ombudspersons for Children

From 21 to 24 October 2014, Deputy Ombudsman Tone Dolčič attended the 18th annual conference of the European Network of Ombudspersons for Children (ENOC) in Edinburgh in Scotland. At the conference, he presented the Advocate - A Child’s Voice Project.

The Ombudsman meets the President of the Constitutional Court of the Czech Republic

On 22 October 2014, Human Rights Ombudsman Vlasta Nussdorfer, and her Deputies Kornelija Marzel, MSc, and Jernej Rovšek received a delegation of the Constitutional Court of the Czech Republic led by the President of the Constitutional Court Pavel Rychetsky. The delegation was accompanied by the President of the Constitutional Court of the Republic of Slovenia Miroslav Mozetič, MSc. They discussed the competences and working methods of both institutions, and especially emphasised the competences of the Ombudsman to the Constitutional Court of the Republic of Slovenia and to the Constitutional Court of the Czech Republic.

The Ombudsman and representative of the UN Human Rights Council on the rights of elderly persons

On 18 November 2014, Human Rights Ombudsman Vlasta Nussdorfer, and her Deputies Ivan Šelih and Tone Dolčič received the independent expert of the UN Human Rights Council, Rosa Kornfeld-Matte. The Ombudsman presented the position of elderly persons in Slovenia, while Deputy Šelih, as the head of the NPM, explained the functioning of the Mechanism, which also monitors the life of elderly persons in closed ward at retirement homes. They discussed violence against elderly persons and the legislation that covers this field in Slovenia, as well as the poverty of elderly persons.

At an international conference in BiH about children's rights

On 3 and 4 November 2014, Deputy Ombudsman Tone Dolčič attended an international conference entitled "Rights of the Child – from Idea to Implementation". The conference was attended by child advocates, representatives of the institutions of ombudsman and child advocates from 27 countries. The conference was organised by the institution of the Ombudsman in Bosnia and Herzegovina in cooperation with the international organisation for children's rights Save the Children.

25th anniversary of the operation of the CPT – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

On 12 and 13 November 2014, Deputy Ombudsman Ivan Šelih attended an international conference entitled "Global, regional and national mechanisms for the prevention of torture and inhuman or degrading treatment: learning from one other" on the occasion of the 25th anniversary of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

Reception of the President of Germany, Joachim Gauck

On 25 November 2014, Human Rights Ombudsman Vlasta Nussdorfer attended a formal reception on the occasion of a visit from the Federal Republic of Germany, His Excellency Joachim Gauck.

Slovenian experience with the work of the NPM in the Czech Republic

On 27 and 28 November 2014, the Ombudsman's advisers Miha Horvat and Jure Markič, MSc, attended a working meeting of National Preventive Mechanisms (NPMs) and the institutions of the Ombudsman in Brno in the Czech Republic. The meeting was organised by the NPM from the Czech Republic, and was attended by the NPM from France, Georgia, Hungary, Poland and representatives of the Ombudsman from Slovakia, since the NPM had not been established here yet, where the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment the NPM had not been ratified. On the second day of the meeting, the Ombudsman of the Czech Republic Anna Šabatova actively participated in the discussion.

Deputy Ombudsman Ivan Šelih transfers the experience of the Slovenian NPM to Serbia at the first NPM forum – South-East European OPCAT Forum

On 27 and 28 November 2014, Deputy Ombudsman Ivan Šelih attended the South-East European OPCAT Forum in Belgrade in Serbia. The forum was organised by the Protector of Citizens (Ombudsman) of the Republic of Serbia and the OSCE Mission to Serbia with the assistance of the UNHCR. The first such meeting was attended by 18 NPMs from South-Eastern Europe established on the basis of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the President and other members of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), several representatives of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), and certain representatives of Serbian state authorities and non-governmental organisations.

Children and virtual reality

On 4 and 5 December 2014, Deputy Ombudsman Tone Dolčič and the Ombudsman's adviser Lan Vošnjak attended a thematic meeting of the Children's Ombudsmen Network in South-East Europe (CRONSEE) entitled "Virtual reality – real possibilities, dangers and challenges". The meeting was organised by the Serbian Ombudsman in cooperation with the CRONSEE Network and the international organisation Save the Children. The participants at the meeting issued a joint statement on the issue addressed.

The Ombudsman visits the Head of Mission at the British Embassy

On 12 December 2014, Human Rights Ombudsman Vlasta Nussdorfer received the Head of Mission at the British Embassy in Ljubljana, Christopher Yvon, at the Ombudsman's premises.

The Ombudsman of Kosovo and his co-workers on a two-day study visit with the Slovenian Ombudsman

On 16 and 17 December 2014, a delegation of the Ombudsman of Kosovo (Avokati i Popullit) was on a two-day study visit with the Ombudsman. The delegation comprised Ombudsman Sami Kurteshi, his Deputy and eight expert workers from various fields. They discussed with Slovenian colleagues the operation of both institutions, and exchanged experience in the protection of human rights in both countries. On the first day, they discussed the organisational structure of the Slovenian Ombudsman and the Ombudsman of Kosovo, procedures for

resolving problems, manners of reporting, annual work plans, and strategies and their realisation in practice. The second day was dedicated to cooperation with parliament and its bodies, the preparation and presentation of annual reports, best practices in cooperation with civil society, and competences in relations with the Constitutional Court and other courts. They also discussed the operation of the NPM. The delegation of the Ombudsman of Kosovo showed great interest in best practice in addressing the Ombudsman's annual reports by the National Assembly. Therefore, they plan to organise an international conference on this topic.

3.6 The service of the Ombudsman

Article 10 of the ZVarCP stipulates that the Ombudsman's head office is in Ljubljana, and that the organisation and work are regulated by the Rules of Procedure and other general acts. The service of the Ombudsman is regulated by Chapter VI of the ZVarCP. Article 51 of this Act stipulates that the Ombudsman passes the Rules of Procedure which specify the division of fields of work, the organisation of work, and the method of dealing with complaints on the basis of the preliminary opinion of the competent working body of the National Assembly. The Rules of Procedure are published in the Official Gazette of the Republic of Slovenia.

The ZVarCP stipulates that the Ombudsman's head office is in Ljubljana, but we arranged our operation with the Rules of Procedure so that the Ombudsman may also be present in other regions of Slovenia. We commenced working in this manner in 1995 and continue to do so. We have already described our meetings outside the head office in 2014.

The second paragraph of Article 52 of the ZVarCP stipulates that the Ombudsman has an office managed by the Secretary General. The Ombudsman determined in the Rules of Procedure that the service was to be organised as an office comprised of expert services and the service of the Secretary General. Expert services carry out expert tasks for the Ombudsman and their Deputies in individual fields under the Ombudsman's competence, classify complaints, manage the handling of complaints, handle complaints and prepare opinions, proposals and recommendations, carry out investigations and prepare reports on their findings regarding complaints, and provide information to complainants in relation to their complaints. Expert services are managed by the Director of Expert Services. The service of the Secretary General, independently or in cooperation with external workers, carries out all tasks in the organisational, legal, material, financial and human resources fields, and administrative, technical, information and other tasks required for the Ombudsman's operation.

The Ombudsman appoints and dismisses advisers and other workers. Advisers and other experts in the service of the Ombudsman may be appointed by the Ombudsman for a fixed period from among employees in state authorities. After the period has expired, they have the right to return to their former functions or posts (Article 53 of the Act). The aforementioned option was used by Ombudsman Vlasta Nussdorfer for the first time (of all ombudsmen) in 2014. At the end of October, the Ombudsman and the Minister of the Interior, Vesna Györköš Žnidar, MSc, concluded a tripartite Annex to the employment contract between a civil servant, the Ministry of Interior and the Ombudsman, pursuant to Article 53 of the ZVarCP, and Article 147 and the first paragraph of Article 151 of the ZJU. Based on this Annex, a civil servant was temporarily, i.e. for three months, relocated from the Ministry to The Ombudsman in order to be trained for the implementation of tasks of the NPM and competences of the Ombudsman in the field of police proceedings.

Employees

As of 31 December 2014, the Ombudsman employed 42 persons: six officials (the Ombudsman, four Deputies and the Secretary General), 24 clerks, eight technical civil servants and four fixed-term employees. Fixed-term employees include an employee who is employed for the duration of the Advocate - A Child's Voice Project (presumably by the end of 2015), and two civil servants as replacements for the duration of maternity and child care leave of two employees. The latter commenced their terms on 1 July 2014 and 8 September 2014, respectively, and their fixed-term employment contracts expire on 18 January 2015 and 28 March 2015, respectively, when the employees return from their maternity and child care leave. One employee was relocated to the Ombudsman from the Sector for complaints against the Police of the Police and Security Directorate

at the Ministry of the Interior on 1 December 2014 for three months, i.e. from 1 December 2014 to including 28 February 2015, pursuant to Article, 53 of the ZVarCP.

On 7 November 2014, the six-year term of Deputy Ombudsman Jernej Rovšek expired. At the 4th extraordinary session of the National Assembly of the Republic of Slovenia on 30 September 2014, Jernej Rovšek was reappointed Deputy Ombudsman for a period of six years at the proposal of the Ombudsman. His term commenced on 8 November 2014.

29 employees have university education (including one doctorate and four M.A.s), 10 have higher professional education (two are specialists), one employee has higher education and two have secondary education.

In 2014, the employment relationships of a civil servant who was a trainee expired on 24 August 2014.

As of 31 December 2014, expert services employed 23 employees, of whom 19 were clerks and four fixed-term employees, including the employee transferred for three months from the Ministry of the Interior.

At the end of 2014, the service of the Secretary General employed 13 persons, including five clerks and eight technical civil servants.

In 2014, a university programme student at the Faculty of Social Sciences performed 176 hours of student practice at the Ombudsman on the basis of tripartite contracts. We also enabled a third-year secondary school student (with special needs) in the administrator programme of secondary vocational education at the Cene Štupar Public Institute – Ljubljana Public Education Centre to carry out 264 hours of practical training.

Very important for the Ombudsman's employees is the Ombudsman's agreement with the President of the Constitutional Court of the Republic of Slovenia from 2014 that the Constitutional Court would enable one or two Ombudsman's employees who participate in the preparation of requests for the review of constitutionality or constitutional complaints to carry out six-month professional training by working in the expert services of the Constitutional Court.

3.7 Statistics

This sub-chapter presents statistical data on cases handled by the Human Rights Ombudsman in the period from 1 January to 31 December 2014.

1. Open cases in 2014: Open cases are complaints sent to the Ombudsman's address.

2. Cases handled in 2014: In addition to *open cases* in 2014, these include:

- *transferred cases* – ongoing cases from 2013 handled in 2014,
- *reopened cases* – cases for which the procedure at the Ombudsman as at 31 December 2013 had been concluded, but which were again subject to consideration due to new substantive facts and circumstances in 2014; since these cases included new procedures in the same cases, we did not open any new files.

3. Closed cases: Includes all cases handled in 2014 which were resolved by 31 December 2014.

Open cases

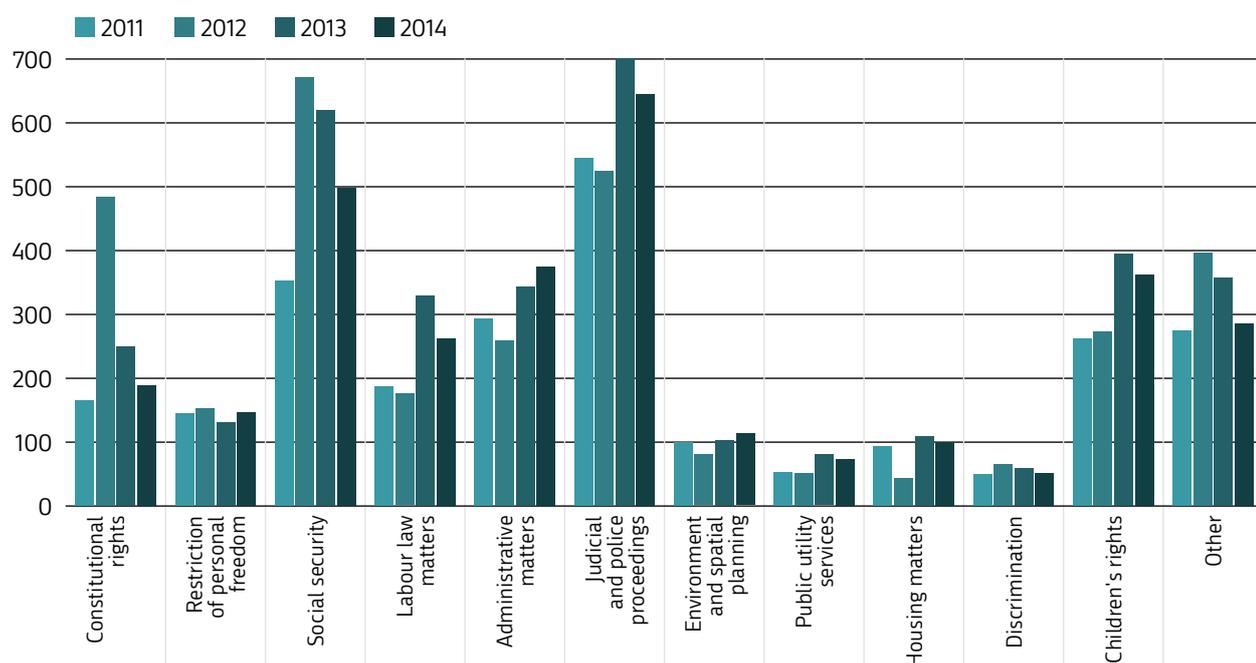
In 2014, the Ombudsman received 3,081 complaints (3,471 in 2013). Most complaints were received directly from complainants in written form (2,753 or 89.4 per cent), 52 during meetings outside the head office, three by telephone and 26 from official notes. Of her own accord (to initiate a procedure, the person affected must provide their consent), the Ombudsman opened 36 complaints; 23 complaints were considered open issues (issues related to the protection of human rights and fundamental freedoms, and for the legal protection

of the wider population in the Republic of Slovenia). We received courtesy copies of 119 complaints and 66 anonymous complaints. Three complaints were referred by the Ombudsman to other authorities.

Table 3.71: Number of open cases received by the Human Rights Ombudsman of the Republic of Slovenia for the period 2011–2014 by individual fields of work

| Field of Work | Open Cases | | | | | | | | Index (14/13) |
|-------------------------------------|--------------|----------------|--------------|----------------|--------------|----------------|--------------|----------------|---------------|
| | 2011 | | 2012 | | 2013 | | 2014 | | |
| | Number | Share | Number | Share | Number | Share | Number | Share | |
| 1. Constitutional rights | 165 | 6.6 % | 482 | 15.2 % | 249 | 7.2 % | 188 | 6.1 % | 75.5 |
| 2. Restriction of personal freedom | 144 | 5.7 % | 153 | 4.8 % | 131 | 3.8 % | 146 | 4.7 % | 111.5 |
| 3. Social security | 352 | 14.0 % | 669 | 21.1 % | 618 | 17.8 % | 496 | 16.1 % | 80.3 |
| 4. Labour law matters | 187 | 7.4 % | 175 | 5.5 % | 329 | 9.5 % | 260 | 8.4 % | 79.0 |
| 5. Administrative matters | 292 | 11.6 % | 258 | 8.1 % | 342 | 9.9 % | 372 | 12.1 % | 108.8 |
| 6. Judicial and police proceedings | 544 | 21.7 % | 523 | 16.5 % | 700 | 20.2 % | 641 | 20.8 % | 91.6 |
| 7. Environment and spatial planning | 99 | 3.9 % | 80 | 2.5 % | 103 | 3.0 % | 112 | 3.6 % | 108.7 |
| 8. Public utility services | 52 | 2.1 % | 51 | 1.6 % | 80 | 2.3 % | 73 | 2.4 % | 91.3 |
| 9. Housing matters | 93 | 3.7 % | 44 | 1.4 % | 109 | 3.1 % | 99 | 3.2 % | 90.8 |
| 10. Discrimination | 49 | 2.0 % | 65 | 2.1 % | 59 | 1.7 % | 50 | 1.6 % | 84.7 |
| 11. Children's rights | 261 | 10.4 % | 272 | 8.6 % | 394 | 11.4 % | 360 | 11.7 % | 91.4 |
| 12. Other | 274 | 10.9 % | 395 | 12.5 % | 357 | 10.3 % | 284 | 9.2 % | 79.6 |
| TOTAL | 2,512 | 100.0 % | 3,167 | 100.0 % | 3,471 | 100.0 % | 3,081 | 100.0 % | 88.8 |

Figure 3.71: Comparisons between the number of open cases by individual fields of work of the Human Rights Ombudsman of the Republic of Slovenia in the period 2011–2014



In 2014, most cases concerned court and police proceedings. 641 cases were opened or 20.8 per cent of all cases in 2014. These were followed by the fields of: social security (496 or 16.1 per cent) and administrative matters (372 or 12.1 per cent of all open cases).

Table 3.7.1 and Figure 3.7.1 show that the number of open cases in 2014 **increased** in comparison to 2013 in the fields of restriction of personal freedom (from 131 to 146 or by 11.5 per cent), administrative matters (from 342 to 379 or by 8.8 per cent), and the environment and spatial planning (from 103 to 112 or by 8.7 per cent). The greatest declines in open cases in 2014 compared to 2013 were in the fields of constitutional rights (by 24.5 per cent) and labour law matters (by 21 per cent). A more detailed explanation of the reasons for the changes in the number of cases in all fields is given in the second chapter of the substantive part of the Report.

Cases handled

Table 3.7.2: The number of cases handled by the Human Rights Ombudsman of the Republic of Slovenia in 2014

| FIELD OF WORK | NUMBER OF CASES HANDLED | | | | Share by fields of work |
|-------------------------------------|-------------------------|-----------------------------|------------------------|---------------------|-------------------------|
| | Open cases in 2014 | Transfer of cases from 2013 | Reopened cases in 2014 | Total cases handled | |
| 1. Constitutional rights | 188 | 8 | 2 | 198 | 5.31 % |
| 2. Restriction of personal freedom | 146 | 21 | 6 | 173 | 4.64 % |
| 3. Social security | 496 | 71 | 11 | 578 | 15.51 % |
| 4. Labour law matters | 260 | 44 | 10 | 314 | 8.43 % |
| 5. Administrative matters | 372 | 67 | 14 | 453 | 12.15 % |
| 6. Judicial and police proceedings | 641 | 155 | 29 | 825 | 22.14 % |
| 7. Environment and spatial planning | 112 | 17 | 2 | 131 | 3.51 % |
| 8. Public utility services | 73 | 5 | 2 | 80 | 2.15 % |
| 9. Housing matters | 99 | 7 | 5 | 111 | 2.98 % |
| 10. Discrimination | 50 | 21 | 4 | 75 | 2.01 % |
| 11. Children's rights | 360 | 94 | 10 | 464 | 12.45 % |
| 12. Other | 284 | 32 | 9 | 325 | 8.72 % |
| TOTAL | 3,081 | 542 | 104 | 3,727 | 100.00 % |

Table 3.7.2 clearly shows that **3,727 cases were handled** in 2014, of which 3,081 cases opened in 2014 (82.7 per cent), 542 cases were transferred from 2013 (14.5 per cent), and 104 cases were re-opened in 2014 (2.8 per cent). The Table 3.7.3 indicates that there were **12.9 percent fewer cases handled** in 2014 in comparison with 2013.

The greatest number of cases handled in 2014 related to judicial and police proceedings (825 cases or 22.1 percent), social security (578 cases or 15.5 percent) and children's rights (464 cases or 12.4 percent). In comparison with 2013, the number of cases handled grew most significantly in the field of administrative matters (from 409 to 453 or by 10.8 per cent), and reduced in the field of social security (from 915 to 578 or by 36.8 per cent) and constitutional rights (from 263 to 198 or by 24.7 per cent).

Table 3.7.3: Comparison between the number of cases handled by the Human Rights Ombudsman of the Republic of Slovenia by individual fields in the period 2011–2014

| FIELD OF WORK | CASES HANDLED | | | | | | | | Index 2014/2013 |
|-------------------------------------|---------------|----------------|--------------|----------------|--------------|----------------|--------------|----------------|--------------------|
| | 2011 | | 2012 | | 2013 | | 2014 | | |
| | No. | Share | No. | Share | No. | Share | No. | Share | |
| 1. Constitutional rights | 183 | 5.9 % | 504 | 13.5 % | 263 | 6.1 % | 198 | 5.3 % | 75.3 |
| 2. Restriction of personal freedom | 187 | 6.1 % | 201 | 5.4 % | 171 | 4.0 % | 173 | 4.6 % | 101.2 |
| 3. Social security | 418 | 13.6 % | 720 | 19.3 % | 915 | 21.4 % | 578 | 15.5 % | 63.2 |
| 4. Labour law matters | 238 | 7.7 % | 205 | 5.5 % | 378 | 8.8 % | 314 | 8.4 % | 83.1 |
| 5. Administrative matters | 379 | 12.3 % | 358 | 9.6 % | 409 | 9.6 % | 453 | 12.2 % | 110.8 |
| 6. Judicial and police proceedings | 701 | 22.8 % | 667 | 17.9 % | 833 | 19.5 % | 825 | 22.1 % | 99.0 |
| 7. Environment and spatial planning | 132 | 4.3 % | 120 | 3.2 % | 127 | 3.0 % | 131 | 3.5 % | 103.1 |
| 8. Public utility services | 60 | 1.9 % | 65 | 1.7 % | 92 | 2.2 % | 80 | 2.1 % | 87.0 |
| 9. Housing matters | 109 | 3.5 % | 56 | 1.5 % | 124 | 2.9 % | 111 | 3.0 % | 89.5 |
| 10. Discrimination | 61 | 2.0 % | 74 | 2.0 % | 80 | 1.9 % | 75 | 2.0 % | 93.8 |
| 11. Children's rights | 314 | 10.2 % | 318 | 8.5 % | 474 | 11.1 % | 464 | 12.4 % | 97.9 |
| 12. Other | 295 | 9.6 % | 434 | 11.7 % | 413 | 9.7 % | 325 | 8.7 % | 78.7 |
| TOTAL | 3,077 | 100.0 % | 3,722 | 100.0 % | 4,279 | 100.0 % | 3,727 | 100.0 % | 87.1 |

Cases by stage of handling

1. Closed cases: Cases the handling of which was completed by 31 December 2014.

2. Cases being handled: Cases that were being handled as at 31 December 2014.

In 2014, 3,727 cases were handled, of which **3,181 cases had been resolved** as at 31 December 2013 or **85.4 per cent** of all cases handled in 2014. 546 cases (14.6 per cent) remained to be resolved.

Table 3.7.4: Comparison of the number of cases handled by the Human Rights Ombudsman of the Republic of Slovenia according to the stage of handling in the period 2011–2014 (at the end of the calendar year)

| STAGE OF HANDLING OF CASES | 2011 (situation as at 31 Dec 2011) | | 2012 (situation as at 31 Dec 2012) | | 2013 (situation as at 31 Dec 2013) | | 2014 (situation as at 31 Dec 2014) | | Index (14/13) |
|----------------------------|---------------------------------------|----------------|---------------------------------------|----------------|---------------------------------------|----------------|---------------------------------------|----------------|------------------|
| | No. | Share | No. | Share | No. | Share | No. | Share | |
| Closed | 2,592 | 84.2 % | 3,004 | 80.7 % | 3,737 | 87.3 % | 3,181 | 85.4 % | 85.1 |
| Being handled | 485 | 15.8 % | 718 | 19.3 % | 542 | 12.7 % | 546 | 14.6 % | 100.7 |
| TOTAL | 3,077 | 100.0 % | 3,722 | 100.0 % | 4,279 | 100.0 % | 3,727 | 100.0 % | 87.1 |

A detailed review of the handling of cases by field of work is shown in Table 3.7.5.

In field **1 Constitutional rights**, 198 cases were handled in 2014 (27.7 per cent less than in 2013). The reduction in the number of cases in this field was due to the smaller number of cases handled in the sub-fields "Ethics of public speaking", where the number of cases in 2013 (183) dropped to 89 in 2014, while an increase was more significant in the sub-field "Protection of personal data" from 49 to 66 or by 34.7 per cent.

The number of cases handled in field **2 Restriction of personal freedom** in 2014 (171) did not significantly change in comparison with 2013 (173). An increase can be seen in the field of persons in social care institutions (from 6 to 12 in 2014) and forensic psychiatry (from 7 to 13 in 2014), while the number of handled cases from prisoners (from 26 to 19) and psychiatric patients (from 33 to 29) declined.

The second largest field according to the number of cases handled by the Ombudsman in 2014 is **3 Social security** with 578 cases. The number of cases handled in 2014 declined by 36.8 per cent (from 915 to 578) in comparison with 2013. The most significant contribution to the reduction was a drop in the number of cases related to pension insurance (from 435 to 101). A more detailed description of the reasons for the significant reduction in cases in the aforementioned field is presented in Chapter 2.11 Pension and disability insurance. Meanwhile, a reduction can also be seen in the sub-fields of poverty – general (from 33 to 19) and social services (from 23 to 18), and a slight increase may be noticed in institutional care (from 46 to 52). No great fluctuation can be seen in cases in other social security sub-fields in 2014 in comparison with 2013.

In field **4 Labour law matters**, the number of cases handled in 2014 (314) fell slightly in comparison with 2013 (378), i.e. by 16.9 per cent. The reduction can be seen in all sub-fields, with scholarships, where we handled 47.4 per cent less cases (57 in 2013, 30 in 2014), standing out the most. A slight increase in cases handled (from 14 to 18) may be seen only in the sub-field "Other", where cases that cannot be classified under other sub-fields within labour law matters are placed.

In field **5 Administrative matters**, the number of cases handled in 2014 (453) increased the most among all fields in comparison to 2013 (409), i.e. by 10.8 per cent. The biggest increase in the number of cases handled may be noticed in administrative procedures from 98 to 130.

The field with the highest number of cases handled in 2014 is **6 Judicial and police proceedings**. In 2014, the Ombudsman handled 825 cases in this field, or one per cent less than in 2013 (833). This field comprises matters related to police, pre-litigation, criminal and civil proceedings, proceedings in labour and social disputes, minor offence proceedings, administrative court proceedings, matters in relation to services of lawyers and notaries, and others. With the exception of the sub-field "Administrative court proceedings", the number of cases in all other sub-fields grew significantly. According to the number of cases handled, the sub-field "Civil proceedings and relations" with 335 cases (324 in 2013) stands out the most. The sub-field "Lawyers and notaries", where the percentage of cases handled grew by 50 (from 26 to 39), should also be highlighted.

In field **7 Environment and spatial planning** the number of cases handled in 2014 grew by 3.1 per cent (from 127 to 131) in comparison with 2013. The number of cases handled in the sub-field "Activities in the environment" grew (from 46 to 60), while the number of cases in the field of other and spatial planning declined.

The number of cases handled in 2014 in field **8 Public utility services** declined by 13 per cent (from 92 to 80) in comparison with 2013. An increase can be seen in the sub-field "Communication" (from 9 to 13) and transport (from 16 to 20), while a reduction may be noticed in municipal utility services (from 31 to 24) and energy (from 19 to 14).

A similar reduction in the number of cases handled as in the field of municipal utility services can be seen in field **9 Housing matters**. The index of the number of cases handled in 2014 in comparison with 2013 is 89.5 (from 124 to 111). While the number of cases handled increased in the sub-field "Housing relations" (from 59 to 61), the number of cases handled in the field of housing economics declined (from 59 to 46).

In 2014, the number of cases handled in field **10 Discrimination** declined by 6.2 per cent (from 80 to 75) in comparison with 2013. In this field, we should highlight the sub-field "Equal opportunities relating to physical or mental disabilities (disability)", where the number of cases handled grew from 16 to 25.

In field **11 Children's rights**, the number of cases handled in 2014 did not significantly change in comparison with 2013 (464 in 2014 and 474 in 2013). This field also includes the sub-field "Child advocacy", where we noted a slight growth in cases handled (81 to 87). The number of cases handled in the sub-fields of contacts with parents (from 45 to 59), and foster care, guardianship, institutional care (from 25 to 35) increased.

Field **12 Other** includes cases that cannot be classified under any of the defined fields. In 2014, we handled 325 such cases, which is 21.3 per cent less than in 2013 or 8.7 per cent of all cases handled.

Table 3.7.5: Overview of cases handled by the Human Rights Ombudsman of the Republic of Slovenia in 2014 by fields of work

| FIELD/SUB-FIELD OF THE OMBUDSMAN'S WORK | Cases handled in 2013 | Cases handled in 2014 | Index (14/13) | FIELD/SUB-FIELD OF THE OMBUDSMAN'S WORK | Cases handled in 2013 | Cases handled in 2014 | Index (14/13) |
|--|-----------------------|-----------------------|---------------|--|-----------------------|-----------------------|---------------|
| 1 Constitutional rights | 263 | 198 | 75.3 | 3.4 Health care | 82 | 85 | 103.7 |
| 1.1 Freedom of conscience | 2 | 2 | 100.0 | 3.5 Social benefits and relief | 109 | 114 | 104.6 |
| 1.2 Ethics of public speaking | 183 | 89 | 48.6 | 3.6 Social services | 23 | 18 | 78.3 |
| 1.3 Assembly and association | 5 | 6 | 120.0 | 3.7 Institutional care | 46 | 52 | 113.0 |
| 1.4 Security services | 1 | 2 | 200.0 | 3.8 Poverty – general | 33 | 19 | 57.6 |
| 1.5 Right to vote | 9 | 14 | 155.6 | 3.9 Violence – anywhere | 17 | 17 | 100.0 |
| 1.6 Personal data protection | 49 | 66 | 134.7 | 3.10 Other | 57 | 67 | 117.5 |
| 1.7 Access to public information | 5 | 6 | 120.0 | 4 Labour law matters | 378 | 314 | 83.1 |
| 1.8 Other | 9 | 13 | 144.4 | 4.1 Employment relationship | 153 | 133 | 86.9 |
| 2 Restriction of personal freedom | 171 | 173 | 101.2 | 4.2 Unemployment | 46 | 44 | 95.7 |
| 2.1 Detainees | 26 | 19 | 73.1 | 4.3 Workers in state authorities | 108 | 89 | 82.4 |
| 2.2 Prisoners | 93 | 95 | 102.2 | 4.4 Scholarships | 57 | 30 | 52.6 |
| 2.3 Psychiatric patients | 33 | 29 | 87.9 | 4.5 Other | 14 | 18 | 128.6 |
| 2.4 Persons in social care institutions | 6 | 12 | 200.0 | 5 Administrative matters | 409 | 453 | 110.8 |
| 2.5 Youth homes | 1 | 1 | 100.0 | 5.1 Citizenship | 15 | 7 | 46.7 |
| 2.6 Illegal aliens and asylum seekers | 1 | 0 | 0.0 | 5.2 Aliens | 67 | 65 | 97.0 |
| 2.7 Persons in police custody | 1 | 0 | - | 5.3 Denationalisation | 12 | 14 | 116.7 |
| 2.8 Forensic psychiatry | 7 | 13 | 185.7 | 5.4 Property law matters | 39 | 42 | 107.7 |
| 2.9 Other | 3 | 4 | 133.3 | 5.5 Taxes | 78 | 85 | 109.0 |
| 3 Social Security | 915 | 578 | 63.2 | 5.6 Customs | 1 | 4 | 400.0 |
| 3.1 Pension insurance | 435 | 101 | 23.2 | 5.7 Administrative procedures | 98 | 130 | 132.7 |
| 3.2 Disability insurance | 55 | 46 | 83.6 | 5.8 Social activities | 68 | 82 | 120.6 |
| 3.3 Health insurance | 58 | 59 | 101.7 | 5.9 Other | 31 | 24 | 77.4 |
| | | | | 6 Judicial and police proceedings | 833 | 825 | 99.0 |

| FIELD/SUB-FIELD OF THE OMBUDSMAN'S WORK | Cases handled in 2013 | Cases handled in 2014 | Index (14/13) | FIELD/SUB-FIELD OF THE OMBUDSMAN'S WORK | Cases handled in 2013 | Cases handled in 2014 | Index (14/13) |
|---|-----------------------|-----------------------|---------------|--|-----------------------|-----------------------|---------------|
| 6.1 Police proceedings | 112 | 100 | 89.3 | 10.2 Equal opportunities by gender | 0 | 4 | - |
| 6.2 Pre-litigation proceedings | 32 | 38 | 118.8 | 10.3 Equal opportunities in employment | 2 | 6 | 300.0 |
| 6.3 Criminal proceedings | 106 | 103 | 97.2 | 10.4 Equal opportunities relating to physical or mental disability (disability)) | 16 | 25 | 156.3 |
| 6.4 Civil proceedings and relations | 324 | 335 | 103.4 | 10.5 Other | 29 | 7 | 24.1 |
| 6.5 Proceedings before labour and social courts | 29 | 31 | 106.9 | 11 Children's rights | 474 | 464 | 97.9 |
| 6.6 Minor offence proceedings | 113 | 92 | 81.4 | 11.1 Contacts with parents | 45 | 59 | 131.1 |
| 6.7 Administrative judicial proceedings | 5 | 2 | 40.0 | 11.2 Child support, child allowances, child's property management. | 48 | 53 | 110.4 |
| 6.8 Lawyers and notaries | 26 | 39 | 150.0 | 11.3 Foster care, guardianship, institutional care | 25 | 35 | 140.0 |
| 6.9 Other | 86 | 85 | 98.8 | 11.4 Children with special needs | 47 | 52 | 110.6 |
| 7 Environment and spatial planning | 127 | 131 | 103.1 | 11.5 Children in minorities and vulnerable groups | 0 | 1 | - |
| 7.1 Activities in the environment | 46 | 60 | 130.4 | 11.6 Family violence against children | 31 | 30 | 96.8 |
| 7.2 Spatial planning | 30 | 29 | 96.7 | 11.7 Violence against children outside family | 22 | 20 | 90.9 |
| 7.3 Other | 51 | 42 | 82.4 | 11.8 Child advocacy | 81 | 87 | 107.4 |
| 8 Public utility services | 92 | 80 | 87.0 | 11.9 Other | 175 | 127 | 72.6 |
| 8.1 Municipal utility services | 37 | 24 | 64.9 | 12 Other | 413 | 325 | 78.7 |
| 8.2 Communication | 9 | 13 | 144.4 | 12.1 Legislative initiatives | 26 | 26 | 100.0 |
| 8.3 Energy | 19 | 14 | 73.7 | 12.2 Remedy of injustice | 15 | 7 | 46.7 |
| 8.4 Transport | 16 | 20 | 125.0 | 12.3 Personal problems | 37 | 24 | 64.9 |
| 8.5 Concessions | 9 | 6 | 66.7 | 12.4 Explanations | 275 | 234 | 85.1 |
| 8.6 Other | 2 | 3 | 150.0 | 12.5 For information | 43 | 18 | 41.9 |
| 9 Housing Matters | 124 | 111 | 89.5 | 12.6 Anonymous complaints | 17 | 16 | 94.1 |
| 9.1 Housing relations | 59 | 61 | 103.4 | 12.7 Ombudsman | 0 | 0 | - |
| 9.2 Housing economics | 59 | 46 | 78.0 | TOTAL | 4,279 | 3,727 | 87.1 |
| 9.3 Other | 6 | 4 | 66.7 | | | | |
| 10 Discrimination | 80 | 75 | 93.8 | | | | |
| 10.1 National and ethnic minorities | 33 | 33 | 100.0 | | | | |

Resolved cases

In 2014, **3,181 closed cases were closed** which is **14.9 per cent less** than in 2013. **According to the comparison of the number of these cases (3,181) to the number of open cases in 2014 (3,081), we establish that there were 3.2 per cent more cases closed than opened in 2014.**

Table 3.7.6: Comparison of the number of closed cases classified according to the Ombudsman's field of work in the period 2011–2014

| FIELD OF THE OMBUDSMAN'S WORK | 2011 | 2012 | 2013 | 2014 | Indeks (14/13) |
|-------------------------------------|--------------|--------------|--------------|--------------|----------------|
| 1. Constitutional rights | 164 | 492 | 255 | 173 | 67.8 |
| 2. Restriction of personal freedom | 144 | 166 | 150 | 130 | 86.7 |
| 3. Social security | 372 | 433 | 844 | 494 | 58.5 |
| 4. Labour law matters | 212 | 163 | 334 | 278 | 83.2 |
| 5. Administrative matters | 291 | 301 | 342 | 388 | 113.5 |
| 6. Judicial and police proceedings | 570 | 552 | 678 | 688 | 101.5 |
| 7. Environment and spatial planning | 95 | 100 | 110 | 93 | 84.5 |
| 8. Public utility services | 55 | 61 | 87 | 76 | 87.4 |
| 9. Housing matters | 97 | 50 | 117 | 101 | 86.3 |
| 10. Discrimination | 54 | 54 | 59 | 66 | 111.9 |
| 11. Children's rights | 278 | 248 | 380 | 403 | 106.1 |
| 12. Other | 260 | 384 | 381 | 291 | 76.4 |
| TOTAL | 2,592 | 3,004 | 3,737 | 3,181 | 85.1 |

Resolved cases by being founded/unfounded

Founded case: Cases with a violation of rights or other irregularities in all statements of the complaint.

Partially founded case: Violations and irregularities are found in some elements of the procedure, which may or may not be stated in the complaint, while none are found in other elements.

Unfounded case: We find no violations or irregularities regarding any statements from the complaint.

No conditions for handling the case: Legal proceedings are ongoing, with no noticeable delays or greater irregularities in the case. We have been providing the complainant with information, explanations and guidelines for the exercise of rights in an open procedure. This group also includes complaints that are rejected (delayed, anonymous, offensive), and procedures that are halted due to the non-cooperation of the complainant or the withdrawal of the complaint.

Not within the Ombudsman's competence: The subject of the complaint does not fall within the competence of the institution. Complainants are presented with other options to exercise their rights.

Table 3.77: Classification of cases resolved according to whether cases were founded/unfounded

| JUSTIFICATION OF THE CASE | CLOSED CASES | | | | Index (14/13) |
|--|--------------|--------------|--------------|--------------|------------------|
| | 2013 | | 2014 | | |
| | Number | Share | Number | Share | |
| 1. Founded cases | 695 | 18.6 | 448 | 14.1 | 64.5 |
| 2. Partially founded cases | 198 | 5.3 | 236 | 7.4 | 119.2 |
| 3. Unfounded cases | 598 | 16.0 | 550 | 17.3 | 92.0 |
| 4. No conditions for handling the case | 1,614 | 43.2 | 1,514 | 47.6 | 93.8 |
| 5. Not within the Ombudsman's competence | 632 | 16.9 | 433 | 13.6 | 68.5 |
| TOTAL | 3,737 | 100.0 | 3,181 | 100.0 | 85.1 |

The share of founded and partially founded cases in 2014 (21.5 per cent) slightly increased in comparison with 2013 (23.9 per cent). **As established in the past, the share of founded cases in comparison with similar institutions abroad is relatively high.**

Table 3.7.8 provides an overview of founded and partially founded cases by individual fields of activity of state authorities. Based on these data, we may determine in which fields most violations were found in 2014.

If we focus on areas in which 100 or more cases were classified, it can be established that the **share of founded cases is the highest in the field of education (48.2 per cent), labour, family and social affairs (30.4 per cent), internal affairs (23.2 per cent), and the environment and spatial planning (22 per cent)**. More about violations in specific fields can be found in the substantive part of the Report.

Table 3.7.8: Analysis of resolved cases in terms of them being founded/unfounded for 2014

| FIELD OF WORK OF STATE AUTHORITIES | CLOSED CASES | NUMBER OF FOUNDED CASES | SHARE OF FOUNDED CASES AMONG CLOSED CASES |
|--|--------------|-------------------------|---|
| 1. Labour, family and social affairs | 1,040 | 316 | 30.4% |
| 2. Finance | 86 | 11 | 12.8% |
| 3. Economy | 64 | 8 | 12.5% |
| 4. Public administration | 19 | 4 | 21.1% |
| 5. Agriculture, forestry and food | 7 | 2 | 28.6% |
| 6. Culture | 28 | 9 | 32.1% |
| 7. Internal affairs | 198 | 46 | 23.2% |
| 8. Defence | 1 | 0 | 0.0% |
| 9. Environment and spatial planning | 300 | 66 | 22.0% |
| 10. Justice | 747 | 53 | 7.1% |
| 11. Transport | 30 | 6 | 20.0% |
| 12. Education and sport | 139 | 67 | 48.2% |
| 13. Higher education, science and technology | 12 | 5 | 41.7% |
| 14. Health care | 164 | 43 | 26.2% |
| 15. Foreign affairs | 11 | 2 | 18.2% |
| 16. Government services | 4 | 3 | 75.0% |
| 17. Local self-government | 40 | 13 | 32.5% |
| 18. Other | 291 | 30 | 10.3% |
| TOTAL | 3,181 | 684 | 21.5% |

3.8 Finance

The second paragraph of Article 5 of the Human Rights Ombudsman Act (ZVarCP) stipulates that the funds for the Ombudsman's work are allocated by the National Assembly from the national budget. At the Ombudsman's proposal, the National Assembly set funds for the work of the institution for 2014 at EUR 1,985,190 from the national budget. The funds were divided into three sub-programmes, i.e.:

- **Protection of human rights and fundamental freedoms;**
- **Implementation of tasks and powers of the NPM;** (the work of the National Preventive Mechanism – NPM);
- **Advocate – A Child's Voice Project.**

We received EUR 15,000 from the Ministry of Labour, Family, Social Affairs and Equal Opportunities in July 2014 to smoothly carry out the Advocate – A Child's Voice Project.

Due to budgetary limits and austerity measures adopted by the Slovenian Government in 2014, by the end of the year the Ombudsman's expenditure was less than the funds allocated, i.e. a total amount of **EUR 1.851.108**. The Ombudsman returned **EUR 134,082** to the national budget.

Table 3.8.1: Ombudsman's financial resources 2014

| | Funds allocated (in EUR) | Funds used (in EUR) | Funds remaining (in EUR) |
|--|------------------------------------|-------------------------------|------------------------------------|
| Human Rights Ombudsman of the Republic of Slovenia | 1,985,190 | 1,851,108 | 134,082 |
| SUBPROGRAMMES | | | |
| Protection of human rights and fundamental freedoms | 1,747,319 | 1,645,402 | 101,917 |
| Wages and salaries | 1,297,319 | 1,263,396 | 33,923 |
| Material costs | 407,000 | 355,326 | 51,674 |
| Investments | 43,000 | 26,680 | 16,320 |
| Implementation of the tasks and powers of the NPM | 133,914 | 114,722 | 19,192 |
| Wages and salaries | 112,914 | 100,105 | 12,809 |
| Material costs | 13,000 | 10,250 | 2,750 |
| Cooperation with non-governmental organisations | 8,000 | 4,367 | 3,633 |
| Advocate – A Child's Voice Project | 90,000 | 77,027 | 12,973 |
| Increased extent of work and contributions | 1,461 | 1,448 | 13 |
| Material costs | 88,539 | 75,579 | 12,960 |
| Earmarked funds | 13,957 | 13,957 | 0 |
| Compensation funds | 9,322 | 9,322 | 0 |
| Funds from the sale of state assets | 4,635 | 4,635 | 0 |

4.

SELECTION OF THE OMBUDSMAN'S RECOMMENDATIONS

This chapter includes a selection of the Ombudsman's recommendations (printed in black) that are published in this Report (20th) at the side of each page in substantive chapters and refer to the Ombudsman's work in 2014.

We also publish a selection of the Ombudsman's recommendations (highlighted in blue) that were included in the Ombudsman's 19th report and refer to the Ombudsman's work in 2013. The recommendations were approved by the National Assembly of the Republic of Slovenia (on 21 November 2014) when considering the 19th Ombudsman's Annual Report for 2013. The National Assembly also published a RECOMMENDATION (Official Gazette of the Republic of Slovenia, no. 85/14, 28 November 2014) to be observed by all institutions and officials at all levels.

Their level of realisation was marked concisely and understandably:

unrealised ✘

partially realised – progress ↗

realised ✔

They are written in blue; the marks on pages refer to the 19th report (2013).

At its session on 21 November 2014 when considering the 19th Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2013, the National Assembly adopted the following pursuant to Articles 272 and 111 of the Rules of Procedure of the National Assembly (Official Gazette of the Republic of Slovenia, nos. 92/07 – official consolidated text, 105/10 and 80/13):

RECOMMENDATION

The National Assembly recommends that all institutions and officials at all levels observe the recommendations of the Human Rights Ombudsman of the Republic of Slovenia stated in the 19th Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2013.

2.6 ADMINISTRATIVE MATTERS

- ✘ The National Assembly of the Republic of Slovenia proposes that the Government of the Republic of Slovenia ensure the respectful burial of victims of war and post-war killings prior to the erection of a memorial.

2.15 CHILDREN'S RIGHTS

- ✘ The National Assembly of the Republic of Slovenia proposes that the Ministry of Justice, and the Ministry of Labour, Family, Social Affairs and Equal Opportunities study the options to amend legislation so that the Public Guarantee, Maintenance and Disability Fund of the Republic of Slovenia could initiate *ex officio* a procedure against maintenance debtors who do not pay child support to the beneficiary pursuant to the Criminal Code.
- ✘ The National Assembly of the Republic of Slovenia proposes that the Ministry of Justice, and the Ministry of Labour, Family, Social Affairs and Equal Opportunities study the options to amend legislation that stipulates that claims arising from child support cannot fall under the statute of limitations in order to collect child support more effectively.
- ✘ The National Assembly of the Republic of Slovenia proposes that the Ministry of Culture study the options to amend legislation on the protection of children against the abuse of their personal and other data that could reveal the identity of children in sensationalist reports in the media, since such reports may cause great harm to children, and prepare suitable amendments to legislation.

No. 000-04/14-7/20

Ljubljana, on 21 November 2014 EPA 2099-VI

National Assembly of the Republic of Slovenia Dr. Milan Brglez, signed

CONSTITUTIONAL RIGHTS

1. The Ombudsman recommends statutory regulation of the protection of children against inappropriate content by indicating suitable ages for viewing films in cinemas, audio-visual media and computer games.
 2. The Ombudsman recommends that all who participate in public discussions, particularly politicians in their statements and writing, avoid the incitement of hatred or intolerance on the basis of any personal circumstance, and in cases of their occurrence, respond and condemn them immediately.
 3. The Ombudsman recommends that the National Assembly adopt a code of ethics and form an arbitration panel to respond to individual cases of hate speech in politics.
 4. The National Assembly should eliminate the unconstitutionality of the National Assembly Elections Act regarding the accessibility of polling stations for disabled persons, while electoral and other authorities should strive to eliminate architectural barriers in all polling stations as soon as possible.
 5. The Government should prepare an act to regulate the collection, protection and archiving of materials of psychiatric institutions by observing Constitutional Court Decision No. U-I- 70/12.
 6. The Government should prepare amendments to legislation that facilitate the efficient exercise of judicial protection for victims of encroachments on personal rights that occur via web contents.
 7. The Government should prepare amendments to the Integrity and Prevention of Corruption Act which ensures respect for personal rights, equal protection and efficient judicial protection for persons who are exposed as corrupt in publications of the Commission for the Prevention of Corruption.
 8. The Ombudsman recommends that a solution in the Public Information Access Act be adopted to enable the realisation of the principle of privacy of procedures conducted by the Ombudsman in cases handled by the Ombudsman pursuant to the Human Rights Ombudsman Act.
 9. The Ombudsman recommends that the Ministry of Health submit instructions to maternity hospitals to standardise the practice of handling dead fetuses.
-
-  1. The Ombudsman recommends that all who participate in public discussions, particularly politicians in their statements and writing, avoid the incitement of hatred or intolerance on the basis of any personal circumstance, and in cases of their occurrence, respond and condemn them immediately. *(page 30)*
 -  2. The Ombudsman repeats her recommendation that the Government examine the possibility of introducing a civil penalty for unjustified encroachment upon integrity, reputation and privacy by way of publication. *(page 30)*
 -  3. The Ombudsman recommends that RTV Slovenia introduce a more transparent system of responses to complaints, proposals and criticisms from listeners and viewers. *(page 30)*
 -  4. The Ombudsman recommends that the management of RTV Slovenia ensure that all complainants receive written replies to their written complaints. She also proposes that a record of complaints and replies be kept from which data on the complaints and functioning of the Ombudsman of Rights of Viewers and Listeners can be obtained. *(page 30)*
 -  5. The Ombudsman recommends that the legislators evaluate whether the field of children's protection from inappropriate content should be regulated in the Republic of Slovenia by indicating suitable ages for viewing films in cinemas, audio-visual media and computer games. *(page 30)*
 -  6. The Ombudsman recommends that the Government of the Republic of Slovenia examine the efficiency of procedures concerning the approval of alternate members of municipal councils, in particular the

judicial protection of candidates for alternate members in the cases of mayor's or other municipal bodies' inactivity or obstruction. (page 30)

- 7.** The Ombudsman recommends that the Archives of the Republic of Slovenia, the responsible inspector of the Culture and Media Inspectorate of the Republic of Slovenia and the Ministry of Culture, provide consistent implementation of the third paragraph of Article 65 of the Protection of Documents and Archives and Archival Institutions Act. (page 30)
- 8.** The Ombudsman recommends that the Government conduct a detailed weighing of interference with privacy and personal data of participants in criminal proceedings when drafting future amendments to the Criminal Procedure Act. (page 30)
- 9.** The Ombudsman recommends that a solution in the Public Information Access Act be adopted to enable the realisation of the principle of privacy of procedures conducted by the Ombudsman in relation to matters handled by the Ombudsman pursuant to the Human Rights Ombudsman Act. (page 30)

DISCRIMINATION

10. The Ombudsman again recommends that statutory solutions be adopted which, in accordance with the Community acquis, ensure the impartial, independent and efficient handling of cases concerning violations of the prohibition of discrimination on any grounds and in all fields. For this purpose, an independent advocate has to be established with powers to investigate cases of discrimination, including an efficient mechanism of measures to deter violators of the prohibition of discrimination in the public and private sectors.

11. The Ombudsman again recommends the formation of a national human rights institution which has full authorisation functions on the basis of the Paris Principles. Such an institution may be independent of other state authorities, or the Ombudsman may be transformed into such an institution if the proposal is suitably supported in terms of personnel and finance.

12. Pursuant to the third paragraph of Article 5 of the ZRomS-1, the Government should take the necessary measures to arrange conditions in municipalities where people's health is severely endangered in Roma settlements, and where public order and peace is disrupted for extensive periods, or where the environment is permanently threatened.

13. The Ombudsman recommends that the Government prepare amendments to the Roma Community Act to remedy the shortcomings identified in the Act, particularly relating to the unsuitable composition of the Roma Community Council of the Republic of Slovenia.

14. By way of its proposals and initiatives, the Roma Community Council of the Republic of Slovenia should become more actively engaged in procedures regarding the regulation and organisation of Roma settlements in municipalities within its powers, and should also become involved as a mediator between the Roma and local communities in the fields concerned.

15. The Government should prepare and adopt a new National Programme of Measures for Roma. The Programme should pay greater attention to the legal and municipal arrangement of Roma settlements (especially in the wider Dolenjska area), define the obligations of municipalities, anticipate the deadlines for their implementation and determine supervisory authorities. The Programme should also define sanctions and the replacement implementation of tasks by the competent state authorities for municipalities that do not carry out the measures set out in the Programme within the set deadlines.

16. The Ombudsman recommends that the Government eliminate discrimination relating to the right to the free transport of persons with mental disorders aged between 18 and 26 who are participating in special education programmes.

- ✘ **10.** The Ombudsman again recommends that statutory solutions be adopted which, in accordance with the Community acquis, ensure the impartial, independent and efficient handling of cases concerning violations of the prohibition of discrimination on any grounds and in all fields. For this purpose, an independent advocate has to be established which will have powers to investigate cases of violation of discrimination, including an efficient mechanism of measures to deter violators of the prohibition of discrimination in the public and private sectors. *(page 41)*

- ✘ **11.** The Ombudsman points out that Slovenia still does not have a national institution for human rights with full authorisation which would function on the basis of the universally adopted Paris Principles. Such an institution should monitor the situation in the field of human rights also from the viewpoint of the internationally accepted obligations of the state and stimulate and implement promotional and educational activities. The Ombudsman expects the state's support in the reorganisation of the Ombudsman's office into an institution which meets all conditions for functioning in accordance with the Paris Principles. *(page 41)*

- ✘ **12.** The Ombudsman proposes that the Government prepare amendments to the Roma Community Act to abolish the shortcomings identified in the Act, particularly relating to the unsuitable composition of the Roma Community Council of the Republic of Slovenia. *(page 41)*

- ✘ **13.** By way of its proposals and initiatives, the Roma Community Council of the Republic of Slovenia should become more actively engaged in procedures regarding the regulation and organisation of Roma settlements in municipalities within its powers, and should also become involved as a mediator between the Roma and local communities in the areas concerned. *(page 45) (page 41)*

- ➔ **14.** Municipalities without spatial acts or other measures to legally regulate and provide municipal utility arrangements in Roma settlements within their boundaries have to adopt these acts and measures as soon as possible. *(page 41)*

- ✘ **15.** Pursuant to the third paragraph of Article 5 of the ZRomS-1, the Government should take the necessary measures to arrange conditions in municipalities where people's health is severely endangered in Roma settlements, and where public order and peace have been disrupted for extensive periods, or where the environment is permanently threatened. *(page 41)*

- ✘ **16.** The municipalities have to provide their residents with suitable access to drinking water without differentiation, particularly in Roma settlements and irrespective of the legal status of the land in Roma settlements. Relating to the implementation of the right to drinking water as an internationally recognised human right, the Government should propose, and the National Assembly should adopt, suitable statutory solutions. *(page 41)*

- ➔ **17.** The Government should take concrete action when realising the National Programme of Measures for the Roma for the 2010-2015 Period and pay more attention to the legal and municipal arrangements of Roma settlements, particularly in the broader area of the Dolenjska region. Within this framework, it should clearly define the procedure concerning legal and municipal arrangements in settlements according to individual phases. A timetable should be envisaged for the implementation of each individual phase of the procedure concerning the arrangement of settlements, and a supervisory body should be appointed to monitor the implementation of individual phases of the procedure regarding the arrangement and organisation of settlements and to envisage sanctions for municipalities which fail to implement measures within prescribed time limits and to remedy their (in)actions. *(page 42)*

- ➔ **18.** For the implementation of the Convention on the Rights of Persons with Disabilities and the Equalisation of Opportunities for Persons with Disabilities Act, the Ombudsman recommends the prompt adoption of implementing regulations and measures to actually equalise opportunities for persons with disabilities. *(page 42)*

- ✘ **19.** The competent ministries should immediately prepare amendments to regulations to eliminate discrimination in the subsidisation of transport for disabled students. *(page 42)*

RESTRICTION OF PERSONAL FREEDOM

17. The Ombudsman again encourages the efforts of the Prison Administration of the Republic of Slovenia and the Ministry of Justice to eliminate overcrowding in certain prisons, and to better utilise legal options in this field to replace imprisonment.

18. The Ombudsman emphasises that the principle of fairness of any judicial proceedings, particularly proceedings which may result in a sanction restricting individual rights, always requires a critical and all-round assessment of all aspects of an individual case and not only consideration of one-sided claims. The Ombudsman recommends amendments to the Criminal Procedure Act regarding the disciplinary treatment of detainees by taking into account the recommendations of the CPT.

19. The Ombudsman recommends that the Prison Administration of the Republic of Slovenia thoroughly and impartially verify complaints from convicts without undue delay. Their replies to complaints from convicts should always include their positions regarding all essential statements in complaints from convicts or explanations from institutions.

20. The Ombudsman calls upon the Government to plan as a priority the comprehensive resolution of unfavourable conditions in prisons due to high summer temperatures, especially by reconstructing old buildings and ensuring sufficient funds for investment in maintenance.

21. The Ombudsman recommends that all persons involved in the treatment of prisoners on hunger strike treat them appropriately, professionally and compassionately, and to respect the rules that regulate their actions in such cases.

22. The Ombudsman alerts the Ministry of Justice and presidents of courts to the need to regularly supervise prisons as stipulated by Article 212 of the Enforcement of Penal Sentences Act.

23. The Ombudsman recommends that procedures for assessing the justifiability of the use of coercive measures should include the option for prisoners against whom coercive measures might have been used by judicial police officers to make a statement or their view of the procedure, and the circumstances of their utilisation.

24. The Ombudsman recommends consistent implementation of the recommendation of the CPT for convicts placed in a special room for isolation to be always and as soon as possible examined by a member of the medical staff,

25. The Ombudsman recommends a clear definition of conditions in which prisons may use the measure of special placement of convicts.

26. The Ombudsman recommends diligent handling of all cases that involve the placement of convicts in rooms with a stricter regime.

27. The Ombudsman recommends that persons received in a prison be immediately examined by a physician, and if necessary, all required measures for their health care be taken.

28. The Ombudsman recommends the adoption of all required measures to provide work for all prisoners who wish, and are healthy enough, to work.

29. The Ombudsman recommends again a regulation to define the operation of the Forensic Psychiatry Unit in more detail.

30. The Ombudsman recommends again that the work on the preparation of necessary amendments to the Mental Health Act (ZDZdr) which will eliminate established shortcomings should continue.

- 31.** The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities take all (additional) required measures to ensure suitable capacities for the accommodation of persons in social care institutions according to court decisions pursuant to Article 74 of the ZDZdr.
- 32.** The Ombudsman recommends that updated expert guidelines on the use of special protection measures (SPM) be adopted as soon as possible.
- 33.** The Ombudsman recommends that the Ministry of Labour, Family, Social Affairs and Equal Opportunities and the Ministry of Health prepare uniform forms for report on the use of SPM.
- 34.** The Ombudsman recommends again the adoption of a special act to comprehensively regulate the organisation, operation and other special features of juvenile facilities. The text of the act should be coordinated with all ministries directly or indirectly responsible for making decisions on the admission of children and adolescents to juvenile facilities. Similarly, it should be determined which children and adolescents are involved – children and adolescents with mental and physical disorders or children and adolescents with special needs.
- 35.** The Ombudsman welcomes the adoption of the legal basis for monitoring the removal of aliens, and expects for this basis to be realised soon in practice.
-  **20.** The Ombudsman once again encourages the Ministry of Justice to continue efforts to resolve the issue of overcrowding of prisons and the poor living conditions in prisons, and on the basis of the findings of the project group to take all necessary measures to execute criminal sanctions while consistently respecting the rules and standards in this field. *(page 54)*
-  **21.** The Ombudsman points out that prisons must carry out all necessary procedures without delay or shortcomings in ensuring the rights of imprisoned persons also when accepting multiple prisoners simultaneously. *(page 54)*
-  **22.** The Ombudsman proposes that adequate rooms be provided in prisons that are also suitable for visits by children, or that other adequate rooms in the area of all district courts which enable a video link be used for this purpose, and that until then, children's contact be restricted only in extraordinary cases (for example, if the child is a victim of a criminal act committed by the imprisoned or detained parent). *(page 54)*
-  **23.** The Ombudsman emphasises that judicial police officers must implement their powers professionally and decisively, but also tactfully, so as not to infringe on the dignity of persons in custody. *(page 75) (page 54)*
-  **24.** The Ombudsman proposes changing or supplementing the regulation of the (judicial) protection of the rights of imprisoned persons to ensure an effective legal remedy. *(page 54)*
-  **25.** The Ombudsman highlights that actual supervision by the ministry responsible for education or the inspectorate responsible for education, as stipulated by the Enforcement of Criminal Sanctions Act (ZIKS-1), of the education of convicts in prisons and minors in correctional facilities should be ensured. *(page 54)*
-  **26.** The Ombudsman notes that the escorting of imprisoned persons should be carried out in accordance with the Rules on the exercising of the powers and duties of judicial police officers, and proposes the harmonisation of the practice of informing responsible persons if the imprisoned person escorted is restrained also during visits to a doctor or a judge. *(page 54)*
-  **27.** The Ombudsman encourages further cooperation between all departments responsible for the expert treatment of persons who have committed a criminal act against the inviolability of sexual integrity, in particular the concrete participation of the Ministry of Health. *(page 54)*
-  **28.** The Ombudsman encourages the efforts to mitigate or eliminate the negative consequences of high summer temperatures in prisons. *(page 54)*

- ✘ **29.** The Ombudsman notes that any convict who is able to work should be enabled to work for an adequate reward, while the Prison Administration must also involve other convicts in other forms of organised activity. *(page 54)*
- ✘ **30.** The Ombudsman proposes that the authorities consider the idea of introducing work for imprisoned persons to provide for the self-sufficient supply of the Prison Administration with agricultural and livestock products and the production of furniture and other equipment for the needs of the prison system or perhaps even wider. *(page 54)*
- ➔ **31.** The Ombudsman proposes that prisons ensure that potential news of the death of an imprisoned person be reported personally. *(page 54)*
- ✘ **32.** The Ombudsman encourages the Ministry of Justice and the Prison Administration to take all necessary measures to ensure adequate accommodation and care for imprisoned persons with health issues or movement impairment during imprisonment and that their fitness to serve a prison sentence be established in an appropriate manner. *(page 54)*
- ➔ **33.** The Ombudsman expects that the Ministry of Justice and the Prison Administration will ensure that possible shortcomings in the practice of prisons in the field of the disciplinary treatment of convicts and in the records of accompanying sessions are eliminated. *(page 54)*
- ➔ **34.** The Ombudsman also emphasises that, in the case of an alleged violation of the rules of residence or intended disciplinary treatment, the allegation must always be adequately presented and the convict be given the opportunity to express their opinion about the allegation and that they can ask for an assessment of the decision taken, while all this must be adequately recorded. *(page 54)*
- ➔ **35.** The Ombudsman emphasises that all rational measures should be taken to prevent any violence among imprisoned persons, in particular among minors serving disciplinary sentences. *(page 54)*
- ➔ **36.** The Ombudsman encourages all competent authorities to take all necessary measures to ensure undisturbed health treatment and protection of all forensic patients (in accordance with the law and implementing regulations), including with an adequate staff structure and constant expert training of employees and by providing an adequate space for the forensic unit. *(page 55)*
- ✘ **37.** The Ombudsman proposes that the work on preparing necessary amendments to the Mental Health Act which will eliminate the established shortcomings be continued. *(page 55)*
- ✔ **38.** The Ombudsman encourages the Ministry of Labour, Family and Social Affairs to adopt as soon as possible adequate amendments to the Guidelines for work with people suffering from dementia in the field of institutional care of the elderly in order to make the Guidelines compliant with the Mental Health Act. *(page 55)*
- ➔ **39.** The Ombudsman encourages the state authorities to adopt, if necessary, further measures to ensure the protection of the right to trial without undue delay, so that speedy and effective trials in all our courts are ensured for all cases. *(page 55)*
- ➔ **40.** The Ombudsman emphasises that the guarantees which in the case of detention or deprivation of freedom are determined by the Constitution of the Republic of Slovenia and the European Convention for the Protection of Human Rights and Fundamental Freedoms, should also be provided to a person detained in a department under special supervision of a psychiatric hospital or secure ward of a social care institution. *(page 55)*
- ➔ **41.** The Ombudsman expects that Vojnik Psychiatric Hospital will ensure that physical restraint as a protective measure will be used in accordance with the law and that it will establish an adequate control mechanism to ensure that the irregularities found by the Ombudsman do not recur. *(page 55)*

- **42.** The Ombudsman emphasises that social care institutions, as well as the courts, must consistently respect the provisions of the Mental Health Act when admitting persons to secure wards. *(page 55)*
- **43.** The Ombudsman notes that the Mental Health Act should be consistently respected in deciding about the payment of costs of procedures for admission to a secure ward on the basis of a court decision. *(page 55)*
- ✗ **44.** The Ombudsman proposes that an act be passed to regulate the organisation, functioning and other features of residential treatment institutions and to regulate mandatory documentation for such institutions, to determine the framework for the creation of house rules and other rules for residence, define the treatment of violations of rules and ensure the uniform implementation of the rights of juveniles. *(page 55)*
- **45.** The Ombudsman calls on the competent authorities once again to take all necessary measures and make agreements for the implementation of all security measures concerning the sending of juveniles to special education institutes. *(page 55)*
- ✓ **46.** The Ombudsman repeats the recommendation that an effective forced return monitoring system for foreigners in accordance with Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in EU member states for returning illegally staying third-country nationals. *(page 55)*

JUSTICE

36. The Ombudsman encourages the adoption of a long-term judicial strategy as the fundamental framework for the operation of courts.

37. In dialogue with the judicial authority and the expert public, the Ministry of Justice should continue with well-considered legislative measures to ensure the protection of the right to trial without undue delay.

38. The Ombudsman recommends that the competent stakeholders study again the efficiency of measures taken by labour and social courts to reduce court backlogs and ensure trials in reasonable time.

39. The Ombudsman encourages further strengthening of the efficiency of supervisory authorities to ensure high quality in the work of court and of trials.

40. The Ombudsman recommends that the Ministry of Justice and courts study the existing mechanisms for the supervision of the work of judges, especially their efficiency, and on this basis, take potential additional measures to improve the work of the courts.

41. The Ombudsman recommends that judges consistently act in accordance with the provision of the first paragraph of Article 71 in relation to point 5 of Article 70 of the Civil Procedure Act, and ensure the respect of the right to impartial trial.

42. The Ombudsman recommends additional measures be taken in the normative field to limit the possibilities for the abuse of institutes of doctor's notes and other justifications connected with ensuring the presence of parties in court proceedings. Courts should use the prescribed procedures to assess doctor's notes.

43. The Ombudsman recommends that the Ministry of Justice take the required measures to solve the problem of the enforcement of income for previous months transferred in the current month.

- 44.** The Ombudsman recommends a more detailed definition of the calculation of costs for the direct performance of enforcement or insurance by payment service providers.
- 45.** The Ombudsman supports all measures that enhance the efficiency of free legal aid and that contribute to better accessibility of such aid.
- 46.** The Ombudsman recommends that the Ministry of Justice adopt additional measures to establish and ensure the professionalism of experts, and to improve the situation in the field of experts.
- 47.** The Ombudsman emphasises that all stakeholders in the procedure of supplementing a fine with community work must take into account its purpose and statutory regulation.
- 48.** The Ombudsman recommends that the Ministry of Justice study the highlighted decisions of the ECHR from the aspect of the need to improve the Minor Offences Act (ZP-1), and that the courts respect the right to fair trial when making decisions regarding requests for judicial protection.
- 49.** The Ombudsman encourages the prosecution service to continue to provide speedy and effective criminal prosecution of perpetrators of criminal offences, and to adequately inform the injured parties of reasons for decisions for the potential rejection of indictments or suspension of prosecutions.
- 50.** The Ombudsman recommends that state prosecutors pay special attention to the treatment of those aliens who are under the special protection in accordance with the Convention relating to the Status of Refugees.
- 51.** The Ombudsman recommends that the Ministry of Justice suitably regulate *pro bono* aid from lawyers (also in the field of taxes) together with the Ministry of Finance.
- 52.** The Ombudsman welcomes all efforts of the Bar Association of Slovenia in the adoption of measures to ensure greater transparency of the work of their disciplinary bodies, and encourages the Association to provide efficient responses to irregularities in their sector through the efficient work of their disciplinary bodies, and to make swift and objective decisions regarding complaints filed against lawyers.
- 53.** The Ombudsman recommends that the legislator consider the suitability of the arrangement regarding the procedure and role of notaries in matters of electronic applications for the registration of title to land.

 **47.** The Ombudsman encourages the state authorities to adopt, if necessary, further measures to ensure the protection of the right to trial without undue delay, so that speedy and effective trials in all our courts are ensured for all cases. (page 69)

 **48.** When ensuring trials without undue delay, the Ombudsman stresses the importance of carefully conducted court proceedings, which should conclude with the issuing of sound court decisions. (page 69)

 **49.** The Ombudsman recommends that courts consistently respect the deadlines for examining the implementation of the preventive measures imposed regarding mandatory psychiatric treatment and protection. (page 69)

 **50.** The Ombudsman encourages the Ministry of Justice to continue efforts to enable access to all buildings of judicial bodies for persons with disabilities. (page 69)

 **51.** The Ombudsman proposes that additional measures be taken to improve the efficiency of enforcement proceedings in a way which does not undermine the rights of debtors that are guaranteed by the Constitution. (page 69)

 **52.** The Ombudsman recommends that supervision of the lawfulness and correctness of the work of enforcement officers be implemented consistently and proposes that all necessary measures be taken,

including legislative changes aimed at preventing proceedings related to such violations from falling under the statute of limitations. *(page 69)*

- X** 53. The Ombudsman recommends that the Ministry of Justice and the Ministry of the Interior examine possibilities for providing additional assistance to municipalities as an incentive to establishing or maintaining the various forms of legal aid which certain municipality (already) provide to their residents. *(page 69)*
- ✓** 54. The Ombudsman proposes that all necessary measures be taken to ensure that applications for free legal aid are processed within the time limits determined by law. *(page 69)*
- ↗** 55. The Ombudsman encourages the prosecution service to continue to provide for the speedy and effective implementation of criminal prosecutions of perpetrators of criminal offences and for an adequate elaboration of reasons for decisions for the potential rejection of indictments or suspension of prosecutions. *(page 69)*
- X** 56. The Ombudsman recommends that attorneys, upon assuming representation of an individual party, dedicate appropriate time to explaining to the party what kind of services they can expect on the basis of the given authorisation, including an explanation about whether the attorney will represent the party only in one proceeding, and whether other proceedings will require a new authorisation for the attorney. *(page 69)*
- ↗** 57. The Ombudsman recommends that the Bar Association of Slovenia take, if necessary, additional measures to improve the effectiveness of its disciplinary bodies and ensure speedy, effective and objective decisions about reports submitted against attorneys. *(page 69)*
- ↗** 58. The Ombudsman encourages the Bar Association of Slovenia in its efforts to take measures which would improve the transparency of the work of their disciplinary bodies, including by publishing a list (on its website) of disciplinary measures taken against attorneys. *(page 69)*
- ✓** 59. The Ombudsman encourages the adoption of a clear and transparent attorney fee system as soon as possible. *(page 69)*
- X** 60. The Ombudsman proposes that the Ministry of Justice examine as soon as possible whether there is a need to amend the legislative regulation of the disciplinary accountability of notaries serving in the capacity of an attorney. *(page 69)*

POLICE PROCEEDINGS

54. The Ombudsman emphasises that the police as a minor offence authority must provide the person in minor offence proceedings (and the defendant) with basic guarantees of fair proceedings (Article 22 of Constitution of the Republic of Slovenia).

55. The Ombudsman also emphasises that several reports of noise require police officers to consistently and correctly establish the actual situation, and act against such violations.

56. The Ombudsman recommends a thorough procedure to study and verify information received on a potential criminal offence by anonymous telephone.

57. In their work, police officers must take into account the rights and freedoms provided, exercise their powers in a professional and correct manner, and ensure suitable verbal communication. Police officers must always make every effort to be respectful in contacts with individuals, and observe human rights.

58. When exercising police powers, the Ombudsman emphasises that special attention should be paid to children, who must not, and cannot, end up like their parents. Therefore, law enforcement authorities must also think about how to protect children in searches of premises.

59. The Ombudsman recommends that courts be organised in such a manner that investigating judges are able to receive persons arrested on the basis of a European Arrest Warrant and immediately commence interrogation.

60. The Ombudsman encourages the police to inform all its units of irregularities established in the work of police officers in order to prevent a similar or the same mistake from being repeated.

➔ **61.** The Ombudsman recommends that police officers take more care to ensure correct and complete examining of facts related to alleged offences and eliminate the repetition of shortcomings in examining facts and collecting evidence. *(page 79)*

➔ **62.** The Ombudsman emphasises that, when implementing police tasks, police officers must respect the personality and dignity of persons and especially carefully treat persons who require additional attention. In the relationship with a person in a procedure (also verbally), they must be fair, and their procedures professional and lawful. *(page 79)*

➔ **63.** The Ombudsman recommends that all procedures conducted by police officers related to the reading and (non-)implementation of rights of a detained person be carefully recorded. *(page 79)*

✓ **64.** The Ombudsman encourages the police to inform all its units about irregularities established in the work of police officers in order to prevent a similar or the same mistake from being repeated. *(page 79)*

✓ **65.** The Ombudsman recommends that the competent authorities reconsider the adequacy of the current regulation on the prosecution of the criminal act of threatening. *(page 79)*

➔ **66.** The Ombudsman encourages the police to continue efforts to eliminate administrative obstacles in order to enable faster, more effective and better action by police officers. *(page 79)*

➔ **67.** The Ombudsman recommends that complaints by individuals containing claims that their rights or freedoms have been violated with an act or failure to act by a police officer be processed carefully. The Ombudsman recommends that every applicant receive at least a first answer to every submission. *(page 79)*

✓ **68.** The Ombudsman recommends that, in cases of a justified complaint, the police and the Ministry of the Interior take all necessary measures to ensure that a similar case does not occur in the future. We also emphasise that in cases when irregularities in the actions of a state authority towards an individual are established, at least an apology should be made to the aggrieved individual. *(page 79)*

➔ **69.** The Ombudsman points out that police officers must consistently observe all regulations and guidelines in this field, also in the case of the detention of larger numbers of persons, in order to provide for the lawful and professional implementation of the detention and humane treatment of detained persons. *(page 79)*

➔ **70.** In order to ensure the right to personal dignity to persons in police procedures, the Ombudsman recommends that the police take all measures to prevent a (handcuffed) person who is escorted or moved from being exposed to the media (if there is no objective and reasonable basis for this). *(page 80)*

➔ **71.** The Ombudsman encourages the MNZ and the police to take all necessary measures to improve the adverse working conditions of police officers as a consequence of high ambient air temperatures. *(page 80)*

ADMINISTRATIVE MATTERS

- 61.** The Ombudsman recommends that the Ministry of the Interior make decisions on requests for international protection without undue delay. The Ministry should especially ensure that providing the right to a translator is not the reason for lengthy decision-making processes.
- 62.** It is reiterated: The Ombudsman requires that the Government take all measures to contribute to the conclusion of denationalisation.
- 63.** It is reiterated: The Ombudsman proposes that the Government promptly take note of the issue of the admissibility of entering illegal constructions in the land register, and prepare legislative amendments to prevent this as soon as possible. The State must assume responsibility for illegal constructions, and prosecute all builders of illegal constructions.
- 64.** The Ombudsman requires that the Ministry of the Interior promptly prepare amendments to the Residence Registration Act, and regulate the field of legal residence to prevent individuals who have lost their dwellings from also losing their registration of residence and all other related rights.
-  **72.** The Ombudsman proposes that the Ministry of the Interior ensure the observation of statutory time limits for decision making at both first and second instances. *(page 87)*
-  **73.** The Ombudsman proposes that the Government adopt suitable implementing regulations as soon as possible to regulate the field of cash social assistance received by foreigners and prevent further violations of human rights and freedoms. *(page 87)*
-  **74.** The Ombudsman requires (a similar proposal was provided in the Ombudsman's Annual Report for 2008) the Government to take all measures which contribute to the completion of denationalisation. *(page 87)*
-  **75.** The Ombudsman proposes that the Government prepare amendments to the Local Self-Government Act and, if necessary, to other regulations, which will establish efficient mechanisms for supervision and actions regarding the work of local self-government and mayors. *(page 87)*
-  **76.** The Ombudsman proposes that the Government promptly take note of the issue of the admissibility of entering illegal constructions in the land register and prepare legislative amendments to prevent this as soon as possible. The state must assume responsibility for illegal constructions and prosecute all builders of illegal constructions. *(page 87)*
-  **77.** The Ombudsman requires the earliest possible regulation of the issue of compensation for material war damage suffered by exiles, parties that suffered material damage, prisoners of war and persons conscripted into the German army during World War II. *(page 87)*
-  **78.** The Ombudsman requires the Government to provide suitable funds for locating hidden war and post-war graves and, where graves are discovered, to ensure a symbolic burial of victims, memorial plaques and access to the burial site for relatives of the dead. *(page 88)*
-  **79.** The Ombudsman proposes that the Ministry of the Interior prepare amendments to the Residence Registration Act, so that the registration of a permanent residence will also be possible for individuals temporarily accommodated in prisons, correctional facilities and elsewhere, and in facilities for homeless people. *(page 88)*
-  **80.** The Ombudsman proposes that a deadline be determined in the Residence Registration Act within which the *ex officio* procedure of establishing permanent residence must be concluded. *(page 88)*

- X** **81.** The Ombudsman proposes amendments to regulations which will enable all parents to freely select a public kindergarten for their child. *(page 88)*
- X** **82.** The Ombudsman proposes taking additional measures which will provide all parents with equal opportunities when including their children in the public network of organised pre-school education and care. *(page 88)*
- X** **83.** The Ombudsman proposes that the Ministry of Education, Science and Sport clearly define those procedures in kindergartens, primary and secondary schools which should be managed pursuant to the General Administrative Procedure Act and those which should not (e.g. grading, which is a professional task). *(page 88)*
- X** **84.** The Ombudsman recommends a more suitable arrangement of habilitation procedures for elections to academic titles for higher education lecturers and academic staff; procedures should be accelerated and facilitate an efficient legal remedy to protect individuals' rights when their application for a title is rejected. *(page 88)*
- X** **85.** The Ombudsman proposes to the Ministry of Education, Science and Sport to systemically regulate studies for students with special needs and their accommodation in halls of residence. *(page 88)*
- X** **86.** The Ombudsman proposes adopting a systemic solution for the issue of minor sportspersons' transfers between sports clubs and eliminating the payment of high compensations which must be paid by the parents of minor sportspersons who decide to transfer. *(page 88)*

ENVIRONMENT AND SPATIAL PLANNING

- 65.** It is reiterated: The Ombudsman requires that the Government take all measures to improve the quality of the living environment and health of people affected in excessively polluted and brownfield areas, also by implementing suitable public health measures.
- 66.** It is reiterated: The Ombudsman recommends that the Ministry of the Environment and Spatial Planning monthly monitor the dynamics of the resolution of cases in the field of water rights and ownership relations on land with access to water, and report the results to the Government.
- 67.** It is reiterated: The Ombudsman proposes that the Ministry of the Environment and Spatial Planning prepare an amendment to point 7.4.2 of the Construction Act, and define the meaning of "reinstatement", i.e. the removal of facilities and related material.
- 68.** It is reiterated: The Ministry of the Environment and Spatial Planning should prepare a systemic solution for the acquisition of authorisations for measuring emissions into the air, and ensure the independent supervision and financing of measurements.
- 69.** The Government of the Republic of Slovenia must ensure an immediate harmonised inter-ministerial approach to resolving the problem at the systemic level, with the health of children and employees being essential.
- 70.** It is reiterated: The Ombudsman recommends that the Government determine priority tasks (priorities) of inspection services in a regulation, as this is the only way to ensure transparency and the impartiality of inspectors.
- ➔** **87.** The Ombudsman requires the Government to promptly take all suitable measures to eliminate backlogs in decision making regarding water right and ownership relations on land with access to water. *(page 95)*

- ✘ **88.** The Ombudsman recommends that the Ministry of Agriculture and the Environment monthly monitor the dynamics of the resolution of cases in the field of water rights and ownership relations on land with access to water, and report the results to the Government. *(page 95)*
- ➔ **89.** The Ombudsman requires the Government to take all measures to improve the quality of the living environment and health of people affected in excessively polluted and brownfield areas, also by taking suitable public health measures. *(page 95)*
- ✘ **90.** The Ministry of Agriculture and the Environment should prepare a systemic solution for the acquisition of authorisations for measuring emissions into the air, and ensure the independent supervision and financing of measurements. *(page 95)*
- ✘ **91.** The Government should prepare a uniform regulation for the rehabilitation of all polluted and brownfield areas in the country. *(page 95)*
- ✘ **92.** The Ombudsman requires the Government to provide the Transport, Energy and Spatial Planning Inspectorate with conditions for efficient inspection task management. *(page 95)*
- ➔ **93.** The Ombudsman recommends that the Government determine priority tasks of inspection services in a regulation, as this is the only way to ensure transparency and the impartiality of inspectors. *(page 95)*
- ➔ **94.** The Ombudsman recommends that all inspection services inform complainants on the receipt of complaints and the anticipated time limit for their processing. *(page 95)*
- ✘ **95.** The Ombudsman proposes that the Ministry of Infrastructure and Spatial Planning prepare an amendment to Point 7.4 of Article 2 of the Construction Act, and define the meaning of 'reinstatement', i.e. the removal of facilities and related material. *(page 95)*
- ✘ **96.** The Ombudsman recommends that the Ministry of Agriculture and the Environment submit an opinion on the competences of the Inspectorate of the Republic of Slovenia for Agriculture and the Environment in cases of illegal construction and, if necessary, prepare amendments to regulations that will enable the Inspectorate to order the implementation of operational monitoring for illegal constructions. *(page 96)*

PUBLIC UTILITY SERVICES

71. It is reiterated: The Ombudsman recommends that the Government prepare and propose a new act on cemetery and burial activities which is adjusted to the currently accepted consensus regarding attitudes to the deceased, and to regulate in a more suitable manner a non-uniform practice in relation to the right to the (continuation) of the lease of graves.

72. It is reiterated: The Ombudsman recommends again that the right to water be included in the legal system of the Republic of Slovenia as a fundamental human right.

73. It is reiterated: The Ombudsman recommends that the competent ministry and the Government prepare a plan of activities to arrange the ownership of public roads where they still run on private land, including time limits for the implementation of individual activities in municipalities.

74. It is reiterated: The Ombudsman recommends that the Government study the possibility of unifying and reducing the prices of procedures for arranging the ownership of land on which public roads run.

75. It is reiterated: the Ombudsman recommends that the responsible ministry promptly prepare amendments to regulations regulating the field of chimney sweeping services in order to facilitate greater competition, and improve the quality of chimney sweeping services.

- **97.** The Ombudsman recommends that the competent ministry and the Government prepare a plan of activities to arrange the ownership of local roads where they still run on private land, including time limits for the implementation of individual activities in municipalities. *(page 97)*
- ✗ **98.** The Ombudsman recommends that the Government study the possibility of unifying and reducing the prices of procedures for arranging the ownership of land where local roads run. *(page 97)*
- **99.** The Ombudsman recommends that the responsible ministry promptly prepare amendments to regulations regulating the field of chimney sweeping services in order to facilitate greater competition and improve the quality of chimney sweeping services. *(page 97)*
- ✗ **100.** The Ombudsman recommends that the Government enhance inspection supervision of the operators of chimney sweeping services. *(page 97)*
- ✗ **101.** The Ombudsman recommends that the Government prepare and propose a new act on cemetery and burial activities which is adjusted to the currently accepted consensus regarding attitudes to the deceased, and to regulate in a more suitable manner a non-uniform practice in relation to the right to the (continuation) of the lease of graves. *(page 97)*
- **102.** The Ombudsman recommends again that the right to water be included in the legal system of the Republic of Slovenia as a fundamental human right. *(page 97)*

HOUSING MATTERS

76. It is reiterated: The Housing Act should be amended so that applicants who meet the means test for subsidised market rent are granted a subsidy even if they did not apply for a municipality's current call for applications for allocating non-profit dwellings for rent.

77. The Ministry of the Environment and Spatial Planning should promptly prepare amendments to the Housing Act which clearly define the obligations of municipalities to ensure a certain number of residential units (taking into account the number of residents) a suitable standard of living, and publish tenders for allocating non-profit dwellings for rent at certain intervals (e.g. annually).

78. It is reiterated: The National Assembly should adopt the National Housing Programme as soon as possible.

79. We require the Ministry of the Environment and Spatial Planning to thoroughly analyse the management of multi-housing complexes and on this basis, make amendments to the legislation, and especially to supervise the work of managers of multi-dwelling buildings more tightly.

80. It is reiterated: The Ministry of the Environment and Spatial Planning should enhance housing inspection services, and clearly define in their competences Housing Act so that housing inspection services supervise the implementation of regulations on housing relations, regardless of the ownership of multi-dwelling buildings.

81. We require again that the Ministry of the Environment and Spatial Planning find solutions to violations that, in our opinion, arise from the unequal position of all former holders of an occupancy right (those in denationalised dwellings, and others in other social apartments).

- ✗ **103.** The National Assembly should adopt the National Housing Programme. *(stran 224)*
- ✗ **104.** The Ministry of Infrastructure and Spatial Planning should promptly prepare amendments to the Rules on renting non-profit apartments and ensure a fairer system for assessing housing and social conditions, and priority categories of applicants (young people, young families – determining age, taking

into account applicants' health and other problems, assessing the quality of life of the homeless, and other). (page 101)

- ✘ **105.** The Ministry of Infrastructure and Spatial Planning should promptly prepare amendments to the Housing Act which clearly define the obligation of municipalities to ensure a certain number of residential units (taking into account the number of residents) with a suitable living standard, and publish tenders for allocating non-profit dwellings for rent at certain intervals (e.g. annually). (page 102)
- ✘ **106.** The Housing Act should be amended so that applicants who meet the means test for subsidised market rent are granted subsidy even if they did not apply for a municipality's current call for applications for allocating non-profit dwellings for rent. (page 102)
- ✘ **107.** The Ombudsman again recommends uniform rules for all users of caretakers' dwellings. (page 102)
- ✘ **108.** The Ombudsman requires the Government and the National Assembly to cease violating the rights of tenants in denationalised dwellings, and to take prompt measures to eliminate violations as per the conclusions of the European Committee of Social Rights of the Council of Europe. (page 102)

EMPLOYMENT RELATIONS

82. It is reiterated: The Ombudsman requires the Government to immediately take measures to ensure a transparent, efficient and fast supervision system for the payment of salaries, i.e. for net amounts and all deductions.

83. It is reiterated: The Ombudsman proposes again their competences the Government ensure that procedures in all supervisory institutions (inspectorates, courts and others) are carried out within reasonable time limits. We propose strengthening human resources where necessary by reassigning civil servants.

84. We propose that the Government consider expanding the competences of the Inspection Board.

85. It is reiterated: The Ombudsman proposes that the Ministry of Justice prepare such amendments to the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act so that non-payments for work which an individual must perform prior to submitting an extraordinary termination of employment relationship priority claim will be considered priority claims.

86. The Government must take all measures to prevent unpaid traineeship without the payment of labour-related costs and at least a minimum payment.

- ✘ **109.** The Ombudsman requires the Government to take measures to ensure a transparent, efficient and fast supervision system for the payment of salaries, i.e. for net amounts and all deductions. (page 110)
- ✘ **110.** The Ombudsman proposes that the Ministry of Justice prepare such amendments to the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act that also consider non-payments for work which an individual must perform prior to submitting an extraordinary termination of employment relationship priority claim. (page 110)
- ✘ **111.** The Ombudsman proposes again that the Ministry of Justice amend the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act and transfer to the state the liability for severance payment in cases of companies in partial state ownership. (page 110)
- ➔ **112.** The Ombudsman proposes again that the Government ensure that procedures in all supervisory institutions (inspectorates, courts and others) are carried out within reasonable time limits. We propose strengthening human resources where necessary by reassigning public servants. (page 110)

- ✓ **113.** The Ombudsman proposes that the National Assembly adopt a reliable explanation of Article 137 of the Employment Relationship Act. *(page 110)*
- ✗ **114.** The Ombudsman proposes that the Ministry of the Interior prepare amendments to the ZUJF and, as an exception to the limitations regarding annual leave, acknowledge the criteria for protecting and caring for, physically, and moderately, severely or profoundly intellectually disabled persons. *(page 110)*
- ✗ **115.** The Ombudsman proposes that the Ministry of Labour, Family, Social Affairs and Equal Opportunities, the Ministry of Education, Science and Sport, and the Government prepare and adopt a suitable strategy for granting scholarships for studies abroad, i.e. relating to occupations for which there is a shortage of personnel who can be employed in Slovenia. *(page 110)*
- ✗ **116.** When preparing public tenders for granting scholarships for studies abroad, the Slovene Human Resources Development and Scholarship Fund should consider realistic employment options in Slovenia when determining the obligation of scholarship recipients to find a job in Slovenia after completing their studies. *(page 110)*
- ✗ **117.** The Ombudsman proposes that the Ministry of Labour, Family, Social Affairs and Equal Opportunities, and the Ministry of Education, Science and Sport consider amending the regulations so that, if a student 'skips' a year, grades from the certificate for the year when the grades are higher are considered when calculating the average. *(page 110)*
- ✗ **118.** The Ombudsman proposes amending the regulation to enable secondary school pupils to be paid their scholarship in a single amount at the end of an academic year during which the pupil fulfils the obligations for two years, and not only after the education has been completed. *(page 110)*

PENSION AND DISABILITY INSURANCE

88. The Ombudsman proposes that the Pension and Disability Insurance Institute of the Republic of Slovenia study the reasons for the complaints and objections of insured persons, and on this basis, attempt to improve communication with insured persons.

89. The Ombudsman proposes taking measures to significantly shorten the deadlines for the consideration of cases received by the Pension and Disability Insurance Institute of the Republic of Slovenia.

90. The Ombudsman expects the competent authorities to keep all records that affect the rights of individuals well maintained and updated, and that the information on the possibility to retire will be verified prior to the issue of an informative calculation.

91. The Ombudsman proposes that the Government determine the responsibility of employees at the Ministry of Health for a year-long delay in the preparation of an implementing regulation on occupational diseases, and suitably sanction them.

- ✗ **119.** The Government should ensure that the competent state authorities prepare and adopt implementing regulations promptly and within statutory time limits to facilitate the implementation of individual acts, and adopt those regulations for which the time limit has already expired as soon as possible. *(page 115)*
- ✗ **120.** The Ombudsman recommends that the competent bodies of the ZPIZ consistently decide on all complaints from insured persons pursuant to the General Administrative Procedure Act, and fully explain the reasons in the explanation as to why individual claims were dismissed or rejected. *(page 115)*
- ✗ **121.** The Ombudsman recommends that the Government and all state authorities preparing regulations pay special attention to financial consequences of new solutions in all fields, not only regarding the

state budget. All insufficiently deliberated solutions lead to high direct and indirect costs, while all the consequences of citizen's distress can never be objectively established. Therefore, state authorities should pay more attention to suitable training for all those participating in the procedure for preparing regulations which have measurable financial consequences. (page 115)

- ✘ **122.** The Ombudsman proposes that the Ministry of Labour, Family, Social Affairs and Equal Opportunities prepare an analysis of the realisation and effects of the Pension and Disability Insurance Act (ZPIZ-2) by the end of 2014, and organise a public discussion on the findings and assessments, as well as prepare potential amendments to the pension and disability insurance system. (page 115)
- ✘ **123.** The Ombudsman recommends that the Pension and Disability Insurance Institute of the Republic of Slovenia ensure everything needed to render decisions within the statutory time limits, and in cooperation with the Ministry of Foreign Affairs establish a way to simplify and shorten procedures which include the participation of foreign policyholders. (page 115)

HEALTH CARE AND HEALTH INSURANCE

- 92.** The Ombudsman proposes that the Government and the National Assembly study the suitability of the provisions of the Government of the Republic of Slovenia Act which facilitate the temporary management of ministries.
- 93.** The Health Insurance Institute of Slovenia should issue and send all decision regarding absence from work prior to the expiry of the permitted absence.
- 94.** The Ombudsman recommends that the Health Insurance Institute of Slovenia and non-governmental organisations that acquire funds for the co-financing of holidays for children at tenders improve the provision of information to parents and paediatricians on all the requirements of the tender, so that parents can promptly register their children who meet all health-related conditions for holidays.
- ✘ **124.** The Ombudsman proposed that the Ministry of Health promptly prepare positions on health-care and health insurance reform, and organise a wide public discussion of all interested publics. The public discussion should include several alternative solutions supported by all relevant information, particularly on the financial consequences for patients. (page 125)
- ✘ **125.** We recommend that the Ministry of Health promptly establish organisational reasons for violating individual patients' rights, especially the right to respect for patients' time, and obliges the managements of health-care institutions to prepare a plan for their elimination. During plan preparation, they should cooperate with interested organisations of patients and their relatives. (page 125)
- ✘ **126.** The Ministry of Health should study the regulatory framework of complementary and alternative medicine and individual treatment methods, and on this basis prepare suitable legislation amendments to ensure providers free financial choice and provide users with the right to select their treatments. (page 125)
- ✘ **127.** The Ministry of Health should include in new health legislation the obligation of health care institutions to promptly inform parents about whether they will be entitled to wage compensation during a hospital stay with a child. (page 125)
- ✘ **128.** Reimbursement for blood donors should be regulated systematically, and different, i.e. discriminatory, treatment should be eliminated. (page 125)

SOCIAL MATTERS

- 95.** The Ombudsman proposes taking measures to speedily provide high-quality information to residents on various options to exercise their social rights.
- 96.** The Ombudsman proposes that the Ministry of Labour, Family, Social Affairs and Equal Opportunities enhance the personnel capacities of social work centres, and prepare high-quality advisory services for residents regarding their rights.
- 97.** The Ombudsman recommends that social work centres provide parents, in cases when children are not covered by health insurance, all necessary information on insuring children by the municipality as soon as possible.
- 98.** The Ombudsman proposes that the Government more suitably secure monetary claims arising from monetary social relief and pension support paid.
- 99.** The Ombudsman recommends amendments to the Social Security Benefits Act (ZSVarPre) to expand the range of beneficiaries of funeral costs to other relatives and persons who were not related to the deceased, but who arranged their funeral.
- 100.** The Ombudsman recommends that the Government prepare a programme for the expansion of capacities of occupational activity centres and enable persons affected to be included in the service of guidance, care and employment under special conditions.
- 101.** The Ombudsman proposes taking measures to improve the accessibility of institutional care for adults with moderate, severe and profound mental disorders and/or with several disorders, in an effort to meet regional needs in a more way.
- 102.** The Ombudsman proposes the renovation of the existing personnel norms for health-care and care personnel in retirement homes where young disabled persons reside.
- X 129.** The Ministry of Labour, Family, Social Affairs and Equal Opportunities should ensure in 2014 that all complaints regarding exercising the right to public funds will be decided within the statutory time limits. *(page 136)*
- X 130.** The Government should prepare a comprehensive strategy for the protection of the elderly against violence and all forms of abuse. *(page 136)*
- X 131.** The Exercise of Rights to Public Funds Act should be amended so that child support is not deemed family income up to a certain amount, and that it is intended solely for the needs of a child. A higher amount would be included in family income and would mean that a child contributes to the subsistence of the entire family. *(page 136)*
- X 132.** The Government should prepare suitable amendments to the Social Security Act which will not put excessive burden on people when disposing of their own assets, and will ensure the right of municipalities to suitably protect their claims for the co-financing of social services. *(page 136)*
- X 133.** The Government should promptly prepare suitable amendment to the Exercise of Rights to Public Funds Act to eliminate unconstitutional fictive incomes. *(page 136)*

UNEMPLOYMENT

103. It is reiterated: We propose that the Ministry of Labour, Family, Social Affairs and Equal Opportunities ensure that all financial obligations to unemployed persons be settled promptly and without delays, which impose additional social distress on them (e.g. travel expenses for referral to a lecture, postage and other administrative costs in the predetermined amount).

104. We propose that the Government not reduce funds intended to implement active employment policy measures until unemployment indicators actually begin improving.

105. We propose that the Ministry of Labour, Family, Social Affairs and Equal Opportunities study the selection of seminars and workshops available for unemployed persons within active employment policy measures, and especially to carry out an evaluation after the conclusion of seminars which will serve as the basis for potential further implementation. A thorough analysis must be carried out as to whether attendance at seminars, workshops and other forms of training has enhanced the employability of the participants.

106. It is reiterated: The Ombudsman proposes that the Government analyse the efficiency of services of the Employment Service of Slovenia and, considering the findings made, adopt organisational, staffing and other measures which contribute to a faster response to the needs of unemployed persons.

-  **134.** The Ombudsman proposed that the Ministry of Labour, Family, Social Affairs and Equal Opportunities prepare amendments to Article 50 of the Labour Market Regulation Act which will facilitate, exceptionally due to the nature of an individual type of work (e.g. personal assistance) and by taking into account extreme circumstances (e.g. illness of the unemployed person), the performance of public work by the same unemployed person at the same public work provider for a period longer than the statutory 24-month limitation. *(page 140)*
-  **135.** The Ombudsman proposes that the Ministry of Labour, Family, Social Affairs and Equal Opportunities amend the Labour Market Regulation Act and the Rules on registration and deregistration from records so that the Employment Service of Slovenia may decide on unemployment benefits immediately after receiving a notice that a worker has submitted an application for deregistration from insurance to the Health Insurance Institute of Slovenia or the Pension and Disability Insurance Institute of the Republic of Slovenia. *(page 140)*
-  **136.** The Ombudsman recommends that the Government analyse the efficiency of services of the Employment Service of Slovenia and, considering the findings made, adopt organisational, staffing and other measures which will contribute to a faster response to the needs of the unemployed. *(page 140)*
-  **137.** The Ombudsman proposes that the Ministry of Labour, Family, Social Affairs and Equal Opportunities ensure that all financial obligations to the unemployed be settled promptly and without delays which impose additional social distress on them (e.g. travel expenses for referral to a lecture, postage and other administrative costs at a flat rate determined in advance immediately after the performance of public works, etc.). *(page 140)*

PROTECTION OF CHILDREN'S RIGHTS

107. The Ombudsman proposes that the Government systematically monitor the signing and ratification of treaties in the field of children's rights, and order ministries to establish actual and legal barriers in their fields to the ratification of treaties, and to eliminate the barriers as soon as possible.

108. The Ombudsman proposes that the Ministry of Foreign Affairs analyse the cooperation in the preparation and signing of the Optional Protocol to the Convention on the Rights of the Child in terms of

communicating violations, and assess the reasons why all dilemmas that have prevented the ratification of the Protocol were not clarified during the preparation and signing of the Protocol.

109. The National Assembly proposes that the Government draft a special act to institutionalise the advocacy of children in a separate and independent legal entity that ensures equal services for all children in Slovenia, regardless of their place of residence.

110. We propose that the Ministry of Labour, Family, Social Affairs and Equal Opportunities accelerate the preparation of a new family code.

111. The Ombudsman proposes that the Ministry of Education, Science and Sport draft a protocol of conduct for cases of natural disasters in educational institutions that include children and adolescents with emotional and behavioural disorders with a decision from social work centres or courts. Institutions, social work centres and courts should also be informed of these instructions.

112. The Ombudsman proposes that the Ministry of Education, Science and Sport prepare amendments to legislation to facilitate the entry in the register of educational institutions for those social care institutions that carry out education programmes. This will provide the legal basis for the acquisition of certain funds, including for the implementation of out-of-school classes.

113. The Ombudsman proposes that the Ministry of Labour, Family, Social Affairs and Equal Opportunities draft a special protocol for the implementation of enforcement (submitting a child to the other parent – by court decision) in a manner that least traumatises the child and that is not carried in kindergartens or schools.

114. The Ombudsman proposes that the Government address the recommendations made at conference on the participation of children and adolescents (November 2014) and take all necessary measures to realise the recommendations supported by the Government.

✘ **138.** The competent ministries should find actual and legal obstacles to the ratification of international agreements in the field of children's rights and prepare everything necessary to ratify the treaties as soon as possible. *(page 159)*

✘ **139.** The act should authorise social work centres only to take necessary measures to protection children; further procedures should be implemented by family courts or specialised family departments of the courts. *(page 159)*

✘ **140.** The Ministry of Labour, Family, Social Affairs and Equal Opportunities should clearly determine and delimit the rights and duties in the Family Code of both parents regarding their children. *(page 159)*

✘ **141.** The Ministry of the Interior should examine the Deaths, Births and Marriages Register Act and amend it so that the birth of a child outside a health-care institution can be proven not only by a birth certificate issued by a doctor present at labour, but also in other ways. *(page 159)*

✘ **142.** Experts should study the suitability of guidelines on autistic children and propose urgent changes. *(page 159)*

✘ **143.** The Ministry of Education, Science and Sport should examine the possibility of amending the standards and norms that regulate the implementation of educational programmes for children with special needs so that the regulations consider the number of children who need additional help at individual schools. *(page 159)*

✘ **144.** The Government of the Republic of Slovenia should prepare systemic solutions to open issues concerning co-financing programmes and investments that are in the joint interests of people from several local communities, which, however, often reject such programmes due to various reasons. *(page 159)*

- ✘ **145.** The state should have the option to effectively intervene if the implementation of some public services within the jurisdiction of local communities is endangered: so that the state could take over the implementation of such services or that local communities could be temporarily deprived of part of their funds and these funds would be invested in joint programmes. *(page 159)*
- ✘ **146.** The Ministry of Education, Science and Sport should re-examine the concept for working with secondary school pupils in hospitals. *(page 160)*
- ✘ **147.** The Government should determine that the coordination of work and responsibility for harmonising the opinions of ministries regarding joint open issues should be taken over by a responsible person from the Cabinet, who would be personally responsible for the proceedings, not for the result of inter-ministerial harmonisation. *(page 160)*
- ✘ **148.** The court should decide *ex officio* on the implementation of expert opinions in proceedings if the court expert is performing work, where the child is included. The enforcement of such evidence should not be linked to the proposals or other activities of the parties. In such court proceedings, the court should or could take such evidence in accordance with the fourth paragraph of Article 153 of the Civil Procedure Act. *(page 160)*
- ✘ **149.** The Ministry of Education, Science and Sport should examine the suitability of the current legal regulation (Article 107.a of the Education Organisation and Financing Act) which prohibits the employment of certain persons but does not prohibit their other activities at schools. We suggest that it should be examined whether the persons defined by this legal provision should be prevented from having contact with children during classes and other school activities, or it should enable the implementation of such activities. *(page 160)*
- ✘ **150.** The Ministry of Education, Science and Sport should analyse the grades of children who are home schooled, and should examine necessary amendments to the regulations which would be in the best interests of children. *(page 160)*

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