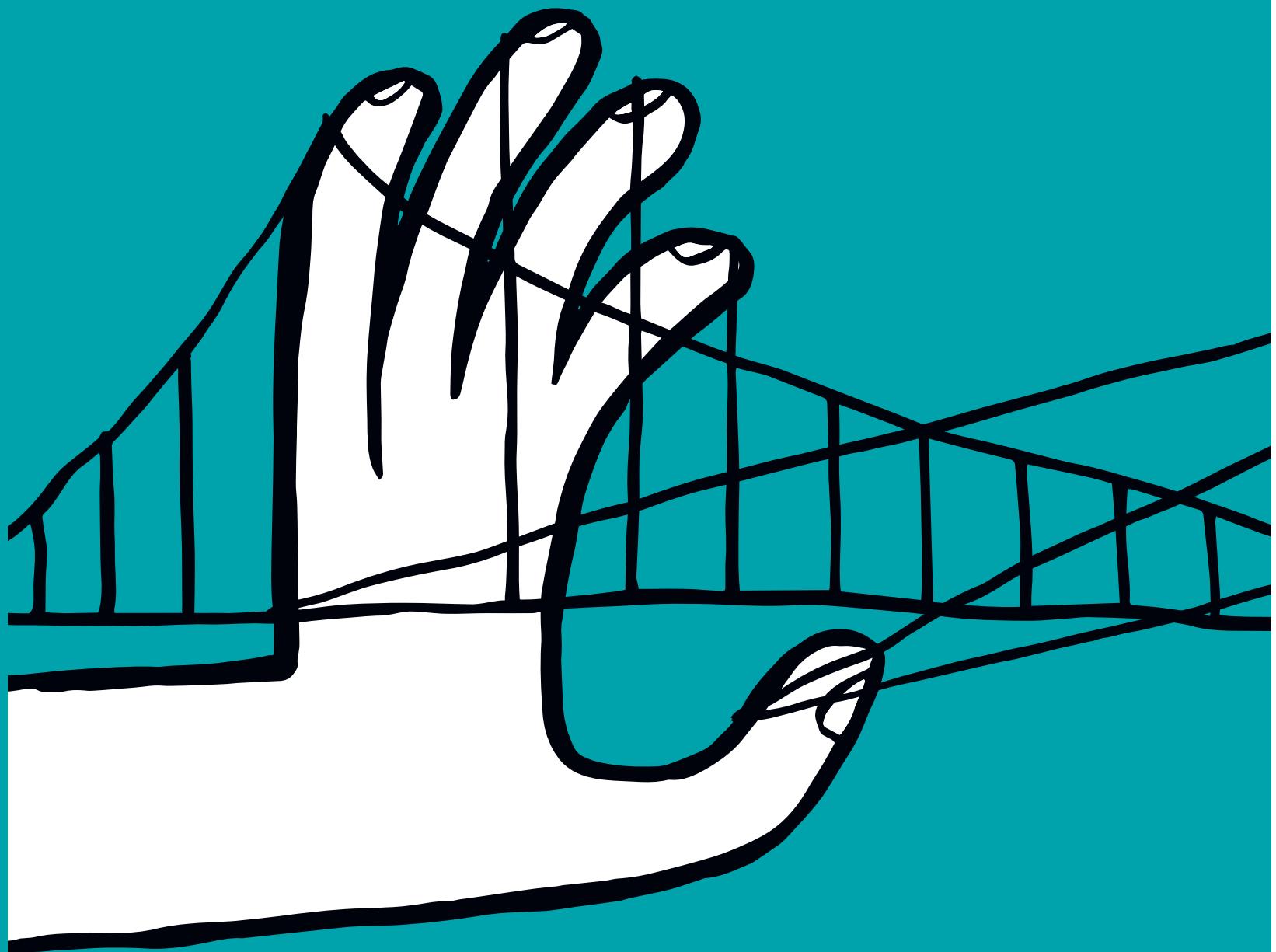


ANNUAL REPORT
OF THE HUMAN RIGHTS OMBUDSMAN
OF THE REPUBLIC OF SLOVENIA
FOR 2018



REPUBLIC OF
SLOVENIA



HUMAN
RIGHTS
OMBUDSMAN



**The 24th Annual Report
of the Human Rights Ombudsman
of the Republic Of Slovenia**

for 2018

Ljubljana, February 2019

ABRIDGED VERSION OF THE REPORT

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The terms used in
this Report expressed
by means of the
masculine gender are
deemed neutral for
men and women.

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INTRODUCTION BY THE OMBUDSMAN AND PRESENTATION OF THE OMBUDSMAN'S WORK IN 2018

You must not lose faith in humanity. Humanity is like an ocean; if a few drops of the ocean are dirty, the ocean does not become dirty. If you change yourself, you will change your world. With every true friendship we build more firmly the foundations on which the peace of the whole world rests. Be the change that you want to see in the world.

Mahatma Gandhi



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Date: 30 January 2019

NATIONAL ASSEMBLY OF THE REPUBLIC OF SLOVENIA

President mag. Dejan Židan
Šubičeva 4
1102 Ljubljana

President of the National Assembly of the Republic of Slovenia mag. Dejan Židan,

pursuant to Article 43 of the Human Rights Ombudsman Act (hereinafter: ZVarCP), I hereby submit to you the twenty-fourth regular annual report on the work of the Human Rights Ombudsman of the Republic of Slovenia in 2018. The report on the implementation of tasks and powers of the National Prevention Mechanism according to the Act Ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which is printed in a separate publication, is also a part of this Report.

When discussing the Report at the session of the National Assembly of the Republic of Slovenia, I expect that pursuant to Article 44 of the Human Rights Ombudsman Act the newly elected Human Rights Ombudsman, Peter Svetina, will also be invited to present the summary of the Report and findings about the level of observance of human rights and fundamental freedoms and legal certainty in the Republic of Slovenia.

Yours sincerely,

Vlasta Nussdorfer
Human Rights Ombudsman



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1.1 ASSESSMENT OF THE OBSERVANCE OF HUMAN RIGHTS AND LEGAL CERTAINTY IN THE COUNTRY



Vlasta Nussdorfer,
Human Rights Ombudsman

Dear Reader,

This is the last report that I hand over to the President of the National Assembly of the Republic of Slovenia, mag. Dejan Židan, as a Human Rights Ombudsman. The Human Rights Ombudsman Act stipulates that the Ombudsman submits to the National Assembly of the Republic of Slovenia (regular or special) reports about their work and findings regarding the level of respect for human rights and fundamental freedoms, as well as legal certainty of citizens in the Republic of Slovenia. The report must be handed over no later than by 30 September of the year following the year that is being reported. I am pleased that we succeeded in shortening the time of drafting annual reports during my term. Until 2014, the report was handed over in June, and in the following years, it was delivered one month earlier, the last one in February.

It is important that the Ombudsman's report arrives at the National Assembly of the Republic of Slovenia as soon as possible and is discussed promptly. Otherwise, the Ombudsman's findings, statements and recommendations lose their topicality, while certain eliminated violations and some others, which were determined anew, were unfortunately not included in the report. **The enforcement of human rights and freedoms cannot and must not be postponed, but we must react swiftly and effectively to all changes and particularly violations.** Every year when discussing the Ombudsman's reports at sessions of working bodies of the National Council and the National Assembly of the Republic of Slovenia, we were unable to avoid currently topical issues and deputies' questions which upset and divided the political, expert and lay publics, but were not the subject of the report being discussed. To discuss the issues highlighted in the report as soon as possible, the handover of the report about our work in 2018 will take place in February, and it will be of use to the new Ombudsman taking over the position on 24 February 2019.

Annual reports were extensive since every report had about four hundred pages. In six years, we thus handed over 2,500 pages of findings, opinions, criticisms, proposals and recommendations. The National Assembly of the Republic of Slovenia accepted all of the Ombudsman's almost 500 recommendations and recommendations to all institutions and high officials at all levels, i.e. state authorities, local self-government bodies and holders of public authority **to comply with the recommendations** written in the regular annual report about the Ombudsman's work. The important question is whether all the aforementioned bodies have also observed these recommendations and adopted suitable measures for their realisation.

I am pleased that the Ombudsman has succeeded in eliminating numerous violations of human rights with its work and recommendations; unfortunately, we had to repeat certain recommendations every year, and were still unable to detect any significant progress. To determine the level of performance, we drafted a special analysis of realised, partly realised and unrealised recommendations adopted during my six-year term and published it in a special publication **Pregled dela Varuha človekovih pravic 2013–2018** (Overview of the Work of the Human Rights Ombudsman 2013–2018) released in February 2019 at the end of my term.

I emphasise that it is not enough to know, observe and respond only to the Ombudsman's recommendations adopted by the National Assembly of the Republic of Slovenia. All findings, criticisms and recommendations which are part of the substantive report, but are not included in the final recommendations **are equally important**. If we were to include all of them, there would be several hundred every year. We thus expect that the ministries and the Government of the Republic of Slovenia respond to everything written by the Ombudsman in the report.

When discussing the non-observance of the Ombudsman's recommendations, it is necessary to also speak about the responsibility of those who do not do enough for elimination of the established violations of human rights. **The Ombudsman will certainly not assume this responsibility, which should be assumed by the executive branch of power for not doing enough to eliminate violations and realise recommendations. The legislative branch also has an important supervisory function**, which, in addition to adopting legislation, should constantly monitor the quality of implementation of adopted system solutions and its recommendations in order to ensure the efficient functioning of all authorities and institutions of the rule of law with amendments, adjustments and supplements.

I highlight the unacceptable fact that the Government of the Republic of Slovenia and the legislator do not respond promptly to **the decisions of the Constitutional Court of the Republic of Slovenia** and fail to draft suitable solutions before the expiry of the deadline for elimination of unconstitutionality. More than ten decisions of this court remain unobserved. The National Assembly of the Republic of Slovenia as the legislator is responsible for eliminating the unconstitutionality in acts; however, it is the duty of the Government of the Republic of Slovenia as the constitutionally appointed proposer of acts to draft legislative proposals on time and submit them to legislative procedure.

Over the years, the Ombudsman has filed 31 requests for a review of the constitutionality or legality of a regulation or a general act issued to exercise public powers. Unfortunately, certain decisions of the Constitutional Court of the Republic of Slovenia, which were adopted on the basis of the Ombudsman's motion, have not yet been observed, to which we also point in this annual report. There are still no legal arrangements which would enable constitutionally compliant enforcement of the right to judicial protection regarding the already filed and future actions for damages dealing with **deleted eligible liabilities based on the ZBan-1**. It is also unacceptable that the legislator failed to ensure the arrangement of a constitutionally compliant procedure for **admitting persons without legal capacity** to secure wards of social care institutions within the set deadline.

Many Slovenian municipalities have not annulled unconstitutional regulations on **the categorisation of public roads**, since the municipalities would have to repeal ordinances on the categorisation of municipal roads themselves in the cases of unresolved ownership relationships.

Every year, the Ombudsman receives several complaints by individuals or non-governmental organisations to file a request for a review of constitutionality of a legal act; however, the Ombudsman does not want to exploit its special position granted by the law, which is why we always decide on these proceedings after a thoughtful consideration of what consequences the decision of the Constitutional Court of the Republic of Slovenia would

have on the protection of human rights and not only on an individual. In the case of the **Health Services Act**, we thus decided against filing the request for a review of constitutionality, since three complaints and one request for the review of constitutionality of the relevant act had already been filed by that time. Nevertheless, we have filed a request for a review of the constitutionality and legality of the Decree on Limit Values for Environmental Noise Indicators, which was the first such request filed by the Ombudsman in the field of the environment.

The Ombudsman recommended (48/2017) to the Government and the National Assembly of the Republic of Slovenia to promptly draft and adopt the regulations necessary to protect the **right to drinking water** determined in the Constitution of the Republic of Slovenia, and particularly in the Environmental Protection Act, the Services of General Economic Interest Act and the Local Self-Government Act. Executive acts should have been adopted by 25 May 2018, which were not and that is inadmissible. The Government of the Republic of Slovenia thus violated the principle of constitutionality and legality under Article 153 of the Constitution of the Republic of Slovenia in connection with Article 2 of the Constitutional Act Amending Chapter III of the Constitution of the Republic of Slovenia according to which acts governing the content from the new Article 70a of the Constitution of the Republic of Slovenia must be harmonised 18 months after their enforcement. In its decisions, the Constitutional Court of the Republic of Slovenia highlighted several times that a severe violation of the principles of the rule of law occurs if unconstitutionality is not eliminated within a certain time period.

One of the explicit examples of the violation of human rights, which has not been eliminated for a very long time, is the **discrimination against disabled students with regard to their transport**, which the Ombudsman has been reporting for years. Even after five years of the Ombudsman's persistence, the recommendation remains unrealised. The National Assembly of the Republic of Slovenia has been postponing its legal responsibility to adopt suitable bases for adjusting the study process to disabled students for over three years. The Ombudsman still discovers certain buildings of public institutions which **are not adapted for persons with disabilities**. These include certain courts, which particularly aggravates the exercise of rights linked with proceedings taking place at courts. For more than half a decade, the state has failed to respond to the recognised deficiency in legislation which does not anticipate **voting by post for persons** who had not expressed this intention at least ten days before voting, and it also does not regulate the position of those deprived of their liberty or admitted to hospital or in institutional care of a social care institution, and are thus unable to vote at a polling station or by post.

One of the important novelties introduced during my term is **systematic monitoring of the established violations and violators**. The established violations of human rights or freedoms determined in the Constitution of the Republic of Slovenia and the Human Rights Ombudsman Act (principles of good administration and equity) are defined for every founded complaint, including the violator (state authorities, local self-government bodies or holders of public authority). On this basis, it was discovered that **in 2018 we most frequently detected** the violation of the principle of good administration (87 times), requested the enforcement of the constitutional principle stating that Slovenia is a social state governed by the rule of law (30 times), requested the elimination of undue delays in proceedings (25 times) and the enforcement of the right to personal dignity and safety (24 times), detected the violation of children's rights (22 times) and demanded action regarding the enforcement of the right to a healthy living environment (22 times). The principle of equity and equal protection of rights remained unrealised several times, including the right to social security, and the protection of privacy and personal rights. Too often the principle of equality before the law is violated, and the right to judicial protection and health care are also unrealised.

When discussing complaints in which individuals claim that fundamental human rights and freedoms have been violated, the Ombudsman often encounters the non-observance of the principles of **equity and good administration**, which the Ombudsman also observes in its work (Article 3 of the Human Rights Ombudsman Act). When evaluating and assessing the suitability of authorities' actions, procedures and decisions, the understanding and application of both principles are not always easy for the Ombudsman. It is difficult to set a limit on when and how they should be applied, as excessive referencing to both principles could lead to arbitrariness in assessing. Nevertheless, it is not compliant with the principle of equity that individuals who exercised their right before a certain practice was amended and those exercising their right afterwards are treated differently. Thus, for example, an allowance was abolished unduly for parents of blind and partially sighted children by the Ministry of Labour, Family, Social Affairs and Equal Opportunities, although two possible parental allowances do not mutually exclude each other and they should have received both. For years, parents sought their right at court,

and we have highlighted that settlements should be concluded in lawsuits or legislation should be adopted to correct the injustices. The state should draw expert bases according to the principle of equity to enable the refund of means paid for the purchase of insurance periods whose intention failed due to legal amendments.

In as many as 87 cases, **violations of the principle of good administration** were determined. The Ombudsman persistently repeats that certain state authorities, local self-government bodies and holders of public authority function too slowly, take too long to resolve applications and exceed all reasonable legal time limits when making their decisions. Prompt decision making about complaints at the first and second instance is particularly crucial when considering applications on granting rights regarding public funds or other forms of social assistance. **The Ombudsman is also encountering unacceptable delays when enquiring and obtaining information necessary for its work when discussing complaints.** Certain authorities reply only after several reminders, which denotes hindering of the Ombudsman's work. The authorities responsible for making decisions in administrative procedures at any instance are obliged to decide on rights and obligations of individuals within the deadlines determined by the law. Only such conduct is acceptable in a state governed by the rule of law. Any unfounded excuses of the authorities are unacceptable for the Ombudsman, and it is also inadmissible that inspection procedures are implemented with undue delay and that the criteria of the order for discussing reports are frequently unclear. We are, however, pleased that there are certain criteria for the order to discuss reports for example in the Building Act and for executing inspection measures. Such solutions will undoubtedly contribute to the impartiality and transparency of inspection service work. Nevertheless, the state must provide material, staffing and financial conditions for efficient implementation of all inspection procedures.

The authorities still fail to reply to letters sent by citizens, send required publicly adopted documents, and unduly delay administrative procedures. The content of letters received by complainants who write to us is particularly concerning since it is completely unclear or even lacks suitable reasoning.

I again express my dissatisfaction because the state has not ensured any conditions for access **to water or appropriate toilet facilities in certain settlements in Slovenia, particularly in Roma settlements.** This is not only a violation of human rights, but it is also unethical and contrary to the principle of equity. It denotes disrespect for the dignity of people who must live in an environment unworthy of living, which is extremely harmful for their health, and especially children and adolescents.

The Ombudsman believed that with **health reforms** the state would ensure accessible, high-quality and safe disease prevention, treatment, and rehabilitation programmes, while also reducing inequalities and ensuring accessible health care to vulnerable groups of people. But these solutions are being postponed from year to year. An urgent paedopsychiatric service is still non-existent, including criteria for determining a network of health-care providers, expert bases for drafting amendments to the Mental Health Act and a regulated field of conducting psychotherapeutic services. A comprehensive analysis of reasons for excessive waiting periods has still not been made, or an analysis of whether the Contagious Diseases Act should be amended accordingly to further provide suitable protection against all contagious diseases.

Not enough has been done with regard to ensuring a **safe and healthy living environment.** A regulation governing noxious odours in the environment has not been adopted yet, which the Ombudsman has been highlighting for years. We lack a systemic solution for the acquisition of authorisations for measuring emissions into the air, and a guaranteed independent supervision and the financing of measurements. There is also no uniform regulation for the rehabilitation of all polluted and brownfield areas in the country. We have no activity plan for arranging ownership of local roads where these are still sited on private land.

Over the years of my term, we unsuccessfully recommended and requested the drafting of amendments to the Housing Act with a clear definition of municipalities' obligations to provide a number of housing units and regularly publish calls for non-profit apartments for rent. The violations of the rights of tenants in denationalised dwellings have still not been eliminated as also determined by the European Committee of Social Rights of the Council of Europe.

The Ombudsman finds it completely incomprehensible why the state has been unable to determine the type and level of physical impairment for 16 years, which is the basis for exercising rights to disability insurance, nor has it adopted an executive act on occupational diseases.

In 30 cases discussed, we established that **the fundamental provision of the Constitution of the Republic of Slovenia stipulating that Slovenia is governed by the rule of law and is a social welfare state** was violated. We claim that the principle of a social welfare state has been violated, when we determine that human dignity has been compromised, and when an individual or their family has no conditions to meet fundamental human needs and are pushed into poverty. Older people are at the highest risk, and we thus discussed in depth the issue of the elderly in 2018. Between March and July 2018, we visited ten retirement homes and spoke to random residents. The findings were presented at the panel discussion, **The Elderly as the Present and the Future of Society**, organised together with the National Council of the Republic of Slovenia at the end of September 2018. The conclusions were submitted to the Government of the Republic of Slovenia, and we expect firm action in eliminating the culminated problems.

In 2016, the Ombudsman detected the issue of undeclared wills; a total of 945 of such wills were found. The Ombudsman is pleased that certain measures were taken and expects that similar occurrences will not be repeated. Nevertheless, we expressed an expectation that personal responsibility of judicial high officials at the highest level of individual courts would be examined since we are concerned that in 22 cases the disregard and non-declaration of the will was exclusively the result of a judge's conduct.

The Ombudsman has recommended and still recommends the adoption of measures to improve **the quality of court decisions** and form a more uniform case law, which will contribute to enhancing citizens' trust. The public still often believes that individuals in court proceedings are not guaranteed equal constitutional rights. The Ombudsman recommends to minor offence authorities and courts to consistently comply with all guarantees of a fair procedure, impartial decision making and trial, and that the prosecution service promptly and effectively implement criminal prosecution of perpetrators of criminal offences, and adequately inform injured parties of clear and substantiated reasons and legal instruction for decisions on the potential rejection of indictments.

Over the years, the Ombudsman has been concerned with the fact that **access to justice** has been hindered for many people in spite of the legally guaranteed free legal aid, which is still difficult to access. It is encouraging that gaps in the field of free legal aid are being filled by certain Slovenian municipalities and non-governmental organisations; in accordance with the *pro bono* principle, free legal aid is also provided by lawyers, notaries, the Detective Chamber and others.

The data on continuing the trend of reducing the number of prisoners is also encouraging; however, certain prisons are still overcrowded and living conditions are not good. We also determined that **prisons** have not done enough to organise activities and provide work to all prisoners capable of working and who wish to work. The conditions for accommodating vulnerable groups of prisoners, especially the elderly and ill, must also improve. Since 2011, the Ombudsman has pointed to the problems encountered by **prison officers, including the lack of staff**, and recommended that the problem be solved by employing additional staff. The Ombudsman constantly emphasises that the situation and the level of safety in prisons depend on the organisational atmosphere and staff's efficiency, which is why it is of the utmost importance to ensure suitable protection of employees' rights and provide stimulating working conditions.

It is impossible to mention all substantive fields, established deficiencies and violations of human rights and freedoms in the introduction. In the extensive first section of the report, you can read about the situation of human rights and fundamental freedoms, including legal certainty in the country. The second part of the Ombudsman's report, which is also its integral part, is the Report of the Ombudsman on the Implementation of Tasks of the National Preventive Mechanism against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (which is in a separate publication).

To conclude, I am particularly pleased that we succeeded in realising in this term the long-term efforts of previous ombudsmen to obtain the **legal bases to enforce a frequently repeated recommendation by the Ombudsman that Slovenia needs a national institution for human rights with A status** according to the Paris Principles. In 2017, the Human Rights Ombudsman Act was amended, which expanded the Ombudsman's powers and mission and also governed *inter alia* the operation of the Human Rights Ombudsman Council for Human Rights, child advocacy and the work of the National Preventive Mechanism.

I am pleased to determine that the Ombudsman has become recognised and respected in Slovenia, which is the result of the work of all past ombudsmen and the expert and dedicated work of the entire team. I sincerely



Colleagues of the Human Rights Ombudsman of the Republic of Slovenia (January 2019)

thank everyone for excellent cooperation. I congratulate the newly appointed Human Rights Ombudsman, Peter Svetina, to whom I pass on good foundations for successful work in the future, orderly staff and spatial conditions, and unfortunately also a heap of unrealised Ombudsman's recommendations. We have realised that zero tolerance for any form of violence is essential. But there is a long way to go to the realisation about the urgency of zero tolerance for all forms of violation of human rights and freedoms.

Vlasta Nussdorfer
Human Rights Ombudsman

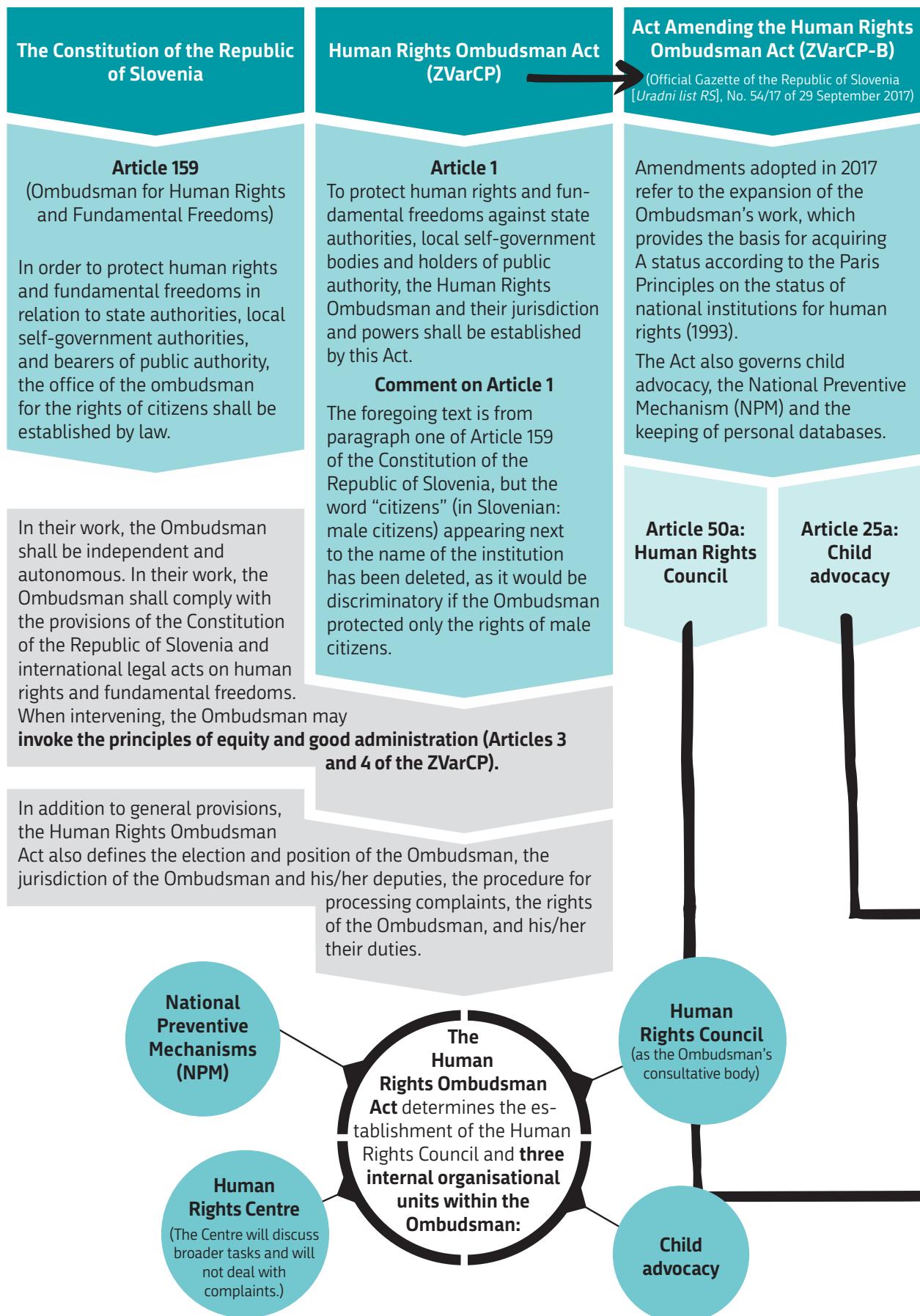
1.2 THE HEAD OFFICE OF THE HUMAN RIGHTS OMBUDSMAN OF THE REPUBLIC OF SLOVENIA



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1.3 LEGAL BASES OF THE OMBUDSMAN'S WORK



Rules of Procedure of the Human Rights Ombudsman

(Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 3/2019 of 11/01/2019)

The Rules were first published on 6 November 1995 (Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 63/95), and its amendments were adopted at a later date (Official Gazette of the Republic of Slovenia [*Uradni list RS*], Nos. 54/98, 101/01, 58/05). The Rules govern the organisation and method of work of the Human Rights Ombudsman, and defines the division of work areas and the procedure for processing complaints. **On 7 January 2019, after a preliminary opinion of the Commission for Petitions, Human Rights and Equal Opportunities, Ombudsman Vlasta Nussdorfer accepted the Rules of Procedure of the Human Rights Ombudsman harmonised with the Act (ZVarCP-B)** (Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 3/2019 of 11 January 2019).

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 [*Uradni list RS*], No. 114/06 of 09/11/2006)

Article 4

In connection with Article 17 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Republic of Slovenia makes the following declaration: "Competences and duties of the national prevention mechanism under the Optional Protocol, in accordance with Article 17, shall be implemented by the Human Rights Ombudsman and, in agreement with him/her, and also by the non-governmental organisations registered in the Republic of Slovenia and organisations that have acquired the status of a humanitarian organisation in the Republic of Slovenia ."

The position and powers of the Ombudsman are also determined in other acts:

the Constitutional Court Act, the State Prosecution Service Act, the Courts Act, the Judicial Service Act, the Equal Opportunities for Women and Men Act, the Defence Act, the Patients' Rights Act, the Environmental Protection Act, the Personal Data Protection Act, the Criminal Procedure Act, the Police Tasks and Powers Act, the Attorneys Act, the Enforcement of Criminal Sanctions Act, the Administrative Fees Act, the Classified Information Act, the Integrity and Prevention of Corruption Act, the Infertility Treatment and Procedures of Biomedically-Assisted Procreation Act, the Public Employees Act, the Public Sector Salary System Act, the Court Experts, Certified Appraisers and Court Interpreters Act, and the Travel Documents Act.

General Legal Act on child advocacy, the organisation of advocacy, the integration of children into the advocacy system and on the tasks, composition and method of work of the expert council

(Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 44/18 of 29/06/2018)

Article 1

(Subject and purpose)

This general act shall determine in detail the manner of implementing child advocacy, its organisation and the procedure of integrating children into the advocacy system, including the composition, tasks and work methods of the expert council, which accompanies the realisation of advocacy.

The purpose of advocacy is to provide professional assistance to a child to express their opinion in all proceedings and matters involving the child, and to forward the child's opinion to those competent authorities and institutions which decide on the child's rights and best interests.

Article 1

(Subject and purpose)

(1) The Human Rights Council (hereinafter: the Council) shall be the consultative body of the Ombudsman as the head of the institution of the Human Rights Ombudsman of the Republic of Slovenia (hereinafter: the Ombudsman), which is established to promote and protect human rights and fundamental freedoms, and to enhance legal certainty.

(2) The Council shall enjoy operational autonomy, which includes internal democracy, open dialogue and suitable consideration of various aspects in its own work

Rules of Procedure of the Council of the Ombudsman

(Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 71/18 of 9 November 2018)



1.4 THE OMBUDSMAN AND HER DEPUTIES



Ombudsman Vlasta Nussdorfer
BA in Law

Deputy

Tone Dolčič,
BA in Law



Deputy

Dr Kornelija Marzel,
BA in Law



Deputy

Ivan Šelih,
BA in Law



Deputy

Miha Horvat,
BA in Political Science
and MA in Law



Responsible for the following fields of the Ombudsman's work

protection of the rights of the child, social security, social activities, health care and health insurance, pension insurance, child advocacy

the environment and spatial planning, administrative procedures and legal property matters, labour law matters, unemployment, housing matters, public utility services

restriction of personal freedom (persons with limited liberty), justice, police procedures, National Preventive Mechanism

constitutional rights, discrimination, national and ethnic minorities, personal data protection, citizenship, foreigners and applicants for international protection, correcting injustices, international cooperation



The Ombudsman's Board (January 2019)

From left to right: **Miha Horvat**, Deputy Ombudsman; **Tone Dolčič**, Deputy Ombudsman; **Dr Kornelija Marzel**, Deputy Ombudsman; **Vlasta Nussdorfer**, Ombudsman; **Martina Ocepek**, Director of the Expert Service; **Kristijan Lovrak**, Secretary General; **Ivan Šelih**, Deputy Ombudsman.

Pursuant to Article 17 of the ZVarCP, **the Ombudsman laid down the hierarchy of her deputies, namely according to their full period of working as a Deputy Ombudsman**. The first deputy is the person with the longest total period of performing this function.

1.5 EMPLOYEES AT THE OMBUDSMAN'S OFFICE

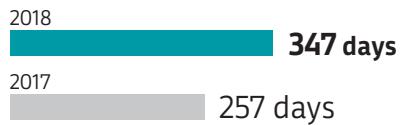


Absences

Sick leave



Maternity leave and absence due to parental leave



Taking into account both types of leave, only **44** employees actually worked at the Ombudsman's office in 2018.



1.6 THE OMBUDSMAN'S OFFICE

The Rules of Procedure of the Human Rights Ombudsman determine that **the Ombudsman's Office is composed of the Expert Service and the Secretariat**. The Ombudsman's Office is managed by the Secretary General who has rights and duties as the head of the state authority regarding the management of the Ombudsman's Office and in the field of employment relationships as per the law unless this competence is explicitly designated to the Ombudsman with the Human Rights Ombudsman Act or the Ombudsman's acts. The Secretary General is the authorising officer for the use of funds for the Ombudsman's work, and answers to the Ombudsman. The Secretary General is replaced in their absence by a public employee appointed by the Ombudsman.

The Human Rights Ombudsman's Office

The Ombudsman's Expert Service

The Service is managed by the Director of the Ombudsman's Expert Service, **Martina Ocepek**, BA in Law



According to the instructions of the Ombudsman, Deputy Ombudsmen and the Director of the Expert Service, the **Expert Service** performs expert tasks in individual work fields within the competence of the Ombudsman, classifies complaints, oversees the discussion of complaints and the course of their discussion, implements enquiries, drafts reports about its findings regarding complaints and prepares opinions, proposals, criticisms and recommendations.

Since 1 July 2017, the Ombudsman's Office has been managed by Secretary General **Kristijan Lovrak**, BA in Economics



The Secretariat

The Secretariat is managed directly by the Secretary General.

The Secretariat performs organisational, legal, administrative, material, financial, staffing and public relations tasks, including the tasks of the main office, administrative, technical, IT and other tasks necessary for operating of the Ombudsman's Office.



Employees of the Expert Service of the Ombudsman (January 2019)

On 31 December 2018, the Secretariat permanently employed **14 public employees**, of whom five were officials and nine expert and technical public employees. Three public employees have a university degree, seven have completed a higher vocational college, of whom one public employee obtained a specialisation, and one public employee completed a higher vocational college and obtained a Master's degree (Bologna level), while one public employee has a short-cycle college education and two have a secondary school degree.

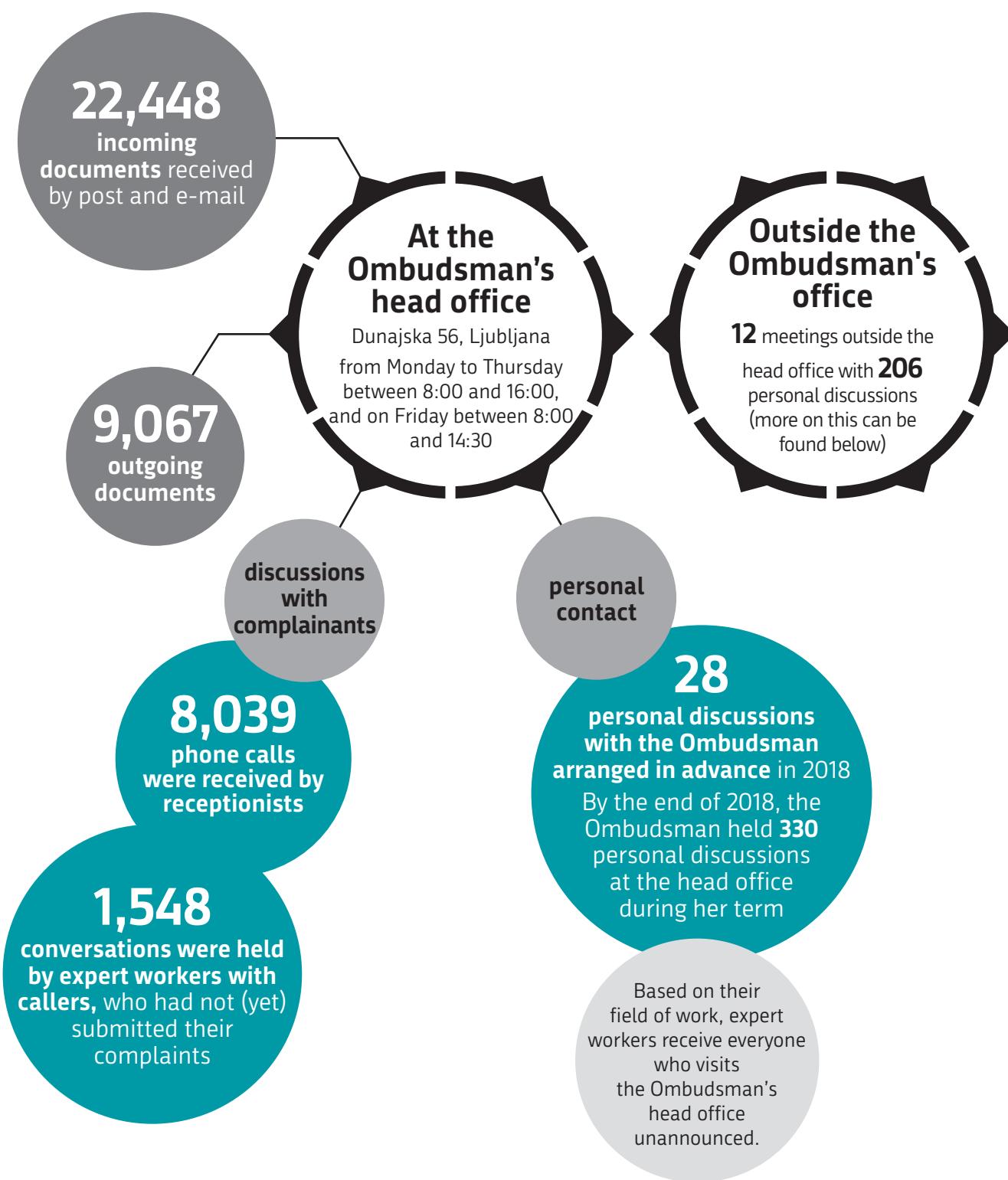
In 2018, sick leave in the Secretariat amounted to **88** working days, and absences due to maternity and parental leave amounted to **87** working days.

The Director of the Ombudsman's Expert Service organises and manages the work of public employees in the Expert Service according to the instructions of the Ombudsman and Deputy Ombudsmen. By means of weekly board meetings of the Expert Service, she ensures the proper flow of information, resolves expert issues, and organises team work when resolving complex cases. The Director prepares meetings with ministers and other heads of state authorities and also manages the preparations for any meetings outside the head office and meetings with non-governmental organisations.

As at 31 December 2018, the Expert Service permanently employed **27 officials**; one fixed-term employee (substitution of absent public employees) and one fixed-term trainee (traineeship).

In 2018, sick leave in the Expert Service amounted to **702** working days, and absences due to maternity and parental leave amounted to **238** working days. Two expert employees perform tasks of the National Preventive Mechanism exclusively, and two only partially.

1.7 ACCESSIBILITY OF THE HUMAN RIGHTS OMBUDSMAN IN 2018



1.8 MEETINGS OUTSIDE THE HEAD OFFICE

Meetings outside Ljubljana fall within the framework of efforts to make the Human Rights Ombudsman as accessible as possible to individuals who are unable to attend a meeting at the Ombudsman's head office due to distance or for some other reason. This allowed us to make it more possible to talk to the Ombudsman or their deputies, thus making our work more accessible to people.

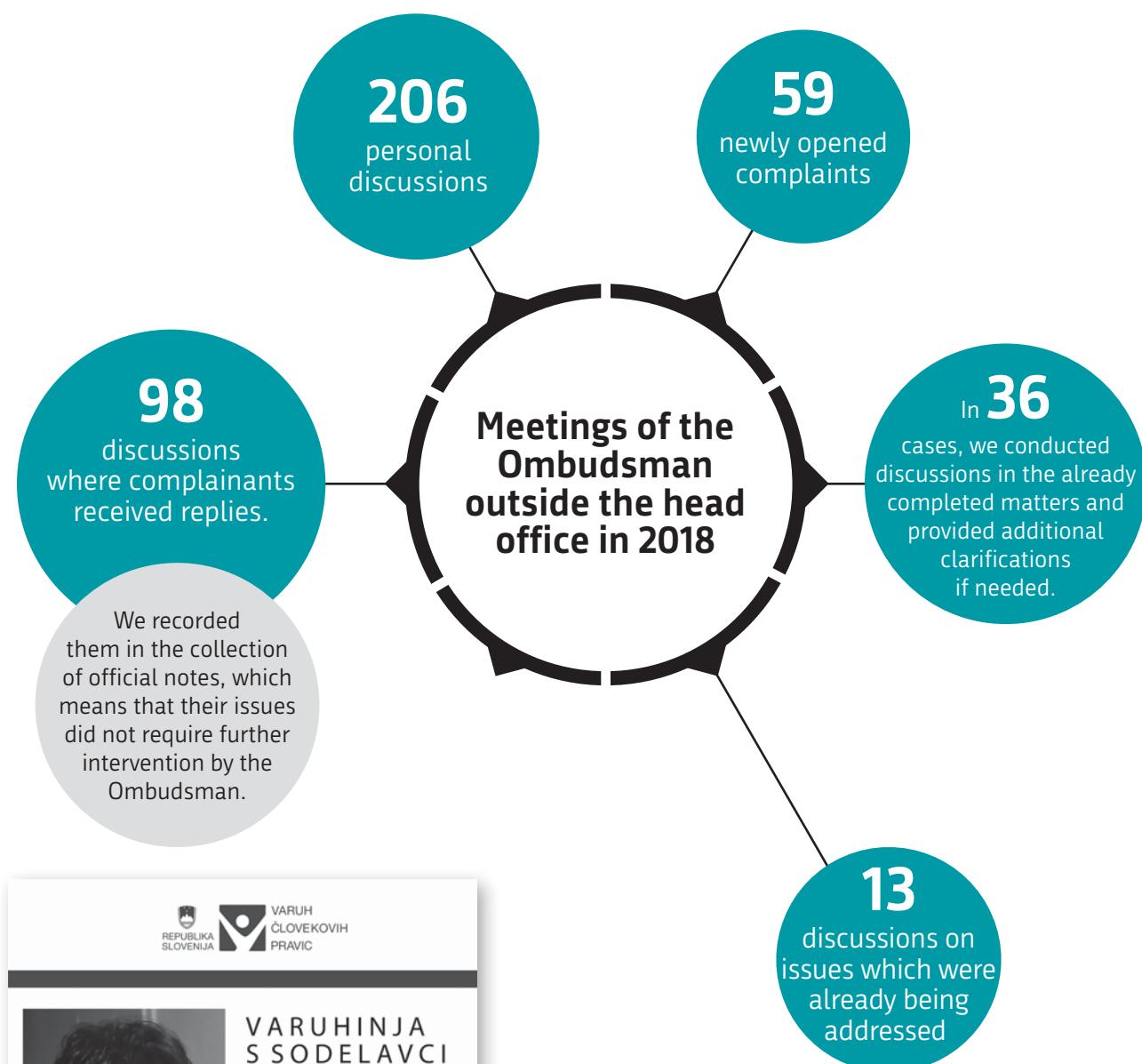
In 2018, we held 12 meetings outside our head office, namely in the following municipalities:

Šentjernej, Pivka, Kostel, Podvelka, Maribor, Krško, Kranj, Izola, Rogaška Slatina, Brda, Ljutomer and Šalovci.

We received the greatest response in Šentjernej (29 complainants) and Ljutomer (29 complainants).



All of the meetings outside the head office were enabled free of charge by mayors at the head offices of municipalities. When organising meetings, we pay special attention to vulnerable groups and make sure that access and discussion are also enabled for disabled persons in a suitable manner.



An example of a poster for meetings held in Maribor

The visits were always first advertised in local newspapers, particularly free community newspapers, and also on the Ombudsman's website and the websites of the municipalities where the visits took place.

To ensure smooth implementation of meetings, it is necessary to visit the location beforehand, inspect the premises and technical capacities, put up posters in the town where the meetings are held and cooperate with local media.

The head of the main office thus conducted as many as **620 calls** in 2018 when arranging applications for discussions at meetings taking place outside the head office.

Meetings outside the head office are divided into three parts

Private discussions with complainants

Every complainant is granted half an hour. Many seek legal advice. Complainants often need someone who listens to them and hears their distress.

Many problems are clarified together or even resolved at the meeting or later through a discussion with mayors.

Discussions with mayors

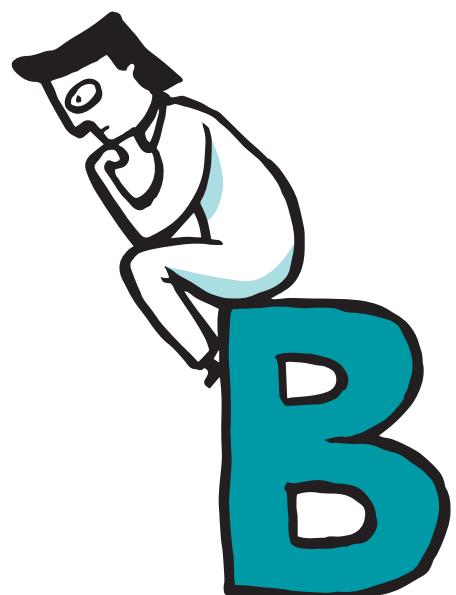
During discussions, the Ombudsman highlights the problems arising from the interviews with residents of the municipalities and the treatment of specific complaints regarding the work of the municipality.

These discussions are extremely important, since they may clarify or even resolve issues arising from specific complaints.

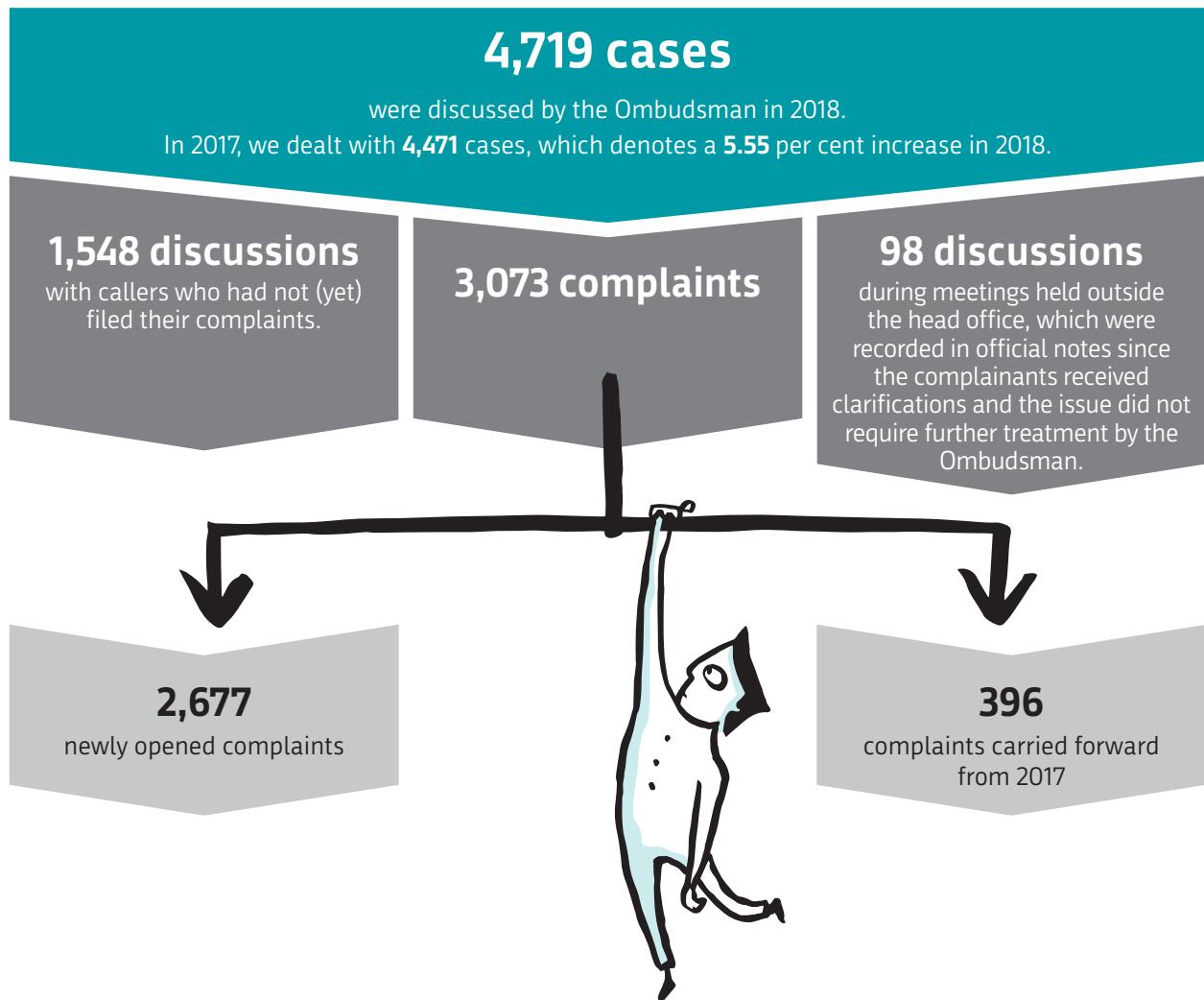
Mayors present the general situation in their municipality to the Ombudsman, as well as their efforts, issues and systemic problems encountered by the local community and its residents.

Press conference

After the meeting, the Ombudsman usually gives several statements or interviews for local or national media, or appears as a guest in talk shows or broadcasts.



1.9 STATISTICS FOR 2018



Employees in the Secretary General's Office (January 2019)

3,073 complaints

discussed by the Ombudsman in 2018.
As at 31 December 2018,

2,661 (86.6%)

complaints were completed

412 (13.4%)

complaints were being discussed

398

or 15%
of complaints
were founded;
89 of these were
from the field of
advocacy.

541

or 20.3%
of complaints
were unfounded.

1,423

or 53.5% of
complaints
provided no
further conditions
for discussion.

299

or 11.2% of
complaints did
not fall within the
competence of the
Ombudsman.

The Ombudsman
determined that violations
of human rights and
fundamental freedoms
claimed in

309 complaints were founded

and that at least one
(or more) fundamental
human right and
freedom (according to
the Constitution of the
Republic of Slovenia)
was violated and that the
principles of equity and
good administration were
not observed.

Legal proceedings are underway
in relation to a complaint in which
no delay or greater irregularities
have been noted. This group
also includes tardy, anonymous
and insulting complaints, and
complaints for which procedures
were suspended due to the
complainant's non-cooperation or
the withdrawal of the complaint.

A higher number of rights' violations in comparison with the number of founded complaints is the result of a higher number of established concrete violations in an individual complaint. When considering a complaint, we thus sometimes came across three or more violations of human rights and fundamental freedoms or other irregularities.

The Ombudsman established 36 violations of human rights and fundamental freedoms or irregularities in the discussed founded complaints defined in the Constitution of the Republic of Slovenia and the ZVarCP. As the most frequently established violations, the violation of good administration (Article 3 of the ZVarCP) should be mentioned, i.e. in 87 cases, and the violation of the principle stating that Slovenia is a state governed by the rule of law and a social state (Article 2 of the Constitution of the Republic of Slovenia), i.e. in 30 cases. A detailed presentation of the most frequently determined violations of human rights and fundamental freedoms or other irregularities is displayed graphically (violations established in more than 4 cases are included).

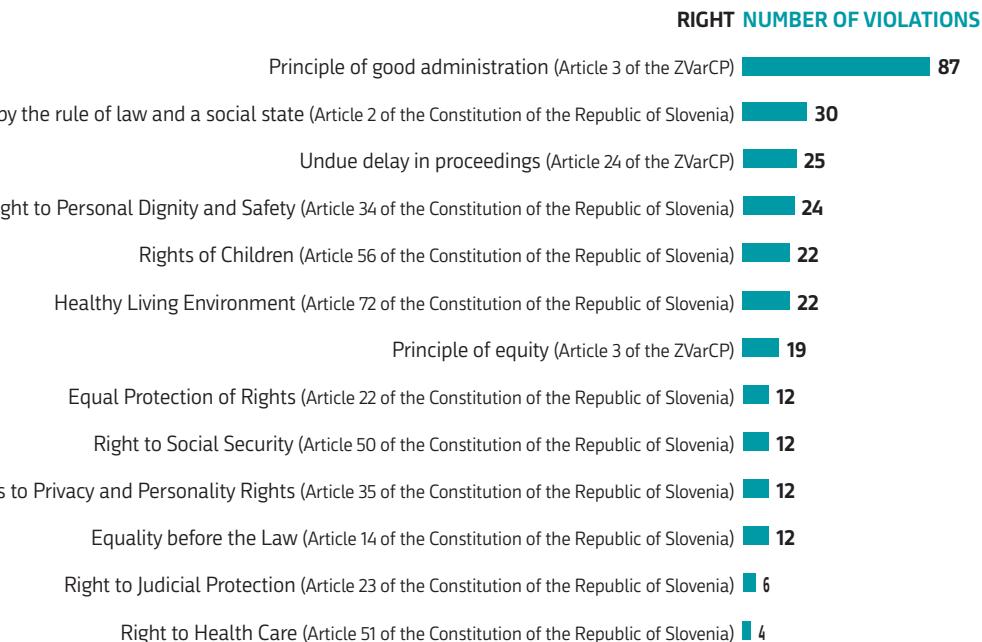
In 309 founded complaints,
the Ombudsman determined

377 violations of human rights and fundamental freedoms

(defined in the Constitution of the Republic of Slovenia) and **other irregularities**, such as a violation of the principles of equity and good administration or undue delay in proceedings and a clear abuse of power as per the ZVarCP.

To these 377 violations, **89 cases regarding child advocacy** must be added, where no concrete violations were established, but they were discussed as founded complaints and thus also included among 398 founded complaints.

The most frequently determined violations of human rights and fundamental freedoms or other irregularities



These 377 violations of human rights and fundamental freedoms or other irregularities were discovered at 45 authorities, i.e. most frequently at the Ministry of Labour, Family, Social Affairs and Equal Opportunities (in 64 cases), the Government of the Republic of Slovenia (in 32 cases) and in the local self-government (municipalities in 31 cases). A detailed display of authorities, which, according to the Ombudsman's findings, violated human rights and fundamental freedoms most frequently or implemented other irregularities is presented below. The authorities where over seven cases of violations were determined are displayed.

Authorities where violations of human rights and fundamental freedoms or other irregularities were established



Grounds for the statistical data displayed are provided in the substantive chapter of this report; every substantive chapter begins with the provision of statistical data.

It must be highlighted that the number and percentage of founded complaints among the resolved complaints are not actual indicators of the situation of human rights protection in Slovenia. Firstly, because not every person whose human rights are violated by state authorities necessarily turns to the Ombudsman. And secondly, because a single founded complaint in which the Ombudsman finds a systemic irregularity may constitute a violation of the rights of several hundred, or even thousands, of people. Therefore, the Ombudsman acts on complaints based on information acquired from publicly accessible sources in individual fields.

1.10 ESTABLISHMENT AND WORK OF THE HUMAN RIGHTS OMBUDSMAN COUNCIL



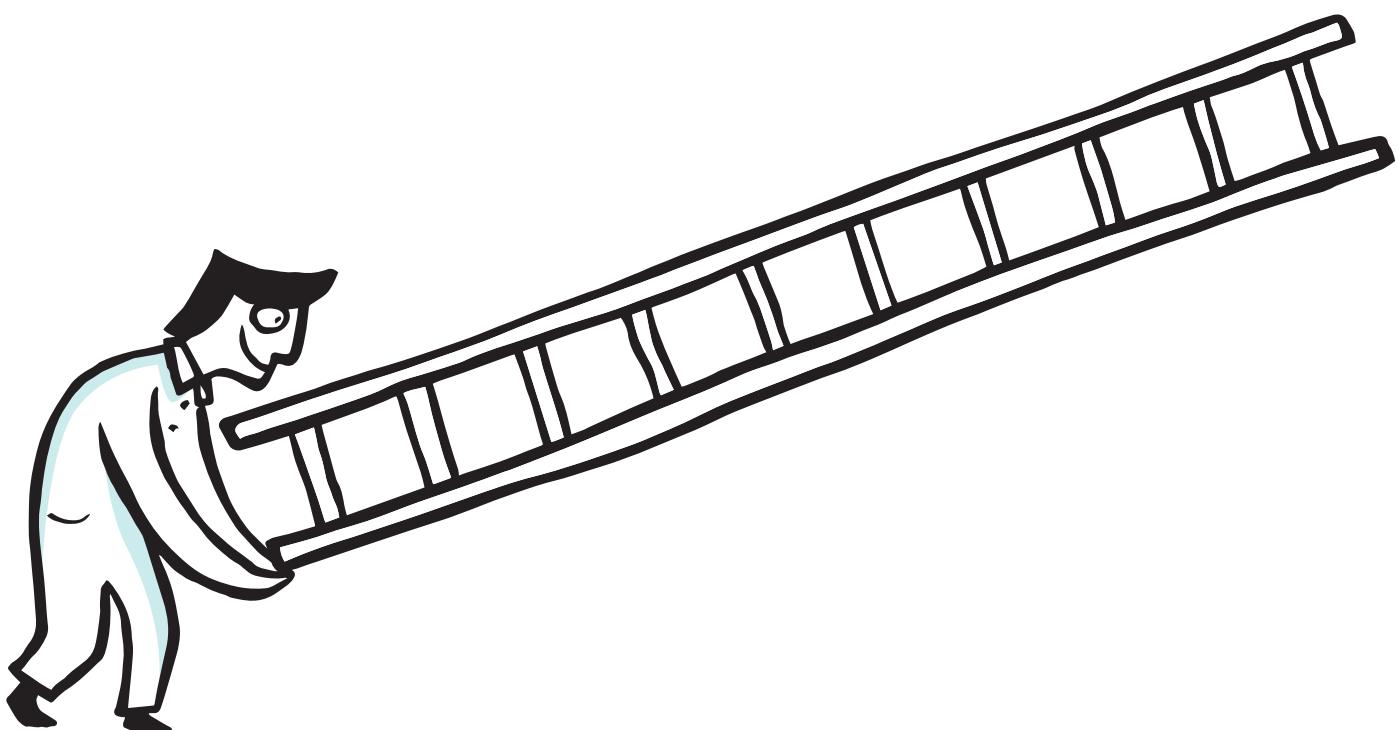
HUMAN RIGHTS
OMBUDSMAN
COUNCIL

- **The Council is the Ombudsman's consultative body** to promote and protect human rights and fundamental freedoms and to enhance legal certainty, which functions according to the principle of professional autonomy.
- In the first term, the Council was composed of Deputy Ombudsman, Dr Kornelija Marzel, in the role of the President of the Council and 16 members, seven of whom were representatives of civil society, three representatives of science, two representatives of the Government of the Republic of Slovenia and one representative of the Advocate of the Principle of Equality, the Information Commissioner of the Republic of Slovenia, the National Assembly and the National Council of the Republic of Slovenia.
- With the Ombudsman's decision on appointing members of the Human Rights Ombudsman Council of 12 June and 12 November 2018, the following members were appointed: mag. Ivan Bizjak, prim. mag. Anton Gradišek, MD, Darja Groznik, Karel Lipič, Dr Kornelija Marzel, Denis Miklavčič, Violeta Neubauer, mag. Sebastijan Valantan, Dr Jernej Letnar Černič, Dr Igor Pribac, Dr Neža Kogovšek Šalamon, Aldijana Ahmetović (National Council of the Republic of Slovenia), Alenka Jerše (Information Commissioner of the Republic of Slovenia), mag. Milena Krnec Horvat (Government of the Republic of Slovenia), Peter Pavlin (Government of the Republic of Slovenia), Simon Maljevac replaced by mag. Samo Novak (Advocate of the Principle of Equality) and Nataša Voršič (National Assembly of the Republic of Slovenia).
- **Plural representation enables the establishment of an effective cooperation of civil society** when drafting the Ombudsman's findings about the level of observance of human rights, fundamental freedoms and legal certainty in Slovenia.
- **The Council implements the following consultative tasks:**
 - participates in the preparation of the Ombudsman's findings about the level of observance of human rights, fundamental freedoms and legal certainty in the Republic of Slovenia;
 - proposes to the Ombudsman the instigation of a procedure regarding possible violations of human rights and fundamental freedoms;
 - discusses broader issues of promoting, protecting and monitoring of human rights and fundamental freedoms at the proposal of the Ombudsman;
 - discusses reports of the Republic of Slovenia submitted to international organisations regarding human rights, and participates in preparing the Ombudsman's independent reports about the realisation of international commitments of the Republic of Slovenia in the field of human rights;
 - forms positions on development policies regarding human rights and fundamental freedoms;
 - raises awareness of the public and experts about the importance and development of human rights and fundamental freedoms;
 - implements other similar tasks at the Ombudsman's proposal.
- **The Ombudsman's mission is complemented significantly with the Council's discussion of broader issues of promoting, protecting and supervising the observance of human rights and fundamental freedoms, and the provision of opinions regarding development policies of human rights.**
- The term of the Council's members depends on the Ombudsman's term of office. The first term will end on 22 February 2019, with the cession of the six-year term of Ombudsman Vlasta Nussdorfer.

- The Council's work is regulated by its rules of procedure adopted by the Ombudsman after prior consultation with the Council's members and are then published in the Official Gazette of the Republic of Slovenia.

The Council's members met three times:

- 27 June 2018** The Council met at its first session. In addition to the Ombudsman and her Deputy, the Ombudsman's office also represented by mag. Lea Javornik, Liana Kalčina, Ombudsman's Adviser on International Relations, Publishing, Analysis and Surveys, and Nataša Kuzmič, Ombudsman's Adviser on Public Relations. At the first session, the Ombudsman, the President of the Council and members examined the legal bases for establishing the Council, objectives and purpose of its operations, became acquainted with one another and discussed the proposal of the rules of procedure of the Council. Its establishment, tasks and objectives are defined in Article 50a of the Human Rights Ombudsman Act (ZVarCP-UPB2). The Council is the Ombudsman's consultative body for promoting and protecting human rights and fundamental freedoms, and for enhancing legal certainty, which functions according to the principle of professional autonomy. It is composed of a president and 16 members. Seven members are representatives of civil society, three representatives come from science and two representatives from the Government of the Republic of Slovenia. The Advocate of the Principle of Equality, the Information Commissioner, the National Assembly and the National Council have one member each.
- 10 September 2019** The Council met at its second session. Eleven members who were present confirmed the proposal of the rules of procedure of the Council, which defines the methods of work of the Council. In the central section of the session, the members discussed the ethics of public discourse with the Ombudsman, her Deputy and President of the Council, Dr Kornelija Marzel and Deputy Ombudsman Miha Horvat responsible for the field of ethics of public discourse.
- 10 December 2018** The members of the Council gathered at their third session, which took place in the European Union House in Ljubljana. The central topic of the discussion was the assessment of the observance of human rights during the Ombudsman's term. For this purpose, the members of the Council received the overview of the level of observance of the Ombudsman's recommendations in the last six years, which was also submitted to the National Assembly of the Republic of Slovenia in addition to the Ombudsman's Annual Report. The members also spoke about the Ombudsman's communication in publicly discussed cases when the public seeks the Ombudsman's opinion and position, frequently also with regard to cases still considered by judicial or other authorities. The Council supported the Ombudsman's decision to not publicly state the position with regard to individual cases until the discussion of a possible complaint or the Ombudsman's own enquiry into a broader issue is complete. However, the Ombudsman may provide a principled answer by presenting human rights, fundamental freedoms and international standards in the field discussed or relating to a broader issue of human rights.



1.11 REPORTS OF THE HUMAN RIGHTS OMBUDSMAN

The Ombudsman reports on the work to the National Assembly of the Republic of Slovenia by means of regular annual or special reports.

In 2018, the following reports were submitted:

the 23rd Annual Report

referring to the Ombudsman's work in 2017

the 10th Annual Report of the NPM

referring to the work of the NPM in 2017

On 10 April 2018,

the Ombudsman and her deputies presented the main findings from both reports at the press conference at the Ombudsman's head office.

The Ombudsman submitted both reports to

Dr Milan Brglez,
President of
the National
Assembly of
the Republic of
Slovenia
on 10 April 2018.

**the National
Assembly
of the Republic of
Slovenia**
Deputies received
the reports.

**the National
Council
of the Republic
of Slovenia**
Councillors
received the
reports.

Borut Pahor,
President of
the Republic of
Slovenia
on 11 April 2018.

Dr Miro Cerar,
Prime Minister of
the Government
of the Republic of
Slovenia
on 16 April 2018.

All ministers of
the Government
of the Republic of
Slovenia received
the reports.

On 4 October 2018,
the Ombudsman, two of
her deputies and an adviser
attended the session of
the Committee on Labour,
Family, Social Affairs and
Disability, where both re-
ports were discussed.

On 23 October 2018,
the Ombudsman and two
of her deputies attended
a **joint session of the
Committee on Education,
Science, Sport and Youth
and the Committee on
Culture**, where both re-
ports were discussed.

On 8 November 2018,
the Ombudsman and one
of her deputies attended
a session of **the Commis-
sion for Petitions, Human
Rights and Equal Oppor-
tunities**, where both re-
ports were discussed.

On 22 November 2018,
the Ombudsman, her
deputies and the Secre-
tary General of the Om-
budsman attended the
second regular **session of
the National Assembly of
the Republic of Slovenia**,
where both reports were
discussed and the recom-
mendations were accept-
ed (see below).

On 23 May 2018,
the Ombudsman and her
deputies attended the joint
session of the Commission
for State Organisation and
the Commission for Social
Care, Labour, Health and
Disabled of the National
Council of the Republic of
Slovenia, where both re-
ports were discussed.

On 13 June 2018,
the Ombudsman and the
Secretary General of the
Ombudsman attended
the session of the Nation-
al Council of the Republic
of Slovenia, where both
reports were discussed.

On 24 August 2018,
the Government of the Re-
public of Slovenia adopted
the Informative Report
on the Realisation of the
Recommendation of the
National Assembly of the
Republic of Slovenia upon
the Discussion of the 22nd
Annual Report of the Hu-
man Rights Ombudsman
for 2016

and

the Response Report of
the Government of the
Republic of Slovenia to the
23rd Annual Report of the
Human Rights Ombuds-
man for 2017

and

the Response Report of
the Government of the
Republic of Slovenia to the
Report on the Implemen-
tation of NPM Duties in
2017 (National Preventive
Mechanism as per the Op-
tional Protocol to the UN
Convention against Tor-
ture and other Cruel, Inhu-
man or Degrading Treat-
ment or Punishment).

Pursuant to Articles 272 and 111 of the Rules of Procedure of the National Assembly (Official Gazette of the Republic of Slovenia [*Uradni list RS*], Nos. 92/07 – official consolidated text, 105/10, 80/13 and 38/17) and at its session on 27 November 2018 when considering the 23rd Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2017, the National Assembly adopted the following:

RECOMMENDATION

The National Assembly recommends that all institutions and high officials at all levels observe the recommendations of the Human Rights Ombudsman of the Republic of Slovenia stated in the 23rd Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2017.

Number: 000-04/18-8/19
Date: 27 November 2018
EPA 2735-VII

National Assembly
of the Republic of Slovenia
mag. Dejan Židan
President

The level of realising 77 of the Ombudsman's recommendations

adopted at the 2nd regular session of the National Assembly of the Republic of Slovenia (starting on 19 November 2018) is presented in the introductory section of every substantive chapter of this report and in the publication, Overview of the Work of the Human Rights Ombudsman 2013–2018, released in February 2019.

Substantive issues concerning the implementation of the Ombudsman's recommendations, systemic issues, and measures to eliminate violations of human rights discovered in the discussed cases were examined by the Ombudsman, her deputies and advisers **in numerous meetings and sessions** and **discussions with the Slovenian President, the Prime Minister, ministers** and heads of national institutions, or at sessions of the bodies of the National Assembly and the National Council of the Republic of Slovenia. More on these sessions can be found in the overview of events under individual substantive chapters or on the Ombudsman's website: Press releases.

18

discussions with ministers and/or their colleagues (at the Ombudsman's head office or at ministries)

The Ministry of the Environment and Spatial Planning, the Ministry of Justice, the Ministry of the Interior, the Ministry of Health, the Ministry of Labour, Family, Social Affairs and Equal Opportunities, the Ministry of Culture, the Ministry of Foreign Affairs, the Ministry of Education, Science and Sport, and the Ministry of Economic Development and Technology

14

discussions at the Ombudsman's head office or at the premises of institutions with directors of directorates or heads of bodies within ministries and judicial authorities:

The Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning, the Police and Security Directorate, the Prison Administration of the Republic of Slovenia, the General Police Directorate (Corruption Section), the Employment Service of Slovenia, the Office of the State Prosecutor General of the Republic of Slovenia, the Supreme Court of the Republic of Slovenia, RTV Slovenija, the ombudsman of the rights of viewers and listeners, the Public Sector Inspectorate, the Chamber of Notaries of Slovenia, and the Association of Social Institutions of Slovenia

21

attendances at sessions of the National Assembly and the National Council, and at commissions and committees of the National Assembly and the National Council of the Republic of Slovenia.

12

discussions with mayors

The Commission for Petitions, Human Rights and Equal Opportunities (5 times), the Committee on Labour, Family, Social Affairs and Disability, the Committee on Justice, the Committee on Education, Science, Sport and Youth, and the Committee on Culture of the National Assembly of the Republic of Slovenia, the Commission for State Organisation, and the Commission for Social Care, Labour, Health and Disabled of the National Council of the Republic of Slovenia

The Ombudsman and her colleagues met with, and held discussions with, the Slovenian President, the Prime Minister, the presidents of the National Assembly, the National Council, the Constitutional Court, the Court of Audit and others at the Ombudsman's head office or at the premises of the relevant institutions.

1.12 MEETINGS WITH CIVIL SOCIETY OR NON-GOVERNMENTAL ORGANISATIONS

Civil society or non-governmental organisations (hereinafter: NGOs) are important for the Ombudsman's work since they determine the actual situation among the citizens, detect their needs and problems, and respond promptly to changed social circumstances. They discover individual and systemic forms of human rights violations and strive to eliminate them.

In 2018, the Ombudsman again had meetings with NGOs or attended their events in order to exchange information in a direct dialogue on achievements and more particularly problems with enforcing human rights, democracy and the rule of law.

In particular, meetings with NGOs in the field of the environment and spatial planning have become common practice. These meetings have taken place on a monthly basis since 2014, and have been upgraded during the term of Ombudsman Vlasta Nussdorfer, so that one meeting is held at the Ombudsman's head office and another one at a relevant location.

43 meetings

were held with NGOs in 2018

In 2018, the Ombudsman organised

7 meetings

with NGOs

in the field of the environment and spatial planning

(more on these meetings can be found in chapter 2.17 Environment and spatial planning)

In 2018, the Ombudsman and her colleagues received the representatives of the following NGOs: Zveza Sožitje – The Slovenian Association for Persons with Intellectual Disabilities, Validity – NGO from Budapest, the Legal Information Centre for NGOs (PIC), Amnesty International, the DOOR Association (Association for Children, Fatherhood and Truth), the Deafblind Association of Slovenia DLAN and the Slovenian Catholic Girl Guides and Boy Scouts Association.

The Ombudsman invited to discussions the representatives of NGOs dealing with:

- **work with, and care for, the elderly** (the meeting took place on 30 January 2018): The meeting was attended by the representatives of the Slovenian Federation of Pensioners' Associations, the Association of Retired Craftsmen and Small Businessmen of Slovenia, Spominčica – Alzheimer Slovenija, Slovenian Red Cross, and the Association of Societies for Social Gerontology of Slovenia,
- **enforcing of human rights of the LGBTIQ community and individuals** (the meeting took place on 5 April 2018). The meeting was attended by the representatives of the Association for Cultural, Information and Counselling Service Centre Legebitra, the Pride Parade Association, the FemA – Feministična akcija movement, the Centre FemA – Institute of Transformative Studies, the Lesbian Section ŠKUC-LL, the Association Against Violent Communication, the 8. marec Research Institute, the Transfeminist Initiative TransAkcija, the Iskra Student Association, and the Cultural Association Taxi Art, and
- **legal gender recognition** in Slovenia (the meeting took place on 10 May 2018).

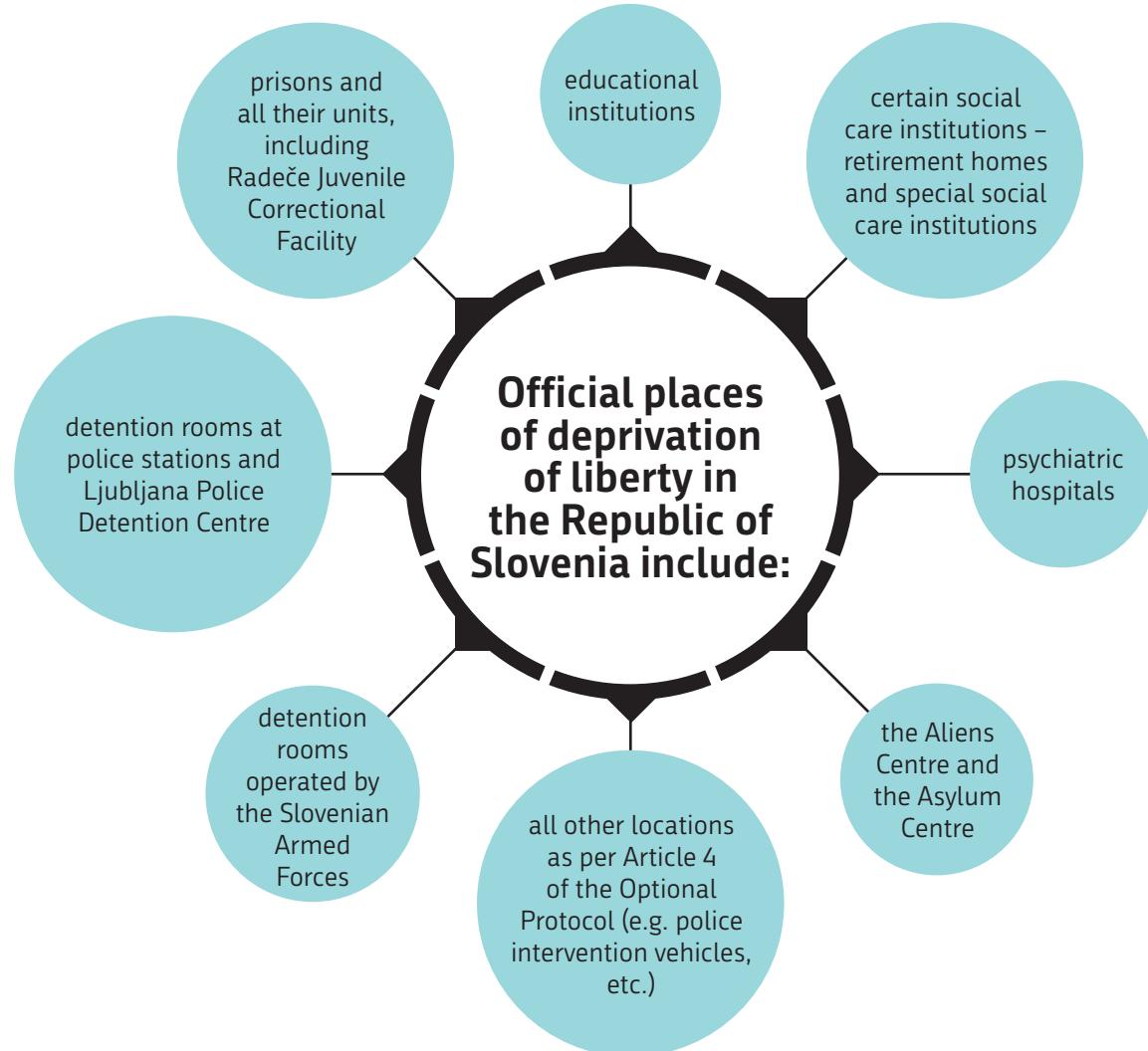
At the invitation of NGOs, the Ombudsman and/or her colleagues attended events in 2018 that were organised by the following NGOs:

Europa Donna, Logout – Centre for the Prevention of Excessive Internet Use, the Slovenian Federation of Pensioners' Associations (ZDUS), the Slovenian Retired Teachers Association, the Sožitje Kranj Intermunicipal Society, Spominčica – Alzheimer Slovenija, Ormož and Šentjur regional associations, Debra Slovenia – the Dystrophic Epidermolysis Bullosa Research Association, the Sožitje Association of coastal municipalities, the Deaf and Hard of Hearing Clubs Association of Slovenia, the Deafblind Association of Slovenia DLAN, the Slovenian Red Cross, the Association of Societies of Jurists of Slovenia, the Pravnik Sports Society, the Association for Cultural, Information and Counselling Service Centre Legebitra, MIRA – Slovenian women's section of the PEN Centre and Rotary Club NIKE, the University for the Third Age Rogaška Slatina, the Eksena Education Centre, Lions Club Ljubljana Omnia, the Idrija – Cerkno Association for the Values of the National Liberation Movement and the Local Association KOZB Cerkno, the ProSoc – Society for project implementation and social entrepreneurship development, and the SILA International Women's Club Ljubljana.

1.13 THE OMUBDSMAN AS THE NATIONAL PREVENTIVE MECHANISM

By adopting 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 [*Uradni list RS*], No. 114 /2006 – International Treaties, No. 20/06 of 9 November 2006), the Republic of Slovenia stated: “**Competences and duties of the national prevention mechanism** under the Optional Protocol, in accordance with Article 17, shall be implemented by the Human Rights Ombudsman, and, in agreement with him/her, also by the non-governmental organisations, registered in the Republic of Slovenia and organisations that acquired the status of a humanitarian organisation in the Republic of Slovenia.”

The purpose of implementing the duties of the National Preventive Mechanism (NPM) is to enhance the protection of persons with restricted liberty against torture and other cruel, inhuman or degrading treatment or punishment. When carrying out the tasks and exercising the powers of the NPM, the Ombudsman visits all places in Slovenia where persons deprived of liberty have been placed on the basis of an act issued by the authorities. These include preventive visits, the purpose of which is to prevent torture or other ill-treatment before it occurs.

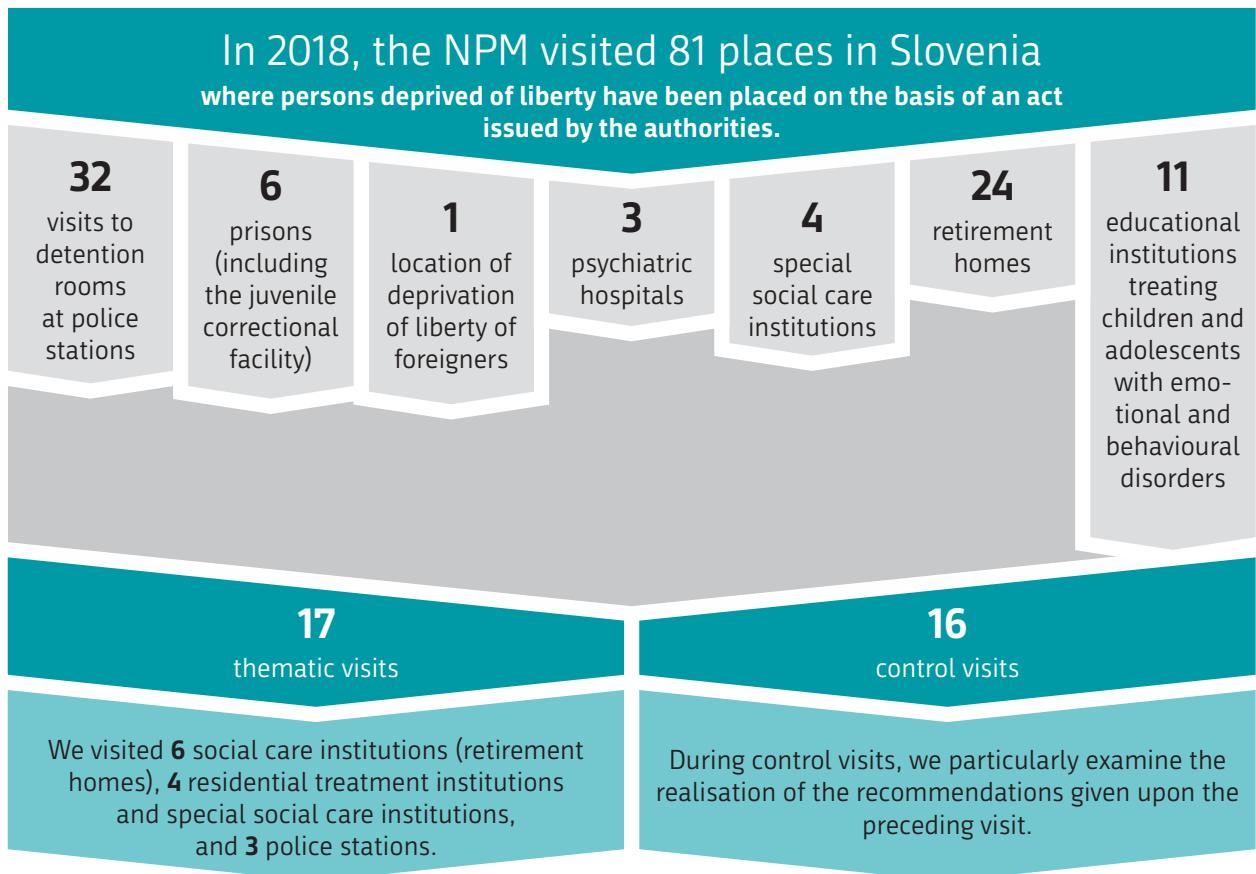


The Ombudsman has been implementing the duties of the National Preventive Mechanism since the spring of 2008. The work is organised within the Ombudsman's internal organisational unit.

The unit is led by Deputy Ombudsman Ivan Šelih. The unit includes four additional officials: a graduate in criminal justice and security who is a specialist in criminal investigation responsible for visiting prisons, detention rooms, police stations, foreigners and asylum centres; a Master in Law responsible for visiting social care institutions and psychiatric hospitals; a professor of defectology for behavioural and personality disorders and institutional education science responsible for visiting juvenile institutions, and a law graduate who is also responsible for visiting social care institutions.

Non-governmental organisations, cooperating with the Ombudsman in 2018 when performing the tasks of the NPM, include: Novi Paradoks, the Pravo Za VSE Humanitarian Society, Caritas Slovenia, SKUP – Community of Private Institutes, Legal-Informational Centre for NGOs – PIC, the Peace Institute and the Slovenian Federation of Pensioners' Associations.

Each group conducting a visit consists of the representatives of the Ombudsman and the selected organisations.



Only three visits were announced (due to the presence of foreigners):

- visit to one detention centre, and
- visit to Celje Prison and the Murska Sobota Unit of Maribor Prison.

The NPM drafts a comprehensive (final) report on the findings established at the visited institution after each visit. The report **also covers proposals and recommendations to eliminate established irregularities and to improve the situation**, including measures to reduce the possibilities of improper treatment in the future.

The report is submitted to the competent authority (i.e. the superior body of the visited institution) with a proposal that the authority take a position on the statements or recommendations in the report and submit it to the Ombudsman by a determined deadline. The institution concerned also receives the report, and a preliminary report is drafted in certain cases (when visiting social care institutions, psychiatric hospitals and residential treatment institutions).



The National Preventive Mechanism drafts a report on its work every year. The report of the NPM for 2018 is its eleventh and is printed in a separate publication, but it is an integral part of the regular Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018. Both reports are published on the Ombudsman's website.

Information on whether the recommendations were received and whether they were realised can also be found in the report.

The NPM may also submit proposals and comments regarding applicable or draft acts (Article 19 of the Optional Protocol). This possibility is implemented by the Ombudsman in the role of the NPM during the drafting of individual recommendations, directly in the procedure of preparing individual acts or their amendments in the field of restriction of personal freedom.

In 2018, the Ombudsman prepared proposals and comments to applicable or draft acts, executive acts and other proposed documents, i.e. the Act amending the Enforcement of Criminal Sanctions Act (ZIKS-1), the Act amending the Criminal Procedure Act, the Act amending the Police Tasks And Powers Act, the Rules on the Exercise of the Powers and Duties of Prison Guards, and other regulations.



Employees of the National Preventive Mechanism (January 2019): Deputy Ombudsman and Head of the NPM, Ivan Šelih (right) and the Ombudsman's adviser mag. Jure Gačnik, Lili Jazbec, Robert Gačnik and Ana Polutnik

1.14 CHILD ADVOCACY

Slovenia also committed to paying special attention to the care of children by signing the Convention on the Rights of the Child and the European Convention on the Exercise of Children's Rights.

The Convention on the Rights of the Child places the interest of the child in the forefront and treats the child as an independent holder of rights, and demands that the position of children be strengthened in all procedures before state authorities. The advantage of such a regime is that it originates from the rights of the child, not from the rights of parents, thus enabling the child to be treated as an entity in various legal relations. Advocates strengthen the voice of the child in such procedures.

The Ombudsman has been heading child advocacy since 2007, initially as the Advocate – A Child's Voice Project. Since 14 October 2017, child advocacy has been regulated by the Human Rights Ombudsman Act.

The purpose of the advocacy is for the advocate to provide professional assistance to a child when expressing its opinion in all proceedings and matters involving the child, and to forward the child's opinion to the competent bodies and institutions deciding on the child's rights and benefits. The advocate is not the child's statutory representative.

Since the project began, 650 children have had advocates appointed for them. **The advocacy is led by Deputy Ombudsman Tone Dolčič responsible for the protection of the rights of the child.**

At the end of 2018, the Ombudsman had a list of
56 advocates

2018

The Expert Council for child advocacy met at **the inaugural session on 19 December 2018.**

6
advocates
passed the
advocate exam

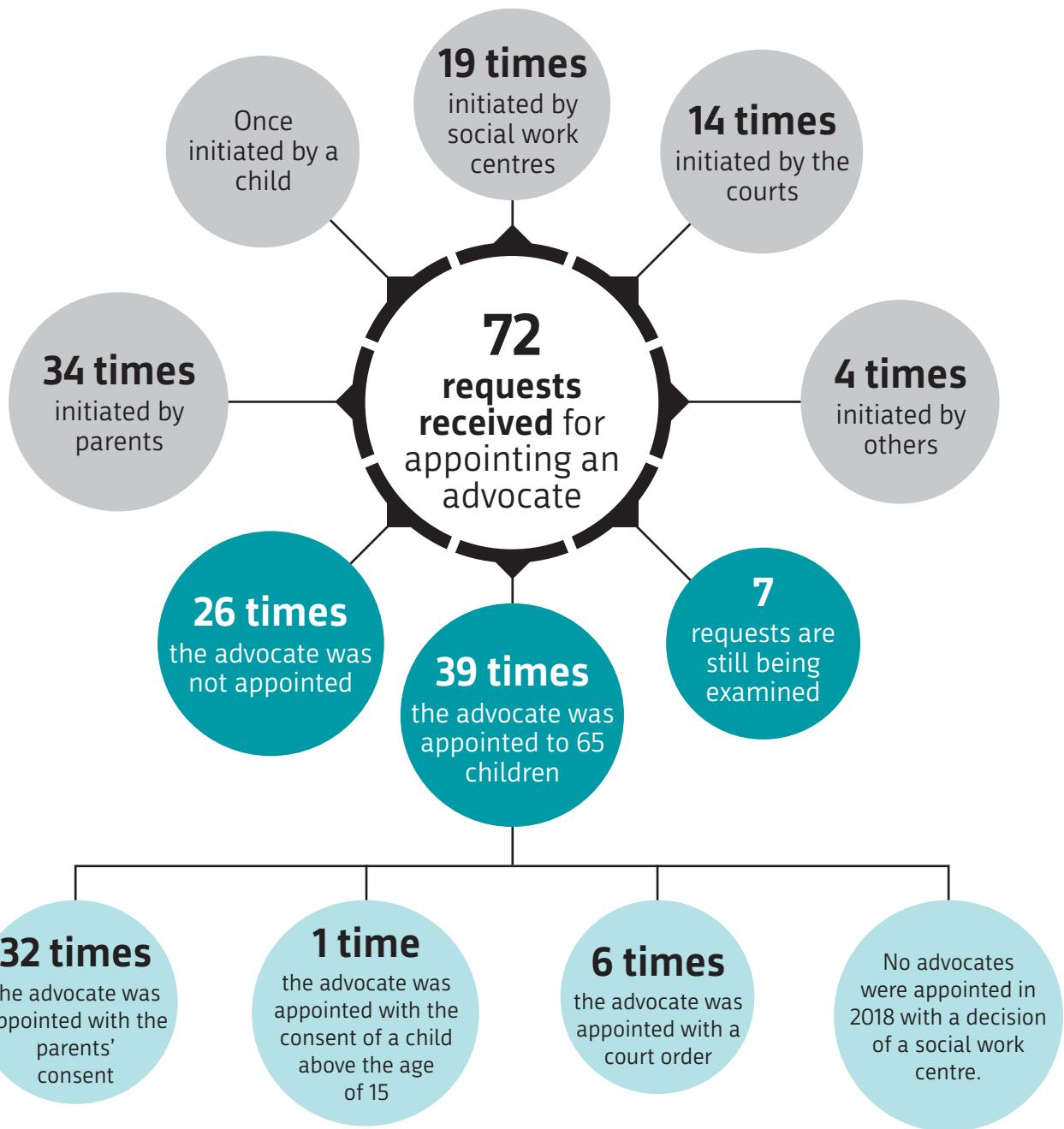
6
supervisory
groups in the
entire country

Each group
conducted 20
hours of super-
vision.

The interview
for coordi-
nators took
place at the
Ombudsman's
head office; 10
meetings were
implemented.

Expert training
of advocates at
a two-day ex-
pert consulta-
tion on 28 and
29 September
at Brdo pri
Kranju.





The child advocacy team (from left to right): Lidija Hvastja-Rupnik, Jasna Vunduk, Lea Javornik and Deputy Ombudsman Tone Dolčič.

1.15 PUBLICATIONS ISSUED IN 2018

In March 2018, we published the **23rd Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2017** and the **10th Report of the National Preventive Mechanism (NPM) for 2017**.

We also issued an abridged (printed) version of the Ombudsman's annual report in English and a translation of the 10th Ombudsman's report on the implementation of tasks of the National Preventive Mechanism (NPM) for 2017 (available only on the Ombudsman's website).



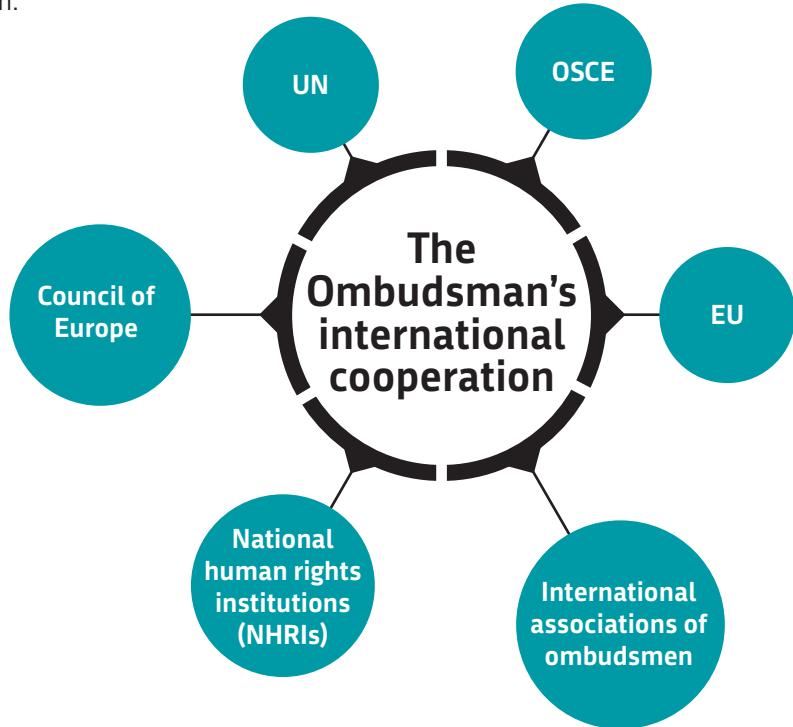
On 26 October 2017, the Human Rights Ombudsman and the National Council of the Republic of Slovenia organised a consultation, **Razmišljanja o vprašanjih ob iztekanju življenja** (**Thoughts on the questions arising when dying**), in the National Council Hall. On 27 September 2018, we together organised a consultation, **The Elderly as the Present and the Future of Society**. We also prepared two journals published by the National Council of the Republic of Slovenia in 2018.



1.16 INTERNATIONAL COOPERATION

In 2018, the Ombudsman participated at 67 international events.

The Ombudsman particularly cooperates with international human rights organisations (UN, EU, the Council of Europe, OSCE), ombudsmen and international associations of national human rights institutions (NHRIs) and ombudsmen.



COUNCIL OF EUROPE

21 February 2018 At the Ombudsman's head office, the Ombudsman and her Deputies Miha Horvat and Dr Kornelija Marzel received the delegation of the **Congress of Local and Regional Authorities of the Council of Europe**. The Congress is a consultative body representing local and regional authorities of the Member States. It is active in the development of democracy at the local and regional level and when enhancing cross-border cooperation. The representatives of the Congress have already visited Slovenia in 2001 and 2011, and recommended that Slovenia adopt measures, which would improve the autonomy of local communities and promote the process of regionalisation, including the expansion of good practices when incorporating the Roma in all local communities.

22 May 2018 Deputy Ombudsman Ivan Šelih, Secretary General Kristijan Lovrak and the Ombudsman's adviser, Liana Kalčina, attended the panel discussion organised by the Ministry of Foreign Affairs on the occasion of Slovenian Diplomacy Day and the **25th anniversary of Slovenia's membership of the Council of Europe**. The title of the discussion was "The Council of Europe: Democracy, Human Rights and the Rule of Law at the Crossroads". The Republic of Slovenia namely became a member of the Council of Europe on 14 May 1993, which was another step in its process of establishing itself as an independent and sovereign country in the international community, simultaneously confirming our commitment to human rights, democracy and the rule of law.

EUROPEAN UNION

10–12 October 2018 Deputy Ombudsman Dr Kornelija Marzel attended the second workshop **on resolving complaints regarding the environment and spatial planning** in Brussels. The event was organised by the European

Commission and it took place at Maastricht University in Brussels. It was attended by representatives from national administrative authorities of EU Member States, judicial authorities, inspectorates, local authorities, NGOs and others. Deputy Ombudsman Dr Kornelija Marzel and Pedro Baena, head of the department for environmental complaints at the Spanish Human Rights Ombudsman, attended the meeting as the representatives of the European Network of Ombudsmen (EOM).

14–16 November 2018 Deputy Ombudsman Dr Kornelija Marzel attended **the conference of European ombudspersons** or comparable institutions on disability and Europe's Labour Market in Vienna. The central topic focused on disabled persons and their integration in the European labour market. The conference took place during the Austrian Presidency of the Council of the European Union, and was supported by the Austrian Ministry of Labour, Social Affairs, Health and Consumer Protection. Council Directive 2000/78/EC serves as the foundation for equal treatment and employment of disabled persons. The attendees agreed that the UN Convention on the Rights of Persons with Disabilities plays a significant role in this field. The inclusion of disabled persons in all layers of the society is crucial for their independent and decent life. Whereby the necessity of early and inclusive education and training was emphasised, which is a prerequisite for subsequent entry to the labour market, which enables independent and participatory life in the society.

UNITED NATIONS ORGANISATION

6 April 2018 Deputy Ombudsman Miha Horvat received **Fernand de Varennes, United Nations Special Rapporteur on Minority Issues**, who visited Slovenia between 5 and 13 April 2018. In his report, the Rapporteur will particularly focus on the fight against hate speech, xenophobic rhetoric and the promotion of hatred against minorities. He will report about his visit to Slovenia at one of the future sessions of the UN Human Rights Council in Geneva.

5 October 2018 Deputy Ombudsman Ivan Šelih and advisers Mojca Valjavec, mag. Uroš Kovačič and Robert Gačnik met the representatives of the **Office of the United Nations High Commissioner** for Refugees Regional Representation (UNHCR) for Central Europe, i.e. Jon Hoisaeter, Deputy Regional Representative of UNHCR in Central Europe, Walaa Abu Gharbieh, Regional Operations Manager, and Senior Adviser Danika Mencin.

10 October 2018 The Ombudsman and Deputy Tone Dolčič received **Michelle Bachelet, United Nations High Commissioner for Human Rights**, and her colleague Anton Nikiforov. The delegation was accompanied by the new head of the Human Rights Department at the Ministry of Foreign Affairs, Dr Marko Rakovec, and his colleague Nina Lenardič Purkart.

OSCE

15 March 2018 At the Ombudsman's head office, Deputy Ombudsman Miha Horvat received the experts of the **OSCE Office for Democratic Institutions and Human Rights (ODHIR)**, i.e. Ana Rusu, Senior Election Adviser, and Oleksiy Lychkovakh, Elections Adviser. As part of their visit to Slovenia, they examined the pre-election atmosphere and preparations for parliamentary elections in June.

30 May 2018 Deputy Ombudsman Miha Horvat received representatives of the **OSCE Office for Democratic Institutions and Human Rights** (OSCE/ODIHR).

OMBUDSPERSONS, INTERNATIONAL OMBUDSMAN INSTITUTE and NATIONAL HUMAN RIGHTS INSTITUTIONS

23 January 2018 Deputy Miha Horvat attended the international workshop, **Human Rights in the Digital Age**, organised in **Tallinn** by the Estonian Human Rights Ombudsman (Õiguskantsler) in cooperation with the International Ombudsman Institute (IOI).

6–7 February 2018 Deputy Miha Horvat attended a joint workshop of the **European Network of National Human Rights Institutions** (ENNHR) and the European Agency for Human Rights (FRA) on the EU Fundamental Rights Charter Training in **Vienna**.

14–16 February 2018 In Sarajevo, the Ombudsman attended the **regional conference of National Human Rights Institutions** of the Western Balkans, "Strengthening the Human Rights Ombudsman to Fight Discrimination". The Ombudsman presented examples of good practice when cooperating with civil society in the effort to reduce discriminatory behaviour, and exchanged experience with regard to the protection of human rights in court proceedings.

8–9 March 2018 Deputy Miha Horvat attended a conference of the **European Network of Ombudsmen** in Brussels. They spoke about the future of the EU, including current and future challenges of ombudsmen. They also discussed the possibilities of cross-border resolving problems of EU citizens.

15–17 May 2018 Deputy Dr Kornelija Marzel and Martina Ocepek, Director of the Expert Service, attended an IOI workshop in Spain entitled "Good environmental governance: **the role of Ombuds institutions in protecting environmental rights**". The two-day conference organised by the IOI and the Basque Human Rights Ombudsman was attended by the representatives of individual ombudsmen from Europe and beyond, international organisations, state authorities, NGOs and representatives from the field of science and research. The participants discussed the right to a healthy living environment as a human right and the role of ombudsmen when considering the scope of this issue and the problems of environmental pollution in connection with climate change and the introduction of good environmental governance. Special attention was paid to the implementation of the Aarhus Convention, which governs the participation of the public in environmental matters and serves as the foundation of democracy in every country. In conclusion, the attendees highlighted the necessity of mutual cooperation and integration.

29 May – 1 June 2018 In Skopje, the Ombudsman attended the fifth meeting of the Executive and Governing Boards of the **Association of Mediterranean Ombudsmen (AOM)**, and the conference, "The Ombudsman as a protector of the social, cultural and environmental rights," celebrating the 20th anniversary of the Macedonian Ombudsman and the 10th anniversary of the AOM. Ombudsmen from various countries and representatives of human rights institutions attended the event and discussed topics important for everyone, i.e. social rights of particularly sensitive categories of people and the rights regarding culture and the environment. In her Introductory speech, the Ombudsman presented the environmental situation in Slovenia, the Ombudsman's recommendations to the state and its institutions in this field, and the Declaration on cooperation of ombudsmen in the areas of the environment and human rights. The participants emphasised their views on the rather alarming situation in the field of the environment in all countries of the world, and focused particularly on the Mediterranean countries. They also spoke about the problems of water and air pollution, increasing noise pollution, consequences in the environment due to the power of capital, water as the basic necessity, non-inclusion of the public in the preparation of various regulations and changes in spatial planning, and cooperation with civil society.

7–8 June 2018 Within the framework of the **European Network of Ombudsmen (EOM)**, Deputy Dr Kornelija Marzel attended the first workshop on discussing complaints in the field of the environment and spatial planning organised by the European Commission in Brussels. The workshop was attended by representatives from ministries of EU Member States, judicial authorities, inspectorates, local authorities, NGOs and others. The attendees discussed good practices of handling complaints regarding the environment and necessary cooperation between authorities and citizens based on the draft document, "Documentation on good practice in the handling of environmental complaints and engagement of citizens at Member State level". The objective of the relevant document is to form a guideline on possible complaint procedures and methods, which would be understandable, useful and friendly to the citizens and authorities.

18–22 September 2018 Ombudsman's Adviser Lan Vošnjak attended the 22nd Annual Conference of the **European Network of Ombudspersons for Children (ENOC)** in Paris. He also attended the ENOC General Assembly.

24–25 September 2018 Deputy Dr Kornelija Marzel attended the symposium, "**Good Public Administration and Benefits for Citizens – The Role of Parliamentary Control Bodies**," in Vienna organised by the Austrian Court of Audit and the Austrian Ombudsman Board. In addition to organisers, the practices and experience of

supervising the work of public administration were also presented by the participants from Finland, Estonia, Poland, the Netherlands, Lithuania and the United Kingdom. Emily O'Reilly, the European Ombudsman, also spoke at the symposium and presented good governance in the EU and its efforts to ensure an open, responsible and efficient administration.

30 September – 3 October 2018 In Brussels, Deputy Dr Kornelija Marzel attended the conference, “**The Ombudsman in an Open and Participatory Society**”. The event took place on the occasion of the 40th anniversary of the International Ombudsman Institute and the 20th anniversary of the Belgian Federal Ombudsman that organised the event. The conference was attended by ombudsmen from Europe, Australia, Canada, Saint Martin, Thailand and Zambia, including representatives of Latin American human rights institutions, the Forum of Canadian Ombudsman, the European Network of National Human Rights Institutions, the Council of Europe, the European Court of Human Rights, and the Office of the United Nations High Commissioner for Human Rights.

9–13 October 2018 Deputy Ivan Šelih and Secretary General Kristijan Lovrak attended the **13th International Conference of National Human Rights Institutions (NHRIs)** in Morocco. The attendees focused on the expansion of civil space, and the promotion and protection of human rights ombudsmen with an emphasis on women. The conference marked the 70th anniversary of the Universal Declaration of Human Rights, the 25th anniversary of the adoption of the Paris Principles, which serve as the foundation for establishing national human rights institutions, the 25th anniversary of establishing the Global Alliance for National Human Rights Institutions known today as the GNHRI (NHRI) and the 20th anniversary of the UN Declaration on Human Rights Defenders.

24–25 October 2018 Secretary General Kristijan Lovrak and Liana Kalčina, Ombudsman's Adviser on International Relations, Publishing, Analysis and Surveys, attended the **Annual Conference of the European Network of National Human Rights Institutions (ENNHR)** in Athens. They also attended the General Assembly Meeting of the Network.

29–31 October 2018 In Novi Sad, the Ombudsman and Liana Kalčina, Ombudsman's Adviser on International Relations, Publishing, Analysis and Surveys, attended the conference, “**Protection of Human Rights – From Illegality to Legality**” organised by the Ombudsman of Autonomous Province of Vojvodina. The Ombudsman spoke about the importance and work of the institution she led.

12 November 2018 The **Croatian Ombudsperson for Children, Helena Pirnat Dragičević**, visited the Ombudsman and Deputy Tone Dolčič, and learned about the Ombudsman's work relating to the protection of children's rights.

29–30 November 2018 In Sarajevo, the Ombudsman and Secretary General Kristijan Lovrak attended a **regional conference, “Role of National Human Rights Institutions** in the Western Balkans”. The Ombudsman lectured on the cooperation of the Ombudsman's office and NGOs in the field of discrimination.

COOPERATION WITH AMBASSADORS

21 February 2018 The Ombudsman met Her Excellency Marion Paradas, French Ambassador to Slovenia, and her adviser Anne Schmidt at the Ombudsman's premises. **20 March 2018** Her Excellency Marion Paradas, French Ambassador to Slovenia, and Katharina Bartsch, First Secretary of the Embassy, visited the Ombudsman. **17 April 2018** Deputy Miha Horvat met Kees Van Baar, Human Rights Ambassador from the Dutch Ministry of Foreign Affairs. **14 June 2018** The Ombudsman attended a reception at the Ambassador of the Republic of Croatia, Vesna Terzić, organised at the head office of the Embassy of the Republic of Croatia. **28 June 2018** The Ombudsman attended a reception at the American Ambassador Brent R. Hartley to honour the 242nd anniversary of the signing of the American Declaration of Independence. **17 August 2018** Deputies Ivan Šelih and Miha Horvat met the representatives of the US Embassy, James Peranteau and Gregor Domadenik, at the Ombudsman's head office. The topics of their discussions were the Ombudsman's work and the alleged unlawful returning of migrants. **19 September 2018** At the Embassy of the Republic of Austria, the Ombudsman attended the farewell reception organised by the Austrian Ambassador, Her Excellency Sigrid Berka, for the Ambassador of the Republic of Croatia. **15 October 2018** At the National Gallery in Ljubljana, the Ombudsman attended the reception on the occasion of the National Day of Spain organised by the Spanish Ambassador, His Excellency José Luis de la Peña Vela. **17 October 2018** On the occasion of the 100th anniversary of Czech and Slovak statehood, the Ombudsman

attended a concert and reception held by the Czech and Slovakian Embassies. **18 October 2018** The Ombudsman met His Excellency Olav Berstad, the Norwegian Ambassador to Hungary and Slovenia, at the Ombudsman's head office. **24 October 2018** The Ombudsman attended the reception on the occasion of the Austrian National Day held by the Austrian Ambassador, Her Excellency Sigrid Berka.

NATIONAL PREVENTIVE MECHANISM

12–13 March 2018 Deputy Ivan Šelih, head of the NPM, attended an **international NPM conference on supervising retirement homes in Trier**. The conference was organised by the German NPM in cooperation with the colleagues from Austria and the Council of Europe, and was attended by representatives from over 20 European DPM and international organisations (CPT, SPT, NPM Obs). The conference was divided into two parts; the first one was dedicated to the issue of using various protection measures in retirement homes, and the second one focused on the communication with persons accommodated in retirement homes. Following a presentation by a member of the CPT Secretariat on the international standards regarding the use of protection measures, their findings in this field were also delivered by the representatives of the NPM Austria, Estonia and Germany, where supervision in this field is implemented by the courts. The discussion that followed revealed that other NPMs also pay special attention to the use of protection measures during their visits due to the possibility of abuse and ill-treatment of persons.

27–28 March 2018 Deputy Ivan Šelih attended a meeting of seven NPM representatives in Vienna. They discussed the **establishment of an NPM database** (DeMon Base), where findings and recommendations of various NPMs would be gathered. The attendees weighed in on the relevance and necessity of establishing such a database, its content and purpose. They agreed that the database would be useful for transparency of NPM work, and it could also serve the needs of court proceedings when deciding on the surrender of a person, e.g. due to imprisonment in another country. The organisers then indicated that work would continue in a narrow group, which would draft concrete solutions for establishing the relevant information system of findings and recommendations of individual national NPMs. The meeting was organised by the Council of Europe in cooperation with the EU or FRA, and was hosted by the Austrian Ombudsman Board.

17–18 April 2018 International conference marking the 10th anniversary of the NPM work took place in Ljubljana. The conference, "NPM Impact Assessment," was organised by the Slovenian Ombudsman and the Council of Europe. The Ombudsman, Minister of Justice mag. Goran Klemenčič, and Markus Jaeger, Head of the Independent Human Rights Bodies Division of the Directorate General of Human Rights and Rule of Law at the Council of Europe, addressed the attendees in their introductory speeches. The Ombudsman emphasised the efforts of her Deputy, Ivan Šelih, also the Head of the NPM, and thanked all those who have done a lot of preventive work in the past ten years within the NPM in order to prevent torture and other degrading treatment in institutions where people's liberty is restricted.

19–20 April 2018 Deputy Ivan Šelih and advisers Jure Markič and Robert Gačnik hosted Dinara Ospanova and Gulmira Aukasheva from the **Kazakhstan Human Rights Ombudsman** for an educational visit. The guests learned about the work of individual units of the Ombudsman and the NPM in Slovenia.

20 April 2018 In Astana in Kazakhstan, Deputy Ombudsman Ivan Šelih **attended a conference of NPMs from 16 Kazakh regions** and human rights ombudsmen from Central Asia and Russia. The conference was organised by the Kazakhstan Human Rights Ombudsman.

24–25 May 2018 Deputy Ivan Šelih, Secretary General Kristijan Lovrak and Adviser Robert Gačnik **received the Hungarian Human Rights Ombudsman Dr László Székely** and his colleagues in Celje. During a two-day visit, the Slovenian and Hungarian sides exchanged experience in the work of the NPM and visited a prison. In the role of the NPM, the Ombudsman visited Celje Prison and Juvenile Prison on 25 May 2018. The representatives of the Hungarian NPM attended the visit as observers, i.e. Human Rights Ombudsman Dr László Székely, Katalin Haraszti, Deputy Head of the NPM, István Sárközy, the NPM member, and interpreter Györgyi Sárik. The Hungarian Ombudsman also visits prisons in Hungary as part of its NPM tasks. The visit of the Hungarian NPM was the continuation of cooperation within the SEE NPM Network and the realisation of its objectives, which include establishing intensive mutual cooperation and the exchange of experience, generating synergy between the members of the Network, providing mutual assistance and creating conditions for efficient implementation of the NPM term.

28–31 May 2018 Deputy Ivan Šelih and Adviser Robert Gačnik attended a **meeting of the South-East Europe NPM Network** in Podgorica. The meeting focused on the prevention of suicides and overdosing in detention centres. The participants also spoke about the status of NPM staff in the member states.

10 July 2018 At the Ombudsman's head office, Deputy Ivan Šelih met the representatives of the **Validity Foundation, an NGO from Budapest**, and the representatives from the Legal-Informational Centre for NGOs – PIC. The discussions focused on accommodation capacities in social care institutions and the Ombudsman's special report on this topic.

24 September 2018 Deputy Ivan Šelih and advisers Robert Gačnik and mag. Jure Markič were on a **study visit in Graz at the Austrian NPM**, where they also visited a (post)forensic institution.

1–4 October 2018 Deputy Ivan Šelih, Secretary General Kristijan Lovrak, the Director of the Ombudsman's Expert Service and other Ombudsman's colleagues **received a delegation from the Armenian NPM for a study visit**. The Deputy presented the work of the Slovenian NPM, the Secretary General the Ombudsman's work in various fields, Director Martina Ocepek presented the work of the Expert Service, and NPM members Robert Gačnik, mag. Jure Markič, Ana Polutnik and Lili Jazbec spoke about the work of the NPM in practice. The guests became acquainted with the work of the Slovenian Police and its cooperation with the Ombudsman, the mental health system and the operating of retirement homes. The members of the Armenian NPM visiting the Ombudsman were Gohar Simonyan, Liana Hovakimyan, Laura Gasparyan and Harut Aklunts.

11–13 October 2018 Adviser Lili Jazbec attended the **regional conference of NPM of the Western Balkans** in Pristina organised on the occasion of World Mental Health Day to provide space for the exchange of experience and to find ways for regional cooperation relating to the prevention of torture and ill-treatment of persons with mental disorders deprived of their liberty. The conference, "Mental Disability, Deprivation of Liberty and Human Dignity," was attended by over 80 participants, i.e. representatives of NPM, human rights institutions and civil society organisations from Kosovo, Albania, Macedonia, Montenegro, Serbia, Croatia and Slovenia.

7–9 November 2018 The Ombudsman's Adviser and NPM member Ana Polutnik attended the **4th NPM workshop** in Denmark organised by the IOI.

13–14 November 2018 The NPM representatives, i.e. Deputy Ivan Šelih and Adviser Robert Gačnik **visited the Hungarian NPM**, whose tasks are implemented by the Hungarian Human Rights Ombudsman. The primary purpose of the visit was the continuation of the exchange of practical experience of implementing preventive visits. Together with the representatives of the Hungarian NPM, including Ombudsman Dr László Székely, the guests visited the prison in Zalaegerszeg. Prison life was presented in detail by the prison's director, and the guests also had the opportunity to review its premises and speak privately with a few prisoners.

28–29 November 2018 Deputy Ivan Šelih attended the **international conference in Yerevan, the capital of Armenia**, which was dedicated to the 10th anniversary of the Armenian NPM. Similarly as in Slovenia, the tasks and powers of the NPM in Armenia are executed by the Human Rights Ombudsman, which also marked its 10th year of operating. The conference was attended by many representatives of foreign NPMs, human rights institutions and international organisations active in the field of human rights protection. During the conference, the attendees discussed the situation of women and children when deprived of liberty, the provision of health care in detention institutions and police detention, and the provision of rights during detention. The participants exchanged their experience of visiting psychiatric institutions. Deputy Ivan Šelih, the Head of the Slovenian NPM, conveyed the experience in Slovenia. The conference was an excellent opportunity to deepen mutual cooperation and for further cooperation with the Armenian Human Rights Ombudsman or the NPM, which had already visited Slovenia in 2018.

3–4 December 2018 As an NPM representative, Katarina Bervar Sternad, the Director of the PIC, attended the **meeting of the NPM and civil society organisations' representatives from 26 OSCE member states** in Milan. The event was organised by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Association for the Prevention of Torture (APT) from Geneva, which selected the enhancement of cooperation in the prevention of torture and ill-treatment of migrants in remand as the central theme of the event. The participants discussed various ways of enhancing regional cohesion and joint efforts to advocate migrants' rights,

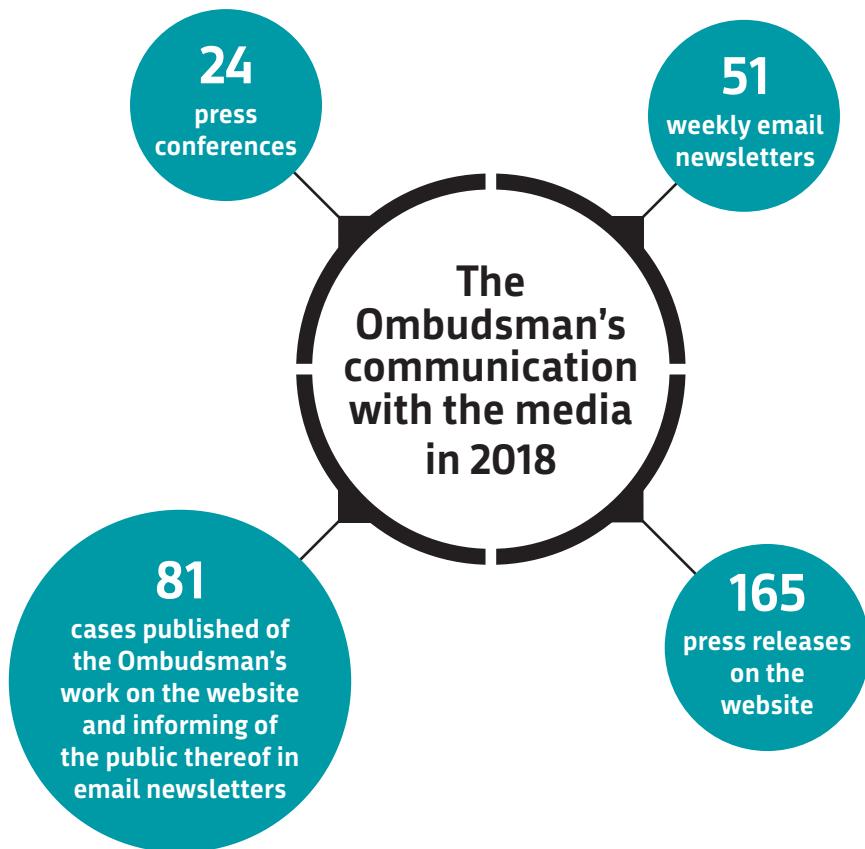
raise awareness in the public about related issues and monitoring the recommendations of different institutions in this field. They exchanged opinions about legal grounds for detaining migrants, including children, and examined ways of efficient monitoring of enforced removal and material conditions in detention rooms with the emphasis on preventing torture and other ill-treatment.

12–13 December 2018 Deputy Ivan Šelih and Adviser Robert Gačnik attended the **second conference of the South-East Europe NPM Network** organised in Podgorica by the Montenegrin NPM in cooperation with the Council of Europe within the framework of the project, "Effective Alternatives to Immigration Detention: Learning, Sharing, Applying". The participants focused on migration and alternatives in the detention of migrants.

OTHER

5 February 2018 At the ZRC Atrium, the Ombudsman addressed the visitors upon the opening of the exhibition on the violation of human rights and imprisoning children in Turkey. **6 March 2018** Deputy Miha Horvat received a Working Group for Petitions of the Christian Democratic Union (CDU) parliamentary group in the Saxon State Parliament in Germany for a working visit. The reception and presentation of the Ombudsman's work took place at the Ombudsman's head office. **3–4 May 2018** Adviser Živa Cotič Zidar attended a conference, "From Words to Actions: Ensuring Human Rights for Migrants while Implementing the Global Compact on Migration after 2018," which took place at the German Ministry of Foreign Affairs in Berlin. At the conference, the participants discussed the Global Compact on Migration and issues related to its implementation, and the implementation of migrant workers' rights in individual countries. They also spoke about the role of national human rights institutions when ensuring migrants' rights, whereby Adviser Živa Cotič Zidar presented the Ombudsman's work in the field of protection of migrant workers' rights and the Ombudsman's research activity involving foreigners and international protection. **16 May 2018** In Zagreb, the Ombudsman and Secretary General Kristijan Lovrak met Smiljana Knez, Slovenian Ambassador to Croatia. **17 May 2018** Deputy Tone Dolčič met representatives of the Ministry of Health, Vesna Zupančič and Katarina Ahac, and the expert from the Danish Patient Safety Authority, Torsten Larsen, at the Ombudsman's head office. Deputy Dolčič spoke about the project under the auspices of the European Commission's Structural Reform Support Service, which will contribute to greater safety of the rights of patients, their relatives and other stakeholders. The Danish expert introduced the system of reporting and learning from warning about hazardous and other adverse events in health care, which has been functioning in Denmark for 16 years, and is successful in the sense of preventive operating and raising the awareness of all medical service providers about the necessity of reporting irregularities, whereby the system is not used to determine fault or responsibility, but its data are processed in order to prevent adverse events from occurring again. **28–29 May 2018** Deputy Miha Horvat attended a consultation session, "Encrypted Data and the Privilege against Self-Incrimination" in Rome. **7–8 June 2018** In Brussels, Deputy Miha Horvat attended the Annual Conference of European Media Law, which was organised by the Academy of European Law (ERA). **28 July 2018** The Ombudsman attended the ceremony at the Russian Chapel organised by the Embassy of the Russian Federation in the Republic of Slovenia, the Municipality of Kranjska Gora, the Russkiy Mir Foundation and the Slovenia–Russia Friendship Association. **4–9 September 2018** Adviser Jasna Vunduk attended the 20th anniversary of the Barnahus Institution (Children's House) in Reykjavik, Iceland. **10 September 2018** Secretary General Kristijan Lovrak attended the 13th Bled Strategic Forum international conference. **13 September 2018** The Ombudsman and Deputies Dr Kornelija Marzel and Miha Horvat met representatives of the Committee on Education, Science, Culture, Human Rights and Petitions of the Senate of the Czech Parliament at the Ombudsman's head office. **25 September 2018** At the Faculty of Criminal Justice and Security of the University of Maribor, the Ombudsman addressed the attendees of the international conference, "Criminal Justice and Security in Central and Eastern Europe." **15–17 October 2018** Adviser Uroš Kovačič attended the international conference, "Fair Treatment of Persons in Police Custody," in Germany. **2 November 2018** Deputy Tone Dolčič met David Alexander from the Lucile Packard Foundation for Children's Health, California. The guest was interested in the international models of governmental structures and other authorities responsible for health and well-being of children in order to transpose these practices in the best way possible into the objectives and tasks of the newly established non-profit organisation, Leading for Kids, whose purpose is to increase the importance of health and well-being of children in the American culture so that all members of society consider the impact of their decisions on children. **26–27 November 2018** Deputy Miha Horvat attended the conference, "Hate Speech and the Limits to Freedom of Expression in Social Media," in Trier.

1.17 RELATIONS WITH THE MEDIA IN 2018



Interest of the media in 2018

The media's sensitivity to **the question of rights of vulnerable** groups is ongoing in their cooperation with the Ombudsman. In 2018, we received most questions relating to foreigners and asylum seekers and police officers' treatment of them, followed by the protection of children's rights, health care and care for the elderly.

Foreigners and asylum seekers

In the first months of 2018, the media interest focused on **stateless persons** or the issue of long-term tolerating of illegal residing in Slovenia, which was first addressed by the Ombudsman at its own initiative as it discussed several complaints regarding this issue. We also received a question on the position toward the Chinese request to extradite all Taiwanese citizens arrested during the criminal investigation relating to illegal call centres. The Ombudsman did not discuss the complaint, but it emphasised that the Slovenian Criminal Code applies for everyone committing a criminal offence in the Slovenian territory since jurisdiction in this territory is executed by its state authorities according to Slovenian regulations. In March, the **case of an Iraqi man, an artist**, whom Slovenian authorities wanted to deport, although he had lived in Slovenia for many years and had made a family here, received a lot of attention. At the time, we also received a question about the problem of (attempted) self-harm and suicides among foreigners in the Asylum Centre. We informed the journalist that the Ombudsman had detected the problem among foreigners in the Asylum Centre in Postojna in the past, and had emphasised this issue several times, including in the role of the NPM. Early in the summer, information about **alleged unsuitable**

treatment of refugees by police officers on Slovenia's southern border spread, including questions relating to this issue. The Ombudsman published a high-profile interim report/release on this matter.

Children's rights

Also in 2018, we were not able to avoid questions regarding **violence**; in particular, the case of a violent teacher at a primary school received a lot of attention. In this regard, the media discussed the issue of peer violence. In autumn, the public was outraged at the disclosure of violent conduct of an elderly person against children in a private institution, Kengurujčki.

The question of whether **enrolment into kindergartens for unvaccinated children should be limited**, as was anticipated in the latest amendments to the Contagious Diseases Act, which the Ministry of Health wanted to adopt as soon as possible, was also topical. The Ombudsman informed the public that it proposed to the Ministry of Health to prepare an analysis of enforcing the Act in cooperation with the National Institute of Public Health and competent health service providers, which would particularly reveal all open issues regarding compulsory vaccination of children and then organise a public presentation of the analysis and its findings.

We received several questions regarding the proposal of the amended Parental Protection and Family Benefits Act, which the Government of the Republic of Slovenia submitted for consideration to the National Assembly of the Republic of Slovenia, and in which it proposed that parents who fail to send their children to school for unjustified reasons **should not receive child benefits**. The Ombudsman was of the opinion that the proposed amendment was not fully finalised and would create great problems in practice. It proposed that the content of the provision be reconsidered, including its suitable substantive amending.

We also discussed the issue of **assistants to autistic children** and stressed that financing of special needs children's primary education and their care should not burden only individual municipalities because small municipalities cannot carry the burden on their own.

We also frequently encounter the question of **suitability of certain literary works for children**; in 2018, we were thus unable to avoid the question about the book, *Evangelij za pitbule* (Gospel for Pitbulls), which is explained in detail in chapter on the protection of children's rights. We again discussed the recurring question of establishing a register of paedophiles.

Mental health

The media joined the Ombudsman's efforts in warning about the fact that we still **do not have a secure ward for children with psychiatric problems**, and that these children are still hospitalised with adults. The Ombudsman repeated this warning until the expiry of her term of office, and this issue still remains a challenge. Although it was expected that such ward could be organised at the end of 2017, a problem occurred with the lack of staff on standby.

Since 2016, the Ombudsman has been actively engaged in informing the public and responsible authorities about the issue of **accommodating persons with mental disorders in secure wards of special social care institutions**. After the lack of progress even after the issue of a special report, the Ombudsman repeated its public warnings again at a press conference in Hrastovec in May, where journalists were again able to see the undignified conditions and dangers threatening the residents.

Health

In 2018, we received a question regarding the introduction of **eHealth** since, according to some people, the diagnoses and procedures involving individual patients could be accessed by about a thousand people who were not subject to professional secrecy. A journalist wanted to know whether that could have denoted a violation of the right to personal data protection and whether patients' rights were violated with the introduction of very

urgent referrals as per the amendments to the Patient Rights Act since "hospitals lack the capacity to examine patients no later than in 14 days". She also wished to know whether that was a case of unequal treatment of public employees because fines for administrative errors in health professions and some other places were relatively high, while for judges, police officers, teachers and others were not. We determined that those were the statements of a section of doctors, which appeared in 2015 upon the introduction of eHealth. Since we had not received any complaints in the meantime that the existing eHealth solutions were unsuitable, it was difficult to comment on statements from three years ago.

In 2018, we also dealt with media questions regarding **obstacles for recognising disability**, and we again pointed out to the Ministry of Health that, in spite of the Ombudsman's numerous appeals and warnings at meetings and the recommendations in annual reports for 2015 and 2016, it had still not prepared the rules on types and levels of physical impairment. We also received a few journalists' questions relating to self-paid **cancer treatment** in one of the private health-care institutions since the case discussed by the Ombudsman and published on the website and in the email newsletter received a lot of attention and was later resolved positively for patients.

Elderly

In 2018, there was also some interest with regard to the **purchase of the insurance period for the years of studying** and the duration of military service. The Ombudsman informed the journalist that it had asked the Government of the Republic of Slovenia to amend the Pension and Disability Insurance Act (ZPIZ-2) since it believed that citizens had certain expectations towards the state in the case of purchase before the legislation was amended. The state received funds from citizens and it could at least give them the possibility to impact the disposal of these funds.

We also detected an increase in interest towards suitable living conditions in retirement homes and the Ombudsman's thematic report on the elderly in prisons was also expected. At the consultation session in the National Council of the Republic of Slovenia, we informed the public of the findings of the **analysis** of hospital-acquired infections, food and care of the elderly in retirement homes.

Gender equality

In 2018, a scientist and member of the National Council upset the public with his contribution at the consultation, "How to Prevent the Dying Out of the Slovenian Nation?", in the National Council of the Republic of Slovenia. As mechanisms for the drop in birth rates, he cited women's liberalisation, contraception, abortions, women's rights, schooling of women, prohibition of too active male advancements, forcing of women into male roles and men into female roles, aggravation of motherhood and childhood and others. He thus initiated a wave of indignation among many women and supporters of gender equality. In its public statement, the Ombudsman communicated that the lecture was a reflection of thinking non-compliant with the achievements of civilisation and the development of human rights, and assessed as inadmissible that anyone should be put in a position of inferiority, being denied acquired rights or intervening in their dignity.

Ethics of public discourse

In 2018, we received a few questions regarding **pre-election posters of certain political parties**. We conveyed that the posters could be reasons for concern. After all, the Parliamentary Assembly of the Council of Europe recognised in its Resolution 1889 (2012) that (point 4) during election campaigns, some candidates and political parties habitually present migrants and refugees as a threat to, and a burden on, society, which increases negative reactions among the public, and it explicitly repeated that (point 7) politicians have a special responsibility to eliminate negative stereotyping or stigmatisation of any minority or migrant group from the political discourse, including during election campaigns. On that note, we also issued a **press release**, in which the Ombudsman expressed concern regarding the rhetoric of intolerance of visible public figures and politicians in the pre-election period. It condemned the scoring of political points by spreading lies and intolerance towards people who are different and socially less privileged.

Workers

The **rights of workers** have been a recurrent topic over the years. In 2018, we discussed journalists' questions on severe weather conditions for work, particularly at construction sites. Several times, we also presented the Ombudsman's positions on issues related to labour rights. We received a journalist's question on the appeal of the trade union's group of the Labour Inspectorate of the Republic of Slovenia from 2016 entitled "Appeal to eliminate illegality and arrange conditions at the Labour Inspectorate of the Republic of Slovenia". We discussed the appeal as a complaint, and since the Ombudsman's procedure is confidential, we referred the journalist to the complainant to obtain information about our opinion.

Police

The public keeps a vigilant eye on the work of the police. We have already mentioned that early in the summer information about **alleged unsuitable treatment of police officers** with refugees on Slovenia's southern border spread, which led to journalists' questions relating to this issue. This year, journalists focused on certain powers granted to the police by the Act Amending the Police Tasks and Powers Act, such as checking at airports and optical recognition of motor vehicle licence plates. The Ombudsman filed a request for a review of the constitutionality of the relevant Act and submitted to the journalists replies to their questions.

The press also investigated the reporting of the police about their action. They requested the Ombudsman's opinion on whether the reporting of a local police unit about their action was compliant with the standard practice of **police reporting and human rights protection**. We informed them that the police may inform the public about matters dealing with their field of work only in a way that does not harm the implementation of police tasks or damage the legitimate interests of others. We added further that the Ombudsman seldom received such complaints, but it recommended to the police that when communicating with the public it should ponder in every case separately which information about an individual (if any) would be released to the public and to what extent.

After the decision on suspending remand, a released person had no transport from the court back to remand prison

A journalist informed us that a gentleman who had pleaded guilty and to whom the court had ordered a suspended sentence and simultaneously suspended his remand where he had been awaiting the trial, had been unable to access his personal belongings which were situated at the location of remand prison. Since the Ombudsman had not yet discussed a similar case, it was unable to state its position in this regard. However, it stated that the rules might have been observed in this case, but they were utterly unrealistic. The Ombudsman expressed its certainty that when drafting rules all circumstances which may arise in such cases should be observed.

Environment

We have noticed that the interest of the public in relation to the environment is constantly increasing and the Ombudsman occasionally receives a question thereof. We provided clarifications relating to the pollution in the Celje Basin, which the Ombudsman has been discussing since 2011, and proposed immediate comprehensive rehabilitation of the area. We were of the opinion that chronology of the activities of the Ministry of the Environment and Spatial Planning needed no special consideration since it was obvious that the progress was certainly too slow and no significant development in the matter was seen.

The public was also upset by the new **decree on noise** and the decision of the Constitutional Court of the Republic of Slovenia to reject the motion of Alpe Adria Green for a review of the constitutionality of the decree due to the lack of legal interest in bringing proceedings. The journalist wanted to know whether, considering numerous appeals by civil society and NGOs, the Ombudsman planned to lodge a request for a constitutional review of the decree, which it did in 2019 (during the preparation of this report, and we are thus updating the information).



Liana Kalčina, the Ombudsman's Adviser for International Relations, Analyses and Publishing, and **Nataša Kuzmič**, the Ombudsman's Adviser for Public Relations

Ombudsman's work

The public's attention is also increasingly focusing on the operations of the National Preventive Mechanism, which celebrated its 10th anniversary with an international conference in 2018. The work of the NPM was presented to the media several times by the Deputy Ombudsman.

Due to the expected **amendments to the Human Rights Ombudsman Act**, we received questions on this topic in 2017, and in 2018. The Ombudsman also spoke about the changes resulting from the amended Act on various other occasions.



1.18 FINANCE

Paragraph two 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 of the Republic of Slovenia from the state budget.

In 2018, the Human Rights Ombudsman disposed of budgetary resources in the amount of
EUR 2,576,731

On three sub-programmes, the Ombudsman spent
EUR 2,519,838

Protection of human rights and fundamental freedoms:
EUR 2,240,299

Implementation of the tasks and powers of the NPM:
EUR 169,847

Child advocacy:
EUR 109,692

Review of the Ombudsman's resources in 2018 by budget headings within individual sub-programmes

	Funds allocated (AB) (in EUR)	Current budget (CB) (in EUR)	Funds spent (in EUR)	Remaining funds according to CB (in EUR)
Human Rights Ombudsman of the Republic of Slovenia	2,344,133	2,576,731	2,519,838	56,893
SUB-PROGRAMMES				
Protection of human rights and fundamental freedoms	2,064,434	2,278,045	2,240,299	37,746
Salaries	1,541,034	1,590,319	1,573,636	16,683
Material costs	438,400	495,486	480,234	15,252
Investments	85,000	192,240	186,429	5,811
Implementation of the tasks and powers of the NPM	174,699	178,354	169,847	8,507
Salaries	118,699	122,354	122,354	0
Material costs	45,000	45,000	40,658	4,342
Cooperation with non-governmental organisations	11,000	11,000	6,835	4,165
Child advocacy	105,000	109,734	109,692	42
Material costs	105,000	109,734	109,692	42
Earmarked funds*	0	10,598	0	10,598
Compensation funds	0	1,048	0	1,048
Funds from the sale of state assets	0	9,550	0	9,550

*Earmarked funds were carried over into the 2019 budget.

Movement of budgetary resources of the Ombudsman between 2013 and 2018

(in EUR.)

Year	2013	2014	2015	2016	2017	2018
Applicable budget	1,890,979	1,868,206	1,965,209	2,050,909	2,171,821	2,576,731
Use of budgetary resources	1,853,086	1,851,108	1,961,205	2,042,767	2,151,491	2,519,838
SUB-PROGRAMMES						
Protection of human rights and fundamental freedoms	1,658,600	1,645,402	1,745,427	1,804,898	1,866,898	2,240,299
Salaries	1,281,014	1,263,396	1,311,202	1,352,089	1,433,292	1,573,636
Material costs	360,059	355,326	384,042	398,138	407,325	480,234
Investments	17,528	26,680	50,182	54,671	46,280	186,429
Implementation of the tasks and powers of the NPM	120,306	114,722	125,557	130,095	158,972	169,847
Salaries	107,706	100,105	106,388	113,030	115,099	122,354
Cooperation with non-governmental organisations	5,631	4,367	11,666	11,435	9,716	6,835
Cooperation of doctors/experts	2,878	5,580	5,105	1,720	3,592	2,224
Travel expenses	797	690	1,799	2,686	1,012	802
Other material costs*	3,294	3,980	599	1,224	29,553	37,632
Child advocacy	56,180	77,027	90,221	107,774	105,621	109,692
Salaries	1,824	1,448	17,899	18,290	22,767	0
Material costs	54,356	75,579	73,322	89,484	82,854	109,692
Earmarked funds*	0	13,957	0	0	0	0
Compensation funds	0	9,322	0	0	0	0
Funds from the sale of state assets	0	4,635	0	0	0	0

*In 2017, other material costs of the NPM include rental of business premises.

It must be emphasised that the Ombudsman began implementing the Act Amending the Human Rights Ombudsman Act in 2018, which extended the Ombudsman's mission, mandate and tasks and for which additional financial resources were provided.

* Namenska sredstva so prenesena v proračun za leto 2018.

1.19 OMBUDSMAN'S FINANCIAL INDEPENDENCE AND AUTONOMY

In the 2017 report, the Ombudsman described the problem relating to the financial independence and wage disparities between high officials. It was also highlighted that this had a significant effect on the Ombudsman's position at home and abroad.

Some 25 years after the UN General Assembly adopted Resolution 48/134 on the principles referring to the position and operations of national human rights institutions (Paris Principles), the Ombudsman asked the Accreditation Board of the Office of the United Nations High Commissioner for Human Rights for A status in October 2018. Currently, the Ombudsman is a national human rights institution with B status. In 2019, the Ombudsman will implement additionally required activities for accreditation, which is anticipated to be confirmed in 2020. **After obtaining A status, the Ombudsman will be required to prepare independent assessments to the country's reports even more frequently, which it is obliged to submit the UN authorities and the Council of Europe as per its contractual obligations. The Ombudsman, particularly its Human Rights Centre, will participate in the formation of the national human rights education programme and will co-design educational and research programmes, whereby it will implement some of them directly in schools, universities and expert circles. In its efforts to fight all forms of discrimination, the Ombudsman will raise awareness, inform and educate various publics and thus contribute to the knowledge about, and respect for, human rights.** The A status will enable the Ombudsman to have a more active role in the European Network of National Human Rights Institutions (ENNHR) and the Global Alliance for National Human Rights Institutions (GANHRI), and impact the formation of operating policies of these associations. The Ombudsman will be able to execute the aforementioned tasks with qualified staff and suitable financial resources.

The Paris Principles are a set of internationally recognised standards for assessing credibility, independence and effectiveness of national human rights institutions (NHRIs). For the institutions to be fully effective, they must obtain broad authorisations to discuss all matters in the field of human rights and fundamental freedoms. They must have a transparent procedure for selecting and appointing its leadership, the possibility of plural representation of sections of society when influencing the management of the institution and ensured independence with regard to legislation and practice. The institutions must have access to sufficient financial resources and suitable staff who will carry out the expected tasks successfully. The Ombudsman is already functioning as an active link between civil society and the authorities, which remains simultaneously independent from both.

In its response report to the 23rd Annual Report of the Human Rights Ombudsman for 2017, the Government of the Republic of Slovenia stated that it respected the autonomy and independence of constitutional authorities and all non-governmental budget users, and that their position is observed accordingly when the National Assembly of the Republic of Slovenia adopts its final decision and financial plans. This can be agreed with, but it must be emphasised that when negotiating financial resources, the Ombudsman is repeatedly exposed to the requirements for additional reasoning of the necessary funds although these have already been agreed upon.

In the same response report, the Government of the Republic of Slovenia wrote that it would address the arrangement of the position of the Ombudsman's high officials immediately after the elimination of anomalies when assessing workplaces and titles in the public sector. It concluded an agreement with trade unions at the end of 2018, and thus caused additional imbalances. By rearranging public employees into higher salary grades, the more or less artificially maintained relationships between public employees and the Ombudsman's high officials were destroyed.

This issue was highlighted again since the composition of the Government changed in 2018, and we were not aware of the transfer of this information to the new Government. We were also not informed about the activities of the Government which would eliminate these anomalies.

Therefore, we want to emphasise again our expectation that the Government of the Republic of Slovenia eliminate the anomalies and determine anew the salary grades of the Ombudsman's high officials as stipulated in Article 47 of the Human Rights Ombudsman Act (ZVarCP-UPB2).

It must be stressed that the Ombudsman does not receive regulations referring to operations of the institution, particularly relating to finance, staff, IT, investments (purchase of employer-provided dwellings) and public calls during the preliminary discussion. **We expect the Government of the Republic of Slovenia to change its practice and enable the Ombudsman to take a position on the proposed acts and other regulations which regulate its constitutional status or the status of its staff directly. Otherwise, the Ombudsman is losing its independence at home and abroad since this quality is particularly highlighted in the Paris Principles.**



2

CONTENT OF WORK AND REVIEW OF CASES HANDLED

2.1

EQUALITY BEFORE THE LAW AND PROHIBITION OF DISCRIMINATION

Field of work	Cases considered			Resolved and founded		
	2017	2018	Index 18/17	No. of resolved	No. of founded	Share of founded among resolved (in %)
1. Equality before the law and prohibition of discrimination	68	46	67.6	46	7	15.3
1.1 Equality before the law	4	1	25.0	1	0	0.0
1.2 Equal opportunities for the disabled	11	24	218.2	22	4	18.2
1.3 Equal opportunities in relation to sexual identity or orientation	7	8	114.3	8	2	25.0
1.4 Equal opportunities in relation to race, nationality or ethnic origin	30	5	16.7	5	1	20.0
1.5 Equality before the law and prohibition of discrimination – other	16	8	50,0	10	0	0,0

2.1.1 Disability remains a pressing problem in providing equal opportunities in Slovenian society

Pursuant to Articles 5 and 43 of the ZVarCP, the Ombudsman reports to the National Assembly in regular annual reports on its work, findings about the respect of human rights and fundamental freedoms, and on legal security in the Republic of Slovenia, while pursuant to paragraph two of Article 272 of the Rules of Procedure of the National Assembly (PoDZ-1), the Ombudsman's reports are sent to the Government of the Republic of Slovenia which states its opinion. **Although the Ombudsman's reports are (initially) discussed by several working bodies and (then also) at a regular session of the National Assembly in the autumn and despite a recommendation made by the Ombudsman several times to all institutions and officials at all levels to take into account the Ombudsman's recommendations from its annual reports (the latest recommendation was published in the Official Gazette of the Republic of Slovenia, No. 78/2018 of 4 December 2018, p. 4), certain deficiencies, no matter how known (recognised), remain.** One of the explicit examples is the discrimination against disabled students with regard to their transport, which the Ombudsman has been reporting for years. The response to our question this year regarding when the Ministry of Infrastructure intends to draft a proposal for an act that will systemically regulate the rights of disabled students on their transport from their place of residence to their place of education was that the proposed Act Amending the Road Transport Act would be drafted in the first half of 2019.

Even after six months of persistence, the Ombudsman's recommendation in this field has not been realised. It should be pointed out that **by the end of 2018, the National Assembly had been postponing its legal responsibility to adopt suitable bases for adjusting the study process to disabled students for over three years (see paragraph three of Article 38 of the Equalisation of Opportunities for Persons with Disabilities Act (ZIMI)).** (1.2-19/2018)

2.1.2 On physical accessibility for disabled persons

When considering a complaint, we could understand that the (district) court did not have physical access for disabled persons. Therefore, the concrete case in which the injured party was a disabled person was handled by another court which may be accessed by disabled persons.

Providing access to public buildings for disabled persons is an important element of providing equal opportunities to disabled persons. Since, pursuant to paragraph two of Article 9 of the ZVarCP, the Ombudsman also addresses wider issues relevant to the protection of human rights and fundamental freedoms, and to the legal security in the Republic of Slovenia, **we decided to open the issue of courts' accessibility for disabled persons as a wider issue.** The actual accessibility of courts for disabled persons is important both for participants in judicial proceedings and others. These may be invited parties (plaintiffs, defendants, persons charged, counsels, witnesses, injured parties, etc.), court staff or the public in its widest sense (Article 24 of the Constitution of the Republic of Slovenia stipulates that court hearings are public). The provision of accessibility (only) of courtrooms as such is insufficient – in addition to access to courtrooms, clients must also have access to e.g. the reception office, land register, court register, court entry register offices, free legal aid service, etc. Disabled persons must have access to rooms in court buildings also because otherwise, we cannot speak of actual respect for the prohibition of discrimination on grounds of the disability of job seekers and court staff during their employment. It is also important to provide access to toilet facilities for disabled persons for them to be able to meet their physiological needs in a dignified way. In addition to all the points mentioned above, comprehensive accessibility would also include disabled parking bays.

As part of the above-mentioned case triggered by the Ombudsman, all 66 courts in the Republic of Slovenia received enquiries on the year of construction and potential reconstruction of court buildings; whether rooms in court building are accessible for disabled persons; whether court building have toilets that may be accessed by disabled persons; whether court buildings have disabled parking bays or whether vehicles of disabled persons may briefly stop at the entrance to the building; whether in summons, courts inform summoned parties of the right to equal participation in proceedings, and how many summoned persons informed the court between 2015 and 2017 that they were disabled persons and have problems overcoming physical/architectural barriers (e.g. stairs), and how courts responded to such information. If disabled persons cannot access court premises, particularly toilets, and if courts do not provide disabled persons with an opportunity to park their cars, we also requested explanations whether in summons, summoned persons are informed that there is no access for disabled persons (entry to /exit from a building, movement in buildings, toilets, parking); how disabled persons who cannot access courts due to their disability may participate in proceedings; whether they have plans to arrange physical access to courts and toilets for disabled persons, and to arrange disabled parking bays or to provide disabled persons with an opportunity to be able to briefly stop their vehicles, and when this would be provided.

On the basis of the responses to the enquiries mentioned above, the Ombudsman established that **less than half of court buildings (46 per cent) are accessible for disabled persons** and that **only 20 per cent of court buildings have toilets for disabled persons.** Slightly more than half (52 per cent) of court buildings have special disabled parking bays.

The established situation is alarming. We should again draw attention to the statements of the Constitutional Court of the Republic of Slovenia from decision no. U-I-156/11-29 Up-861/11-25 of 10 April 2014 that “*only one third of all polling stations (33.99 per cent) were accessible for disabled persons at the last elections*” and that “*meeting the obligation to provide physical accessibility of public buildings for disabled persons cannot be postponed by public entities (the state and local communities) into the distant future when this involves the realisation of one of the fundamental human rights, i.e. the right to vote*”. The accessibility of polling stations included the issue of realising one of the fundamental human rights (the right to vote); **similarly, the case**

of accessibility of courts includes the realisation of fundamental human rights, i.e. the right to judicial protection (Article 23 of the Constitution of the Republic of Slovenia), in certain cases also the right to the freedom of work (Article 49 of the Constitution of the Republic of Slovenia), and in the widest sense, the right to personal dignity (Article 34 of the Constitution of the Republic of Slovenia). Therefore, the state cannot postpone the fulfilment of its obligation to provide physical accessibility when it comes to court buildings too. The percentage of the accessibility of courts is slightly higher in comparison with the accessibility of polling stations (46 per cent in comparison with 34 per cent), but not so much higher that similar criticism could not apply to courts. If, in addition to physical accessibility of courts, the accessibility of toilets and court buildings is included in the actual accessibility of courts, the percentage drops to a modest 20 per cent. We should also bear in mind significantly higher frequency of judicial proceedings in comparison with elections.

The situation is also alarming from the aspect of the provisions of the ZIMI which entered into force in December 2010 and stipulated a 15-year transitional period regarding the accessibility of public buildings to eliminate architectural and communication barriers in these buildings. The transitional period is halfway through in 2018, but the responses received do not show that substantial architectural barriers in Slovenian court buildings were eliminated between the entry into force of the ZIMI and the first half of 2018.

If accessibility is assessed from the aspect of the accessibility of courts as such (not from the aspect of all court buildings), the situation is even worse: **only 35 per cent of all courts in Slovenia are physically accessible for disabled persons, and only 15 per cent of all courts, i.e. 10 courts, in Slovenia provide toilets for disabled persons in addition to physical accessibility.**

The situation is slightly more encouraging in terms of partial accessibility, which includes courts that operate in one building but only rooms on the ground floor are accessible, and courts that operate in several buildings (also in external departments) and at least one of them is fully or partially accessible for disabled persons. There are 28 such courts or 42 per cent of all courts in Slovenia. **The share of Slovenian courts that are at least partially accessible (i.e. the sum of partially accessible and accessible courts) is relatively high (77 per cent).**

15 courts in Slovenia are not accessible for disabled persons. Two solutions are available to these courts in practice to be adjusted to disabled persons. The first solution is that a case is heard at the nearest court that may be accessed by disabled persons. The operation is adjusted in this way at local courts in Jesenice and Radovljica, whose hearings are scheduled in the building of Kranj Local Court (however, this court is also only partially accessible for disabled persons). Similar adjustments are made by Tolmin Local Court and Nova Gorica District Court, which operate on the premises of Nova Gorica Local Court to provide access for disabled persons. We should particularly mention cases when none of the buildings in a court district is accessible for disabled persons, for example in the court district of Gorenjska. The Ombudsman believes that this aspect should be paid special attention. The second solution to adjust courts is to carry disabled persons up or down the stairs, usually with the assistance of security guards. Such responses were sent to us by local courts in

Črnomelj, Ilirska Bistrica, Krško (as a solution for one of the buildings which is inaccessible), Ljutomer, Postojna, Sevnica, Slovenska Bistrica and Žalec, Maribor District Court and Maribor Higher Court (these two courts operate in the same building). However, carrying a disabled person up or down the stairs is problematic from the aspect of ensuring the dignity of disabled persons as well as from the aspect of potential injuries of a disabled person or damage to their wheelchair (a separate issue is direct liability for damages of persons involved should anything go wrong).

On the basis of the responses received from courts, we also established that **not all courts inform summoned parties of the right of disabled persons to equal participation in proceedings (paragraph three of Article 223 of the Court Rules) despite their obligation to do so.** On the other hand, we should also mention a favourable response of the District Court in Slovenj Gradec, which decided, on the basis of the Ombudsman's enquiry, to inform clients who inform them of their disability of accessibility of the court for disabled persons.

On the basis of the said findings, **the Ombudsman sent specific recommendations to the Ministry of Justice**, i.e. 1. to monitor the situation and progress in eliminating architectural barriers in court buildings more actively and accurately, and to annually report on concrete numbers (how many buildings are or are not accessible, investments in how many buildings are planned to provide accessibility, and in how many buildings accessibility

was provided in the previous year) in the Report on the Realisation of the Action programme for Persons with Disabilities 2014–2021, since only seven and a half years remain until the end of the transitional period stipulated by the ZIMI; 2. to include in the project to eliminate architectural barriers in court buildings plans for toilets for disabled persons, and study options to provide disabled parking bays; and 3. to determine priorities in the plan to eliminate architectural barriers, and as part of this, to set up at least one court in each court district, which will be, actually and fully, accessible for disabled persons.

The Ministry of Justice responded to the Ombudsman's analysis and recommendations, stating that they were aware of the problem mentioned in the analysis. **They agreed that the current situation in most court buildings was inappropriate and may make the realisation of the rights of disabled persons, which are related to proceedings before courts, difficult, and that physical accessibility of courts for disabled persons is far from satisfactory**, which, in their opinion, is the result of the fact that most court buildings are old and that their funds for investment maintenance of such buildings are limited. They informed us that improvements had been made in this field (with approximately EUR 360,000 in 2016 to approximately EUR 1,400,000 in 2017, despite the fact that the decline of EUR 300,000 in 2018 in comparison with 2017 is slightly worrying). **They stated that, in accordance with the Ombudsman's recommendations, they will prepare an overview of the state of toilets for disabled persons, and to check, together with courts, the option to provide disabled parking bays; they will also attempt to set up at least one court in each court district, which will be, actually and fully, accessible for disabled persons.** The Ministry's direct response to point 1 of the Ombudsman's recommendation could not be discerned, but they stated that they will carry out their obligations to provide suitable access to court buildings and the conditions to use these buildings more speedily than in recent years.

We did not forget that the Constitutional Court of the Republic of Slovenia is also part of the judicial power; therefore, we also enquired at this Court about the provision of physical accessibility. They responded with an explanation that access "*without barriers that could hinder disabled persons' physical access to the Constitutional Court*", that the Court is also accessible by lift, and that toilets may also be used by disabled persons. They stated that, due to such an arrangement, they had never had any problems regarding physical accessibility of the premises for disabled persons.

2.1.3 Issues regarding the provision of equal opportunities in relation to sexual identity or orientation remain controversial

On gender reassignment or legal gender recognition

In our Annual Report for 2016, we stated that the Ombudsman's intervention in a case led the Ministry of Education, Science and Sport to take the position that (already) on the basis of the applicable legal framework, **educational institutions may issue originals of new certificates, which contain changed personal data, to persons who undergo gender reassignment and change their name after completing their education.**

That this is a very sensitive matter is corroborated by the terminology – e.g. certain people point out that legal gender recognition and gender reassignment cannot be equated (in Slovenian regulations, the last mentioned is used), since legal gender recognition does not bring any "reassignments" but only means that the fact that already existed is recognised. Point 11 of Article 4 of the Civil Register Act stipulates that gender reassignment is entered in the civil register, while further procedure

is regulated by the Rules on the implementation of the Civil Register Act whose Article 37 stipulates that gender reassignment is entered on the basis of a decision of the competent authority on the change of the entered information, and that the basis for the decision is a certificate of the competent health care institution or a physician, which shows that the person has undergone gender reassignment. When considering a case, the Ombudsman proposed to the Ministry of the Interior to study options to delete Article 37 of the Civil Register Act, particularly the part which stipulates that the basis for a decision on gender reassignment is a "certificate

of the competent health care institution or a physician, which shows that the person has undergone gender reassignment". The provision of the implementing regulation pointed out is questionable particularly from two aspects: it seemed that it does not comply with calls from Resolution 2048 of the Parliamentary Assembly of the Council of Europe, whose point 6.2.1 calls on Member States to develop quick, transparent and accessible procedures for changing the name and registered sex of transgender people on birth certificates and identity cards, while point 6.2.2 calls to abolish sterilisation and other compulsory medical treatment, as well as a mental health diagnosis, as conditions for legal gender recognition; it also does not comply with paragraph two of Article 15 of the Constitution of the Republic of Slovenia, which stipulates that the manner in which human rights and fundamental freedoms are exercised may be regulated only by law.

Regarding gender reassignment or legal gender recognition, several human rights may be involved, e.g. inviolability of human physical and mental integrity, their privacy and personality rights (Article 35 of the Constitution of the Republic of Slovenia, and the right to respect for private and family life referred to in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: European Convention on Human Rights). The European Court of Human Rights (hereinafter: ECHR) has already taken a position that sexual identity or identification, names, sexual orientation and sex life are part of a person's private life protected under Article 8 of the European Convention on Human Rights, that the right to respect for private life referred to in Article 8 of the European Convention on Human Rights fully applies to sexual identity which is part of a person's identity, and that the right to sexual identity and personal development is an important aspect of the right to respect for private life. **Pursuant to paragraph two of Article 15 of the Constitution of the Republic of Slovenia, the manner in which the right to sexual identity is exercised as the crucial aspect of personality rights could be prescribed by acts, not implementing regulations – in the concrete case, the Rules on the implementation of the Civil Register Act.**

In its response to the Ombudsman, the Ministry of the Interior agreed that "**formally suitable legal basis to regulate the manner in which the right to sexual identity is exercised may be regulated only by law**"; nevertheless, the Ministry insists on the arrangement that does not comply with paragraph two of Article 15 of the Constitution of the Republic of Slovenia. They believe that the entry of gender reassignment in the civil register "*may only be the result of a separate, legally defined procedure of legal gender recognition, which affects all areas of social life, and must therefore be solved as a legal matter at the systemic level and horizontally, which has been pointed out by the Ministry of the Interior several times. Amendments to the Rules are merely the logical result of the adoption of the act that would comprehensively regulate this issue; in view of the content of the field the act would regulate, the Ministry of the Interior cannot be responsible for it.*"

The Ombudsman pointed out to the same ministry several times that shifting responsibility for the adoption of a suitable legal basis to other ministries was unacceptable, when the reason for the constitutionally unacceptable situation was the result of the Rules on the implementation of the Civil Register Act adopted by this, not any other ministry; however, they were not convinced. Moreover, available documents showed that neither the Ministry of the Interior nor the Ministry of Labour, Family, Social Affairs and Equal Opportunities consider themselves the ministry that should draft the said implementing regulation – in response to a deputy question of 12 December 2016, the then Minister of Labour, Family, Social Affairs and Equal Opportunities stated among other things that the procedure of legal gender recognition was the responsibility of the Ministry of the Interior, while the written response of the Minister of the Interior to an oral deputy question regarding gender recognition stated that the issue of gender recognition was the responsibility of the Ministry of Labour, Family, Social Affairs and Equal Opportunities (with the Ministry of Health in brackets).

It seems that this is **another (too) frequently seen case when the state does not deny a problem or openly admits there is a problem, but does not attempt to actually solve it – and it seems that the will to do so is lost particularly when any form of "inter-ministerial cooperation" should take place**. Let us note that the Ombudsman has already reported in its annual reports e.g. that "*a procedure of 'inter-ministerial cooperation' in practice frequently means unnecessary delay or even blocking of the procedure of adopting decisions*" and that "*it establishes, as a general problem in the operation of the public administration, restriction to the field of work, which is determined by law, while in practice, it is a very convenient excuse to avoid responsibility*"; the Ombudsman has also proposed to the Government of the Republic of Slovenia to "*ensure effective inter-ministerial cooperation and harmonisation in preparation and introduction of legislation, implementing regulations and other systemic measures to eliminate violations of human rights and fundamental freedoms*",

recommended “*to put responsibility for work coordination and responsibility for harmonising opinions of ministries on joint open issues to a person from the Office of the Prime Minister, who will be responsible for the procedure not the result of inter-ministerial cooperation*” and pointed out that “*supervision of work coordination of all inter-ministerial groups in all fields should be assumed by the Office of the Prime Minister, and groups should regularly inform the Government of procedures, solutions and obstacles in their work.*” We should also reiterate that “*it would be inappropriate and incompatible with the Ombudsman’s tasks for us to assume responsibility for inter-ministerial coordination of certain open issues that concern a field of work of several state authorities. Such issues should be resolved by the Government within the scope of its responsibilities if they cannot be resolved by individual ministries*”.

Since the Rules on the implementation of the Civil Register Act with the unconstitutional provision pointed out above are under the responsibility of the Ministry of the Interior, the Ombudsman has already proposed to attempt to reach an agreement with the ministry which it believes should be responsible on the ministry that must manage the drafting of a regulation that will regulate the field of gender reassignment – if an agreement is not reached, the Ombudsman has also proposed that the Ministry of the Interior should address a proposal to the Government of the Republic of Slovenia to decide on the disputable issue. However, the addressed ministry did not act on our proposal, explaining that “*it has not yet been decided which ministry should manage the drafting of a regulation that would regulate the issue of legal gender recognition*”, that “*they cannot assume the coordination role between various sectors in relation to the mentioned above*”, and that their position was still “*that the issue of gender reassignment is, in view of its content, under the responsibility of the Ministry of Labour, Family, Social Affairs and Equal Opportunities and alternatively, the Ministry of Health*”.

Options provided to ministries by Chapter VI RELATIONS BETWEEN MINISTRIES of the State Administration Act (ZDU-1), which orders ministries to use certain options, remain a dead letter (see e.g. Articles 60, 61, 62 and 58). In November 2018, we wrote to the Government of the Republic of Slovenia, proposing that, pursuant to paragraph two of Article 62 of the ZDU-1, it should decide on the disputable issue and determine a concrete deadline for the competent ministry to draft a proposed regulation – however, by the end of 2018 and the preparation of this report, the Ombudsman had received no response.

On homosexuality as a specific factor in health care

Since its establishment, the Ombudsman has dealt several times with homosexuality as a specific factor in health care. We considered for example alleged discrimination of homosexuals by dentists when they used a disputable questionnaire that included a question on potential exposure to HIV or the inclusion of (un)registered same-sex partners in compulsory health insurance. In our Annual Report for 2014, we mentioned that the issue of blood donation by homosexuals had re-emerged, while for 2018, we may present in more detail how we handled the issue of the permanent prohibition of blood donation for men who have had sexual relations with other men. We received a letter from a complainant, raising the issue regarding the position of the Blood Transfusion Centre of Slovenia that men who have had sexual relations with other men must not donate blood. The complainant pointed out that he understood that experts want to reduce the risk of contracting HIV, but did not agree that all homosexuals were treated as promiscuous; he argued in favour of more proportional prohibition, e.g. that homosexuals may donate blood if they have had sexual relations a year before or if they live in a monogamous partnership.

Donation is regulated by the Blood Supply Act (ZPKrv-1). An important principle of this Act is safe blood transfusion and the related right of patients to receive safe blood (paragraph two of Article 2). Article 21 (chapter “*Provisions on the quality and safety of blood and blood components*”) of said Act stipulates who suitable blood donors are and that “*physicians must not allow blood to be collected if they establish that the person who wishes to donate blood must be temporarily or permanently deferred on the basis of the criteria of medical experts*”. Article 22 of the ZPKrv-1 stipulates that, prior to donating blood or blood components, “*blood donors must be examined and a questionnaire on the donor’s suitability must be filled in*” and that professionally qualified health care workers “*are responsible for providing information to blood donors and collecting the information from blood donors, which are required to assess their suitability for blood donation, and must assess if they are suitable on this basis*”; Article 39 stipulates fines for physicians who collect blood from persons who should be deferred as blood donors.

Professional medical conditions, and manners and procedures to establish if blood donors are suitable for blood collection, and the content and scope of information a transfusion institute or centre must provide to future blood donors, and the scope of information required from blood donors prior to the collection of blood are determined in the Rules on the technical and medical requirements for blood collection. The Rules also determine the criteria on the suitability of blood donors to donate blood. Pursuant to Article 16 of the Rules, this aims to protect the health of recipients against the transmission of diseases or other harmful effects of the transfusion of blood and blood products, and to protect the health of blood donors against potentially harmful effects of blood collection. Article 17 stipulates that the criteria on the suitability of blood donors to donate blood refer to data obtained from medical history and the examination of blood donors, and may change according to expert findings.

Article 8 stipulates that when selecting blood donors, their personal data must be obtained to identify them, a questionnaire including medical history must be filled in and signed, and a consent for blood collection, which includes a statement on receiving facts related to blood donation, must be signed. Article 10 stipulates that blood donors must fill in a questionnaire to obtain the history of current general medical condition and past diseases, while Article 11 stipulates that general and special questionnaires are used to obtain information on blood donors (a general questionnaire is used to obtain information from repetitive blood donors on their general well-being, and current and past medical condition; risk of contracting HIV/HBV/HCV; risk of transmitting Creutzfeldt–Jakob disease; risk of infection when travelling abroad; risk of infection due to risky lifestyle; a special questionnaire includes additional questions to obtain information from blood donors who donate blood or blood components with apheresis for the first time).

Appendix no. 2 to the said Rules is entitled Acceptability criteria for donors of whole blood and blood components. Category “*Criteria for permanent deferral of donors of allogeneic blood and blood components*” under point B1 of these criteria also state sexual behaviour of persons “*who are exposed to a higher risk of contracting infectious diseases that may be transmitted by blood due to their sexual behaviour*”.

The regulation of this field is additionally clarified by the fact that the ZPKrv-1 and the Rules on the technical and medical requirements for blood collection are based on Commission Directive 2004/33/EC of 22 March 2004 implementing Directive 2002/98/EC of the European Parliament and of the Council as regards certain technical requirements for blood and blood components, which also means that European Union law is implemented.

EU Member States approached the transposition of said Directive in their legislation differently. Final proposals of the Advocate General in case C-528/13 of 17 July 2014 show that “*Spain and Italy provide only for temporary deferral in the case of multiple partners or a change of partner, regardless of the nature of the relationship in question [...] ; Slovakia [...] and, most recently, Finland and the United Kingdom have adopted a 12-month abstinence requirement for men who declare that they have had sexual relations with another man*” (the United Kingdom subsequently shortened the said 12-month abstinence to three months). In the case in question, the Court of Justice of the European Union decided on the compliance of the French regulation with the European Union law, under which national authorities deferred a man from donating blood, as he has had sexual relations with another man (the regulation applicable at the time explicitly stated that there was a permanent contraindication to donating blood if the person was “*a man who has had sexual relations with another man*”), and concluded in its judgment that such a regulation is not necessarily non-compliant with the European Union law. As the Court stated, the criterion for permanent deferral of donating blood from the provision of Directive 2002/98/EC of the European Parliament and of the Council as regards certain technical requirements for blood and blood components, which refers to sexual behaviour, “*includes a case in which a Member State, in view of the situation in this country, lays down the permanent contraindication to donating blood for men who have had sexual relations with men if, while taking into account current medical, scientific and epidemiological findings and data, it is established that such persons, due to their sexual behaviour, are exposed to a higher risk of contracting infectious diseases that may be transmitted by blood, and that, while taking into account the principle of proportionality, there are no effective procedures to discover such infectious diseases, or if there are no such procedures, there are manners to ensure a high level of recipients' health protection, which are less restrictive than such contraindication. The task of the national court is to assess whether these conditions have been met in the Member State in question.*”

The basic purpose of regulating blood supply is to ensure a high level of recipients' health protection and the related issue of selecting persons suitable for blood donation, which is primarily an expert issue. According to the Ombudsman, regulations applicable in Slovenia do not show that men who have had sexual relations with other men are permanently excluded from the list of blood donors.

However, the website of the Blood Transfusion Centre of Slovenia states that "*men who have had sexual relations with other men*" must not donate blood. In this regard, the following explanation was also published: "*The position of transfusion experts is that men who have had sexual relations with other men must never donate blood*", and that this position "*is based on the criterion adopted by the European community, which determines that persons who are exposed to a higher risk of contracting infectious diseases that may be transmitted by blood due to their sexual behaviour are permanently deferred from blood donation*". Regarding this position, it should, first and foremost, be noted that **the European Union has no uniform criterion for deferral of men who have had sexual relations with men from blood donation; instead, Member States regulate this field differently with more or less invasive measures to protect blood recipients' rights related to the protection of their health.**

Spain and Italy have less invasive measures, which apply only temporary deferral regarding risky sexual behaviour, which is neutral regarding gender and sexual orientation. The (former) French regulation may be deemed more invasive, as it permanently prohibits blood donation if the person is "*a man who has had sexual relations with men*". Judgment of the Court of Justice of the European Union in case C-528/13 also shows that **deferral from blood donation for men who have had sexual relations with men may constitute discrimination on grounds of sexual orientation within the meaning of paragraph one of Article 21 of the EU Charter of Fundamental Rights**, while point 52 explicitly states that "*any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others*".

In the case of Slovenian regulations, the limitation on the exercise of rights (i.e. permanent deferral of men who have had sexual relations with another man from blood donation) is not provided for by law, but arises merely from "the position of transfusion experts". Particularly emphasised should be the significant difference between Slovenian regulations and (former) French regulations judged by the Court of Justice of the European Union in case C-528/13: in Slovenia, the prohibition of blood donation for men who have had sexual relations with men is based on the position of transfusion experts, not on a legal regulation; on the other hand, (former) prohibition in France stemmed from an appendix to the ordinance determining the criteria for the selection of blood donors of 12 January 2009, and in this regard, the Court found that the fact that the prohibition was provided by law within the meaning of paragraph one of Article 52 of the Charter was not disputable. The response to the Ombudsman's question whether the Blood Transfusion Centre of Slovenia contacted the Ministry of Health with proposals for their amendment, in view of the fact that regulations do not stipulate any prohibition of blood donation for men who have had sexual relations with other men, and that such prohibition was determined by the Centre, referring to the opinion of transfusion experts, does not say whether the Centre did so.

It should also be pointed out that the Court of Justice of the European Union in Judgment no. C-528/13 defined exactly the conditions on which (law-based) permanent deferral of men who have had sexual relations with other men from donating blood would comply with the prohibition of discrimination: "*if, while taking into account current medical, scientific and epidemiological findings and data, it is established that such persons, due to their sexual behaviour, are exposed to a higher risk of contracting infectious diseases that may be transmitted by blood, and that, while taking into account the principle of proportionality, there are no effective procedures to discover such infectious diseases, or there are no such procedures.*"

Also from this aspect, the Ombudsman addressed a question to the Blood Transfusion Centre of Slovenia whether they find that there are new medical, scientific and epidemiological findings on the risk of contracting infectious diseases that may be transmitted by blood for men who have had sexual relations with men, and that there are new effective procedures to discover such infectious diseases, which point to the fact that transfusion experts could change their position on the fact that men who have had sexual relations with other

men must never give blood, particularly towards regulating prohibition that is neutral regarding gender and sexual orientation. Their response shows that changed criteria and the medical questionnaire, which is a standard test of the suitability of blood donors, were last revised in 2016.

Medical, scientific and epidemiological findings are based on the report of the National Institute of Public Health Epidemiological surveillance of infectious diseases in Slovenia in 2016, which shows that between 2007 and 2016, each year saw a larger share of newly diagnosed HIV infections among men who have had sexual relations with men. In 2016, there were 56 cases of newly diagnosed HIV infections among men, 46 of whom were men who were infected by having sexual relations with other men, which is 19 more than in 2015. These data should be the expert basis of the preservation of the criteria of permanent deferral of men who have had sexual relations with men.

In its response to the Ombudsman, the Blood Transfusion Centre of Slovenia also stated that "*the introduction of changes to the criteria for the selection of blood donors in the field of risky sexual behaviour in Europe and the world shows that risky sexual behaviour and risks of transferring diseases by blood must be defined anew*". By monitoring changes abroad, the said Institute planned to update the expert criteria for the selection of blood donors with the assistance of other medical experts (infectologists, epidemiologists), which includes redefining risky sexual behaviour. Similar to other states, they preferred in-depth additional medical history, with the help of which they would only defer individuals with risky sexual behaviour at risk of transmitting diseases to patients by blood transfusion.

It seems that the current practice of the Blood Transfusion Centre of Slovenia, which permanently defers men who have had sexual relations with men, is discriminatory, since there is no suitable legal basis for such limitations. Therefore, the Ombudsman then contacted the Ministry of Health with a proposal, while taking into account the principle of proportionality referred to in Judgment of the Court of Justice of the European Union no. C-528/13 and in cooperation with medical experts, to study the need for permanent prohibition of blood donation for men who have had sexual relations with men – and if the Ministry found on this basis that the reasons for such a prohibition still exist, to propose suitable amendments to legal bases with the aim to meet the requirement referred to in paragraph one of Article 52 of the EU Charter of Fundamental Rights, which stipulates any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law. In July of the reporting year, the addressed ministry informed us that it had requested the opinion on the described problems of the expanded professional board for transfusion medicine, and that it would inform us with its response once they have received it. (1.3-4/2018)

On certain constitutional and convention aspects of legislation which regulates the partnership of two women or two men

As written in our Annual Report for 2016, the National Assembly of the Republic of Slovenia contributed to ground-breaking shifts in the equation of rights of same-sex couples by adopting the Civil Union Act (ZPZ) (adopted on 21 April 2016, in force since 24 May 2016, applicable since 24 February 2017), since the new regulation equates most rights of same-sex couples with the rights of opposite-sex couples – despite the adoption of the ZPZ, certain issues remain open, e.g. Regulation of joint adoptions of same-sex couples and their options of biomedically-assisted procreation. In this regard, the Ombudsman was expected to contribute to changes of the situation (only a few days after the ZPZ commenced to apply, we received a complaint asking us whether the Ombudsman intended to file a request for a review of the constitutionality of provisions "*which prohibit adoption for partners in a formal or non-formal civil union*").

Within the consideration of the problem in question, we initially contacted the Ministry of Labour, Family, Social Affairs and Equal Opportunities, which, pursuant to Article 28 of the ZDU-1, is also responsible for performing tasks in the field of equal opportunities, family and social affairs, and pointed out what we reiterate here.

On the basis of paragraph two of Article 2 of the ZPZ and paragraph two of Article 3 of the same Act, civil union and non-formal civil union equal a marriage or cohabitation regarding legal consequences in all legal fields, except in the joint adoption of children and in biomedically-assisted procreation procedures. The Constitutional Court of the Republic of Slovenia has already stated that a registered partnership is "a

relationship whose content is similar to the content of a marriage or cohabitation"; however, a decision that referred to the exercise of human rights to (intestate) succession (after a deceased partner) states that the position of partners in a stable actual same-sex partnership is "in essential actual bases, comparable to the position of cohabitants". The Court has also stated that "discriminatory treatment occurs when the state (on the basis of personal circumstances) treats individuals in the same situation differently"; point 13 adds: "In view of all these actually the same actual and legal bases of partnerships – registered same-sex union and union of a woman and a man, it turns out that the difference in the regulation of succession is not based on a real, impersonal difference but on sexual orientation. Although it is not explicitly stated, sexual orientation is undoubtedly a personal circumstance referred to in paragraph one of Article 14 of the Constitution. It is a personality trait that significantly defines individuals, affects their lives and, like other circumstances, e.g. race, gender, birth, is there their whole lives. The European Convention on Human Rights also perceives sexual orientation as a circumstance on grounds of which discrimination is prohibited, although it is not among explicitly stated circumstances in Article 14 of the European Convention on Human Rights."

The aforementioned suggests that different treatment of individuals on grounds of sexual orientation interferes with the right of individuals to non-discriminatory treatment (paragraph one of Article 14 of the Constitution of the Republic of Slovenia), but an interference with human rights is constitutionally admissible only if it is based on a constitutionally admissible aim, i.e. factually justified (paragraph three of Article 15 of the Constitution) and complies with the general principle of proportionality as one of the principles of the rule of law (Article 2 of the Constitution of the Republic of Slovenia), which is assessed in the case law of the Constitutional Court on the basis of the so-called strict proportionality test (three aspects of the interference, i.e. the assessment of necessity, appropriateness and proportionality of the interference in its narrow sense if it is established beforehand that the limitation is based on constitutionally admissible aim). **Therefore, a question arises on constitutionally admissible reasons that would justify the difference referred to in paragraph three of Article 4 and paragraph four of Article 3 of the ZPZ (according to which, partners cannot adopt children together and are not eligible for biomedically-assisted procreation procedures), and on this basis, a question of potential discrimination on grounds of sexual orientation.**

Taking into account that, pursuant to paragraph one of Article 43 of the ZVarCP, the Ombudsman reports to the National Assembly in regular reports on its work and findings on the level of respect for human rights and fundamental freedoms, and legal security in the Republic of Slovenia, **the Ombudsman particularly points out in its annual report that the first sentence of paragraph three of Article 2 (which reads: "Civil union partners cannot adopt children together.") and the first sentence of paragraph four of Article 3 (which reads: "Partners living in a non-formal civil union cannot adopt children together.") of the ZPZ seem to be constitutionally questionable.**

Legislative material shows what led the legislator to adopt the provision of paragraph three of Article 2 and paragraph four of Article 3 of the ZPZ. The legislator's main position when adopting the ZPZ was an attempt to introduce equality of same-sex partners; however, the legislator was bound by the results of the referendum of 20 December 2015, in which voters voted against the introduction of the Act Amending the Marriage and Family Relations Act (ZZZDR-D).

Due to the provision of Article 25 of the Referendum and Popular Initiative Act (ZLI), which stipulates that the National Assembly pass an act the content of which is in contravention of the voters' decision in terms of content a year after the results of a referendum have been declared, the legislator, in the preparation of the regulation, was bound by the results of a subsequent legislative referendum in which voters voted against the introduction of the ZZZDR-D. The proposer of the ZPZ also stated: "*However, the latter [the results of the referendum, note by the Ombudsman] does not prevent the National Assembly from attempting to introduce the equality of same-sex partners in fields opponents did not contradict at the referendum.*"

As the proposed ZPZ was being passed, the National Assembly arrived at a political consensus that voters, by rejecting the ZZZDR-D at the referendum, expressed their opposition to regulation that would equate the position of same-sex partners when designating their partnership (marriage), in joint adoptions and biomedically-assisted procreation procedures.

The will of the people expressed at the referendum is the reason that the ZPZ explicitly prevents same-sex partners in a formal or non-formal civil union from adopting children together.

However, such a legislator's argument may only be understood up to the moment when, pursuant to the provision of Article 25 of the ZRLI, the argument was bound by the results of the referendum, which in the concrete case, means until 20 December 2016. The statements of the Constitutional Court of the Republic of Slovenia indicate an option or duty of the legislator "*to ensure the respect for the Constitution by realising its fundamental responsibility by suitably amending a regulation if it assesses that it does not comply with the Constitution or the law*". It must be established that the National Assembly already attempted to ensure the respect for values protected under Articles 14, 34, 35, 38, 53 and 56 of the Constitution of the Republic of Slovenia in the field of joint adoptions of same-sex partners.

On 7 December 2009, the Government of the Republic of Slovenia proposed that the National Assembly passes the Family Code. Initially, the proposed Family Code defined marriage as a partnership of two persons of the same or opposite sex. As stated by the proposer: "*In the chapter on adoptions, the proposed Family Code explicitly states that spouses or cohabitants may adopt a child together. Therefore, the proposed Family Code enables same-sex partners to start a family by adoption. In this regard, the proposer assesses that the equation of legal regulation of same-sex and heterosexual partnerships includes equation in relation to third parties – the proposer believes that there is no constitutionally admissible reason for another type of legal regulation.*"

A political consensus was reached in the legislative procedure, according to which same-sex partners could only enter a civil union instead of marrying, and adoptions by same-sex partners were limited to the adoption of biological children of the partner. The Act was passed in this form, but rejected at the referendum on 25 March 2012. On 3 March 2015, the legislator passed the ZZZDR-D mentioned above, with which it attempted to introduce full equality of same-sex partners by law, including in joint adoptions. On page 5 of the Act Amending the Marriage and Family Relations Act, the proposer stated regarding joint adoptions by same-sex partners that "*it sees no real reason that is not based on a personal circumstance, i.e. sexual orientation, for which adoptions should not be allowed*".

However, a group of voters filed an initiative to call a subsequent referendum on the ZZZDR-D. The National Assembly rejected the call for a legislative referendum with a justification that it refers to the act that eliminates unconstitutionality; however, the Constitutional Court of the Republic of Slovenia annulled the decision of the National Assembly. Following the decision on the referendum of 20 December 2015, the ZZZDR-D was not introduced, since 63.51 per cent of voters who cast valid ballots voted against it, and the referendum quorum was reached – 23.03 per cent of all voters cast their votes. **This means that the legislator attempted to equate the position of same-sex partners regarding adoptions, but was prevented from doing so by the will of the people who cast their votes at the referendum.**

In the highlighted provisions of the ZPZ prevent joint adoption of children by same-sex partners in a formal or non-formal civil union; in such an arrangement, we may also perceive discrimination on grounds of sexual orientation (Article 14 of the Constitution of the Republic of Slovenia), inadmissible interference with dignity (Article 34 of the Constitution of the Republic of Slovenia), the protection of privacy and personal data (Articles 35 and 38 of the Constitution of the Republic of Slovenia), incompatibility with the best interest of the child (Articles 53 and 56 of the Constitution of the Republic of Slovenia), and contravention of the principle of internal compliance and cohesion of legislation (Article 2 of the Constitution of the Republic of Slovenia), as well as in compliance with two ratified international treaties (the Convention on the Rights of the Child, the Act notifying succession to United Nations Conventions and Conventions Adopted by the International Atomic Energy Agency, entry into force in the Republic of Slovenia: 25 June 1991, and the Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, the Act ratifying the Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette of the Republic of Slovenia – International Treaties, No. 8/10).

In its practice with the assessment of the justification of allegations regarding unequal, discriminatory treatment, the Constitutional Court of the Republic of Slovenia devised a test that requires answers to the following questions: "1. Does the alleged different treatment refer to the provision of exercise of a human right or fundamental freedom?; 2. If yes, are the initiator and the person the initiator is compared with treated

differently?; 3. Are the actual positions the initiator compares the same and is the difference based on the circumstance referred to in paragraph one of Article 14 of the Constitution; and 4. If it involves the difference of the circumstance referred to in paragraph one of Article 14 of the Constitution and thus, an interference with the right to non-discriminatory treatment, is such interference constitutionally admissible?"

Paragraph one of Article 56 of the Constitution stipulates: "Children shall enjoy special protection and care. Children shall enjoy human rights and fundamental freedoms consistent with their age and maturity"; paragraph three of the same Article also states: "Children and minors who are not cared for by their parents, who have no parents or who are without proper family care shall enjoy the special protection of the state. Their position shall be regulated by law."

The legal regulation of adoption is also part of special protection and care for children stemming from Article 56 of the Constitution.

Article 7 of the ZZZDR stipulates: "*Adoption, as a special form of protection of young children, shall create the same relations between adopter and adoptee as between parents and children*"; similar is stipulated by Article 9 of the Family Code: "*Adoption is a special form of protection of children which establishes between the adoptive parent and the child a legal relationship equal to the relationship between parents and their children*". **The significance of adoption as a legal arrangement is shown in two directions – firstly, as a provision of suitable family care for children who have no parents or parents do not provide such care, and secondly, as a form to enable potential adoptive parents to establish family life.**

The legislator's exclusion of same-sex partnerships from the possibility of joint adoption in advance is primarily an interference with the right of children to be provided with a wide range of potential adoptive parents to pursue their best interest (under Article 3 of the Convention on the Rights of the Child, the Republic of Slovenia is committed to taking into account the best interest of the child in all activities regarding children), which is the most important principle of the adoption procedure. Adoption is one of the most important forms of special protection of children and minors who are not cared for by their parents, who have no parents or who are without proper family care. Also in adoption procedures, the best interest of the child is the main principle of decision making.

The legislator's exclusion of partners in a (non)formal civil union from the possibility of joint adoption is therefore perceived in contravention of the principle of the best interest of the child. It is not impossible to imagine circumstances in which it could turn out that joint adoption by same-sex partners in a (non)formal civil union is in the best interest of the child. In this regard, we wish to remind, for illustrative purposes, of a situation when "*a child's parents die in a traffic accident and the child's relations with their uncle (or aunt) who lives in a same-sex partnership were very good*". In this case, joint adoption by the uncle (or aunt) and their partner, i.e. joint adoption by same-sex partners, may well be in the best interest of the child.

We should further point out that **if the legislator excludes same-sex partnerships from the possibility of joint adoption only on the basis of sexual orientation of partners, such an arrangement, whose inevitable consequence is the establishment of the gender and sexual orientation of partners in joint adoption procedures, constitutes an interference of the state with an individual's most intimate part of life, and an interference with an individual's dignity (Article 34 of the Constitution of the Republic of Slovenia), their privacy and personality rights (Article 35 of the Constitution of the Republic of Slovenia), the protection of personal data (Article 38 of the Constitution of the Republic of Slovenia) and with the negative aspect of the respect of family life (paragraph three Article 53 of the Constitution of the Republic of Slovenia).** Sexual orientation is a very sensitive piece of personal data which is allowed to be processed only in cases when a constitutionally admissible aim is demonstrated, and the interference complies with the general principle of proportionality. In (joint) adoption procedures, the partnership type of two individuals (marriage, cohabitation, (non)formal civil union) reflects sexual orientation of individuals, but **this does not seem to provide the legislator with the basis to bind further legal consequences, such as the possibility of joint adoption, to such sensitive information, since it is not clear what objective the legislator pursues with an interference with this right. At the abstract level, the information of the gender and sexual orientation of potential**

¹ Tomaž Pavčnik, Posvojitev – pravno ali politično vprašanje? (Adoption – a legal or political issue?), contribution of 29 September 2011, available at: <http://www.delo.si/mnenja/gostujejo-pero/posvojitev-ndash-pravno-ali-politicno-vprasanje.html>

adoptive parents may be in contravention of the pursuit of constitutionally or conventionally admissible aims (e.g. the pursuit of the best interest of the child). Only during the consideration of a concrete case, may it turn out that parents' sexual orientation is an important circumstance (e.g. as mentioned above, due to a child's experience of life in a same-sex partnership).

Current regulation also constitutes an interference with the positive aspect of the right to respect for family life referred to in paragraph three of Article 53, which stipulates: "*The state shall protect the family, motherhood, fatherhood, children, and young people and shall create the necessary conditions for such protection.*" The Constitutional Court of the Republic of Slovenia stated among other things: "*Paragraph three of Article 53 of the Constitution particularly highlights the positive aspect of the right to respect for family life, i.e. the duty of the state to facilitate the establishment and protection of family life in its territory with suitable legal regulations and by creating suitable conditions.*" The same point also stipulates: "*Paragraph three of Article 53 of the Constitution is about the protection of the family, but does not stipulate in more detail the content and range of the right to respect for family life. Taking into account Article 8, paragraph two of Article 153 and paragraph five of Article 15 of the Constitution, the interpretation of the right to respect for family life must also consider numerous international instruments which, in comparison with paragraph three of Article 53 of the Constitution, define the content and range of this right in more detail.*" According to the judgment of the European Court of Human Rights (hereinafter: ECHR) in the case Dubois and Gas v. France² of 15 June 2012, which referred to the adoption of a child by same-sex female partners³, the existence of "family life" of the applicants should be acknowledged within the meaning of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: European Convention on Human Rights) and sexual orientation is part of private life protected by Article 8 of the European Convention on Human Rights. On this basis, the ECHR concluded that the considered case **was part of the framework of at least one article of the European Convention on Human Rights, which may be related to Article 14 of the European Convention on Human Rights, i.e. the prohibition of discrimination on grounds of personal circumstances.** In addition, the ECHR stated⁴ in the judgment in the case E. B. v. France⁵ of 22 January 2008 that **different treatment in an adoption procedure, which is based on the applicant's sexual orientation, constituted discrimination within the meaning of the European Convention on Human Rights.** In Decision no. G 119-120/2014-12 of 11 December 2014, the above-mentioned was referred to by the Constitutional Court of Austria when it annulled the prohibition of joint adoption for same-sex partners in Austria. Point 5 of said judgment stated that regulations that regulate adoption are part of the framework of the field protected under Article 8 of the European Convention on Human Rights, due to which Article 14 of the European Convention on Human Rights must be observed when applying these regulations.

Same-sex couples too have the right to the protection of family life; the state must provide such couples with the same legal status as opposite-sex partners have when establishing and protecting their family life. **Adoptions are always a (two-way) relationship which primarily pursues the best interest of the child; however, the needs and interests of potential adoptive parents must not be completely ignored.** In this relationship, adoptive parents meet their emotional needs and interests protected under the right to the protection of family life. Denying same-sex couples the possibility of joint adoption in advance may mean denying them the recognition and credibility of their emotional needs and interests related to the protection of family life, and denying their dignity.

Pursuant to the provision of Article 135 of the ZZZDR, only spouses have the possibility of joint adoption. The Family Code (which entered into force on 15 April 2017, and commenced to apply on 15 April 2019) brings changes in this field: paragraph one of Article 213 stipulates: "*Spouses or cohabitants may adopt a child only jointly, except in cases where one of them adopts the child of their spouse or cohabitant.*" Paragraph two of the same Article states: "*By exception, a single person who is not married or cohabiting may adopt a child in cases where this is in the best interests of the child.*" The new arrangement of joint adoptions does not only provide this opportunity to spouses but it introduced joint adoption for cohabitants too. The Family Code also stipulates that joint adoption has an advantage over second-parent adoption – if adoption by spouses or cohabitants cannot be realised, only one person may adopt. In accordance with the regulation that applies (ZZZDR), the

² Application no. 25951/07.

³ Point 37.

⁴ Point 93.

⁵ Application no. 43546/02.

position of partners in a formal or non-formal civil union regarding joint adoption is worse than the position of spouses. In accordance with the regulation that is in force (Family Code), the position of partners in a formal or non-formal civil union regarding joint adoption is worse than the position of spouses or cohabitants. The decisions of the ECHR in the case X and Others v. Austria, and Gas and Dubois v. France (both cases involve second-parent adoption) gave rise to the position of the ECHR that arrangements which facilitate second-parent adoption in (opposite-sex) cohabitations must provide the same to same-sex partners.

By analogy, we may conclude that if an arrangement facilitates second-parent adoption in (opposite-sex) cohabitations, it must provide the same to same-sex partners. The provision of paragraph one of Article 213 of the Family Code facilitates and even orders joint adoption for cohabitants, while it does not enable same-sex partners in a (non) formal civil union to do the same. **In addition, the applicable legislation treats same-sex couples who adopted a child together abroad and same-sex couples who would like to adopt a child in Slovenia differently; the legislation enables the first-mentioned to adopt a child together by recognising a foreign court decision, and prevents the last-mentioned from adopting a child together with the provisions refuted here.**

We further wish to again draw attention to the indications of the Constitutional Court of the Republic of Slovenia that "*in modern society, there are no longer any differences in opinions that same-sex couples, just like opposite-sex couples, create loving and permanent partnerships*" and that a registered partnership (a registered partnership could also be concluded prior to the Civil Partnership Registration Act (ZRIPS), but this institute was replaced by a civil union with the introduction of the ZPZ – six months after the ZPZ commenced to apply, registered partnerships transformed into civil unions if partners did not provide a statement referred to in paragraph three or four of this Article) is a relationship whose content is similar to the content of a marriage or cohabitation. Stable connection of two close persons, and mutual help and support may be recognised as being characteristic of a civil union. The legal regulation of a civil union is similar to that of a marriage with the exception of a possibility of joint adoption and biomedically-assisted procreation.

The purpose of adoption is to find parents for a child whose biological parents do not provide them with suitable family care, who can offer the child the most suitable home in every respect (in point 42 of the judgment in the case Frette v. France of 26 February 2002 states: "... *State must see to it that the persons chosen to adopt are those who can offer the child the most suitable home in every respect.*")"). Domestic legal theory states that "*by adoption, the law realises special protection of the best interest of the child provided by the Constitution for children who are not cared for by their parents, who have no parents or who are without proper family care* (Article 56 of the Constitution of the Republic of Slovenia)". The statement that partners in a (non)formal civil union cannot provide children with a safe and loving environment means that such partners cannot provide children with a safe and loving environment only due to their sexual orientation.

Last but not least – the applicable legislation in Slovenia already recognises families in which both parents are of the same gender; they may reach this position by adopting a stepchild (this adoption means that a partner from a (non)formal civil union adopts a biological child of their partner), with successive adoption (this adoption means that a partner from a (non)formal civil union adopts an adopted child of their partner) or by recognising a foreign judgment on joint adoption of a child by same-sex couples. The legal recognition of such families is contrary to positions that there are legal (or actual) reservations or reasons which would lead to a conclusion that partners in a (non)formal civil union, who would adopt a child together, cannot provide a safe and loving environment. Moreover, **an arrangement which, on the one hand, allows same-sex parenthood, but at the same time, prevents same-sex partners from adopting a child together, is in contravention of the principle of internal compliance and cohesion of legislation referred to in Article 2 of the Constitution of the Republic of Slovenia** (the Constitutional Court of Austria also states that the prohibition of joint adoption for same-sex partners, while recognising the right to parenthood in same-sex partnerships is inconsistent and contradictory).

Although sexual orientation is not explicitly mentioned as one of the personal circumstances referred to in paragraph one of Article 14 of the Constitution of the Republic of Slovenia, the Constitutional Court of the Republic of Slovenia deemed it a circumstance on whose ground discrimination is prohibited. **An arrangement which prevents same-sex partners in a formal or non-formal civil union from adopting a child together is an interference with their right to non-discriminatory treatment (paragraph one of Article 14 of the Constitution of the Republic of Slovenia)** Such an interference is constitutionally admissible only if it is based

on constitutionally admissible (really justifiable) aim and complies with the general principle of proportionality. In this regard, we would like to draw attention to the position of the ECHR in the case *E. B. v. France* that in cases when the basis for distinction is sexual orientation, particularly convincing and justified reasons justifying unequal treatment in the exercise of the rights referred to in Article 8 of the European Convention on Human Rights must be found. And – a Slovenian court (Decision of the Supreme Court of the Republic of Slovenia, Ref. No. II Ips 462/2009 of 29 January 2010), when deciding on the request for the protection of legality due to the recognition of a foreign court decision on the adoption of a child, did not establish that the effects of the recognition of a foreign judgment were in contravention of the legislation of the Republic of Slovenia (or in contravention of the best interest of the adopted child, which the court had to consider *ex officio*).

The Republic of Slovenia is also a signatory of the Protocol No. 12 to the European Convention on Human Rights, which entered into force for Slovenia on 1 November 2010. In paragraph one of Article 1, signatories to the Protocol undertake that "*the enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*". In comparison with paragraph one of Article 14 of the Constitution of the Republic of Slovenia, the aforementioned means wider protection against discrimination, as it does not refer only to the provision of equal human rights and fundamental freedoms (supported by the Constitution) but to the enjoyment of any right set forth by law.

The Steering Committee of the Council of Europe prepared the Explanatory Report to the Protocol No. 12 to the European Convention on Human Rights, which was adopted on 26 June 2000 by the Committee of Ministers, Rome, 4 November 2000. In this regard, point 22 of the Report that addresses the issue of the scope of protection against discrimination, as provided by the Protocol No. 12 to the European Convention on Human Rights, is particularly important. Indent three of this point states that the provision of Article 1 of the Protocol No. 12 to the European Convention on Human Rights concerns cases where a person is discriminated against by a public authority in the exercise of discretionary power.

The legislator's discretion is thus limited with the protection against discrimination; whenever the National Assembly regulates issues under its responsibility, all legal addressees in a similar or the same situation must be ensured the same legal position. In the case in question, it seems that the position of same-sex partners in a (non)formal civil union regarding joint adoption procedures is worse than the position of spouses and cohabitants only due to their sexual orientation. Such an arrangement would constitute discrimination prohibited by Protocol No. 12 to the European Convention on Human Rights (and paragraph two of Article 153 of the Constitution of the Republic of Slovenia stipulates that laws must be in conformity with valid treaties ratified by the National Assembly).

2.1.4 Discrimination maintained also on grounds of other circumstances

People also contact the Ombudsman to maintain discrimination on grounds of other circumstances. For illustration, we present a case in more detail, in which a complainant maintained **discrimination on grounds of age** as she attempted to exercise the right to subsidised transport. She was a full-time 36-year-old student who claimed that the regulation did not enable her to exercise the right to a subsidised pass due to her age. She pointed out that she had three children and that transport costs were very high in view of her financial ability, which is why she had been forced to take a year off.

Pursuant to indent three of paragraph one of Article 114.b of the Road Transport Act (ZPCP-2), beneficiaries of subsidised transport are applicants who reside at least two kilometres away from their place of education, receive education under publicly accredited education or study programmes, and have the status of a student, but only until the age of 32 if they enrolled in a higher education programme of the first or second cycle before turning 27. Such a provision could constitute discrimination on grounds of age (the age condition of 32 years with an additional age condition of 27 years at first enrolment) when exercising the right to subsidised transport for students (relation to paragraph two of Article 4 of the Protection Against Discrimination Act (ZVarD)). For this reason, the Ombudsman contacted the Ministry of Infrastructure to state its position on the alleged violation of the prohibition of discrimination.

The Ministry explained that, in 2014, they proposed, as part of austerity measures and greater supervision of the eligibility of applicants to subsidised transport, the maximum age of beneficiaries to stand at 26 years of age, since the number of beneficiaries and users of more cost-efficient annual and semi-annual passes had increased each year. The Student Union opposed this proposal; therefore, the Ministry took into account their proposal to harmonise the right to subsidised transport with paragraph one of the Article 13 of the Scholarship Act (ZŠtip-1) when amending the Act. The Ministry believes that the case of Article 114.b of the ZPCP-2 is not about discrimination, since limits have been harmonised with other age limits in comparable fields (in addition to the ZŠtip-1, the Ministry also states the example of compulsory health insurance of children as family members until they turn 26 if they are included in full-time schooling); when preparing the proposal, they wanted to encourage young people to complete their education more speedily.

The Ombudsman believes that the said arguments are not very convincing. Discrimination cannot be justified with an argument that the disputable regulation relies on the regulation of comparable legal institutes. In addition, the objective of speedy completion of education is already pursued by the time limit on the status of a student (Article 70 of the Higher Education Act (ZVis in relation to Article 66 of the same Act); therefore, it is not incomprehensible in what sense age discrimination in subsidised transport contributes to the same objective. In the concrete case, an additional relevant element was the fact that the student was a mother of three children. Her motherhood could be a personal circumstance on whose ground discrimination is prohibited.

Nevertheless, **it could not be realistically expected for the position of the student, who is a year and a half away from completing her studies, to improve during this time on the basis of a potential recommendation of the Ombudsman to the Ministry to eliminate discrimination. This is also drawn from experience with five years of unsuccessful efforts of the Ombudsman to eliminate the discrimination against disabled students**, where the Ministry (unlike this case) even recognised discrimination. We believed that, in the given case, options provided by the ZVarD should be utilised to solve the student's problems, i.e. the lawsuit on the basis of paragraph one of Article 39 of the ZVarD, which could be used to request discrimination to stop and to request payment of compensation for discrimination (this would also constitute the much needed case law in the field of discrimination), and a proposal for the Advocate of the Principle of Equality to consider a case of discrimination (Article 33 of the ZVarD). The complainant did so but we are not familiar with further developments.

2.2

PROTECTION OF DIGNITY, PERSONALITY RIGHTS, SAFETY AND PRIVACY

Field of work	Cases considered			Resolved and founded		
	2017	2018	Index 18/17	No. of resolved	No. of founded	Share of founded among resolved (in %)
2. Protection of dignity, personality rights, safety and privacy	69	62	89.9	60	2	3.3
2.1 Protection of personal data and other privacy aspects	69	50	72.5	48	1	2.1
2.2 Protection of personality rights		3		3	1	33.3
2.3 Prevention, suppression and punishment of trafficking in persons		1		1	0	0.0
2.4 Reparation		5		5	0	0.0
2.5 Protection of dignity, personality rights, safety and privacy – other		3		3	0	0.0

2.2.1 On the protection of personal data and other privacy aspects

In the field of personal data protection, the most significant event was undoubtedly **the direct application of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), abbreviated to the GDPR, on 25 May 2018**. Prior to its application, much has been said about the GDPR, but it is clear that the details of its numerous actual dimensions will have to take shape in practice.

According to the explanations of the Ministry of Justice, the GDPR largely replaces the provisions of the previous Personal Data Protection Act (ZVOP-1) from 2004; persons who process personal data as part of the filing system should respect the rules from the GDPR and the rules from the ZVOP-1 which remain in use. We also considered a proposal for the new Personal Data Protection Act (ZVOP-2), which should regulate the field of personal data protection at the national level as systemically as possible. It was encouraging to see that the legislative material showed that the Ombudsman had been recognised as "*sui generis constitutional authority outside the three branches of government*" or as "*a (general) control mechanism which does not operate as an authority with its own supervisions in the field of personal data protection as a human right referred to in the Constitution of the Republic of Slovenia*"; this is reflected in the logical inclusion of the Ombudsman among proposed exceptions to inspections with regard to personal data protection (according to the proposer, this was based on "*sui generis constitutional position of the Human Rights Ombudsman pursuant to Article 159 of the Constitution of the Republic of Slovenia and its supervisory function outside authority*").

It must be pointed out that the Ombudsman's supervisory function is aimed against public authorities not against subordinate holders of human rights and fundamental freedoms (Article 159 of the Constitution of the Republic of Slovenia stipulates that the human rights and fundamental freedoms ombudsman is established "*to protect human rights and fundamental freedoms in relation to state authorities, local self-government authorities, and bearers of public authority*"; such protection in the same ratio is also mentioned in Article 1 of the ZVaCP as it states of the established Ombudsman that this Act "*establishes their jurisdiction and powers*"). Chapter III POWERS OF THE OMBUDSMAN of the ZVarCP is unambiguous – Article 23 stipulates: "*The Ombudsman shall have the powers stipulated in this Act with regard to all state authorities, local self-government bodies and holders of public authority.*"

According to the ZVarCP, the Ombudsman cannot initiate proceedings against individuals on the basis of received complaints, and also the initiation of proceedings requires the consent of the injured party if the Ombudsman wants to initiate proceedings in a certain case of their own accord (which cannot be held against an individual) (see Article 26). The Ombudsman undoubtedly also processes personal data; however, it is wrong to perceive the Ombudsman in the same way as other state authorities and deem that, merely due to the fact that it is a state authority, the Ombudsman inevitably (co)contributes to the supervision of individuals by the state.

Otherwise, the question is immediately raised why the lack of (non-judicial) supervision of personal data processing would not worry the Information Commissioner more, when, unlike the Ombudsman, the Information Commissioner is a state authority which makes decisions as an authority. Once the visual range is limited to the point where it does not reach the relevance of judicial protection, should the Roman *Quis custodiet ipsos custodes* then sound? **The proposed ZVOP-2 was considered by the then legislator from 6 April 2018 but was not promptly passed, since, based on a decree of the President of the Republic, the National Assembly was dissolved on 14 April 2018 and early elections of deputies were called.** Forecasting when and what act on personal data protection will finally be passed is a thankless job.

Within the context of more important developments in the regulatory field in 2018, **the activities of the Council of Europe towards the recast Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data** (ratified in Slovenia with the Act Ratifying the Convention for the Protection of Individuals with Automatic Processing of Personal Data (MKVP), Official Gazette of the Republic of Slovenia – International Treaties, no. 3/94) should initially be pointed out. The session of the Committee of Ministers on 18 May brought the text (in official languages) *Protocol (CETS No. 223) amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108)* or *Protocole d'amendement à la Convention pour la protection des personnes à l'égard du traitement automatisé des données à caractère personnel*. The ministers called for immediate commencement of procedures that will lead to the ratification of the said protocol at the national level as soon as possible.

European measures to prevent, detect and investigate money laundering and terrorist financing still cause frustration

In our previous report, we stated that, in the second half of 2017, the Ombudsman received numerous questions from individuals why they had to identify themselves with an identity card and state their place of birth when paying their bills or picking up their parcels at the post office of Pošta Slovenije. We also received a few complaints in 2018. Three complainants stated as a problem that, when they accepted a payable parcel from the postman or at the post office, they had to identify themselves with an identity card and state their place of birth; one complainant stated that he had to identify himself and state his place of birth when paying with a payment order at the post office.

The same explanation may apply to all these cases, i.e. that *Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds* entered into force at the end of June 2017, which lays down rules on the information on payers and payees, accompanying transfers of funds, in any currency, for the purposes of preventing, detecting and investigating money laundering and terrorist financing, where at least one of the payment service providers involved in the transfer of funds is established in the Union. Pursuant to Article 288 of the Treaty on the Functioning of the European Union, regulations are fully binding and apply directly in all Member States – pursuant to paragraph one of Article 4 of said Regulation,

the payment service provider of the payer shall ensure that transfers of funds are accompanied by the name of the payer, the payer's payment account number; and the payer's address, official personal document number, customer identification number or date and place of birth, whereby, pursuant to paragraph four of the same Article, the accuracy of the information is verified on the basis of "*documents, data or information obtained from a reliable and independent source*" before transferring funds.

What about personal data processing by political parties?

-The Ombudsman also received (a carbon copy of) a letter from a person who complained about the Slovenian Democratic Party. She pointed out that she first received a letter inviting her to a meeting of members of the Party, and a few days later, a letter in which they welcomed her as a member with an attached membership card and a questionnaire. She stated that she became member of this political party against her will – and she claimed that this was an abuse of her personal data, and requested to be erased from the record and an explanation how such an error could have occurred. The day after this, we received (a carbon copy of) a response from said political party. They apologised to the complainant and let her know that she had been erased from their records. They explained that they had received a questionnaire at the head office of the SDS, in which YES was circled next to the question if they wish to join the Slovenian Democratic Party; on this basis, they sent her a membership card and a staff questionnaire. They also expressed their regret that someone had abused this person's data, and caused her and them inconveniences.

Let us remind you that in 2016, we reported that the Ombudsman considered a case in which a complainant maintained abuse of personal data by a political party (in this case, the Democratic Party of Pensioners of Slovenia (DeSUS)), since he had received an invitation to join the party the day following his retirement.

A question therefore arises how personal data of persons who are not members of registered political parties are processed.

2.2.2 Concisely on the protection of dignity and personality rights

We still receive letters in which people refer to events from World War II or a few years after it. In such cases, we have to remind people of the fact that **the Ombudsman has publicly pointed out several times the problem of the regulation of war and post-war mass graves**. During the term of the current Ombudsman, this issue has been pointed out in all Ombudsman's Annual Report.

In the Annual Report for 2013, we emphasised respect for the human dignity of victims (and their relatives) of post-war extra-judicial proceedings and the obligation of the state to reveal the known locations of mass graves in Slovenia. We stated that the state must finally arrange a symbolic burial of the victims' remains and erect a suitable monument to enable a decent farewell for their relatives. We reiterated that "*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*". This was also presented at a press conference that we held after this Annual Report was submitted on 2 July 2014 to the then President of the National Assembly.

Our position on this issue was also similarly presented at the ceremony for the entry into Huda Jama, as well as in the said Annual Report. Furthermore, we wrote in the Annual Report for 2014 that a final solution was also required for post-war executions and decent burial of all victims, and made an appeal for us to admit our mistakes and apologise for them. We also clearly stated in the said Annual Report that there is an unfulfilled recommendation of the National Assembly to the Government of the Republic of Slovenia to ensure a decent burial for casualties of war and victims of post-war executions even before a memorial is erected. This issue was particularly stressed in the introduction to the Annual Report for 2015. In 2015, at the session of the Commission for Petitions, Human Rights and Equal Opportunities of the National Assembly held on 30 June 2015, we reported that the recommendation from the Annual Report for 2013 adopted in the National Assembly is being implemented too slowly, whereby the erection of a memorial for the construction of a monument to all victims, which was ceremoniously opened on 23 June 2015, and a discussion on an act on post-war mass

graves, which was intensively under way in the Parliament at the time, constituted a step forward. In 2016, for example on 27 October 2016, the Ombudsman attended a funeral ceremony for the victims of post-war executions in Huda Jama (Dobrava pri Mariboru Memorial Park), and pointed out this issue at the international panel discussion *Human Rights and Fundamental Freedoms: For All Times!* held in Škofja Loka on 7 December 2016, organised by the Study Centre for National Reconciliation in cooperation with some other organisations. On 20 December 2016, we published on our website an example of our work under the title *Police Also Active in Hidden Mass Graves*, which describes the Ombudsman's findings on police activities in the case of the recent discovery of human skeletons in Košnica pri Celju.

When considering such complaints, we (still) **base our findings on the belief that the state must respect the right to personal dignity of each individual even after their death**. As we stated for 2002, a state that is not willing to respect the rights of each individual even after their death does not strengthen its credibility and is not a role model for its citizens.

On the other hand, the Ombudsman received again a complaint that the Republic of Slovenia requested compensation from Germany in relation to World War II (in the Annual Report for 2012, we reported that the then representatives of the Association of Mobilised Slovenes into the German Army *expressed to the Ombudsman their wish for Slovenia to file an application for the reimbursement of compensation in Germany*; see also the Annual Report for 2011). Regarding this problem, we stated among unrealised recommendations in the Annual Report for 2014 the recommendation that *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 forcefully mobilised into the German army during World War II* is necessary.

This time, the Ombudsman was contacted by the *Slovenian Exiles Society 1941–1945*. They pointed out that, after World War II, all states that were subject to aggression were called to submit requests on war damage, that war damage in Slovenia was minutely listed and submitted at peace and reparation conferences, and that there were also data on the war damage recognised at these conferences and data that Germany compensated only 20 per cent of war damage to Yugoslavia and Slovenia. They also stated that 80,000 Slovenian exiles lost all their property and never received even a symbolic war compensation for confiscated property. Only around 8,500 of them are alive today. They further pointed out that the second and third generations of Slovenian exiles are deprived due to not only the physical and psychological suffering in exile but also the loss of property. Following the unification of Germany, requests for the payment of war damage were filed by certain European countries which were partially successful. They criticise the fact that *Slovenia, following the unification of Germany, did not put in suitable diplomatic efforts to recover at least part of war damage and that it did not file a request at least for a few billion EUR of war damage*.

There is no doubt that **there is still at least a part of Slovenian society, which not only feels hurt as the result of events in World War II but also deprived as the result of the attitude of the current state to this issues – and expects changes towards the state's more active engagement in this field**.

2.3

FREEDOM OF CONSCIENCE AND RELIGIOUS COMMUNITIES

Field of work	Cases considered			Resolved and founded		
	2017	2018	Index 18/17	No. of resolved	No. of founded	Share of founded among resolved (in %)
3. Freedom of conscience and religious communities	8	5	62.5	5	1	20.0
3.1. Freedom of conscience	8	4	50.0	4	1	25.0
3.2 Religious communities	0	0		0	0	0.0
3.3 Freedom of conscience and religious communities – other	0	1		1	0	0.0

2.3.1 The legislator still does not seem to be serious about prohibiting the organisation of religious rituals in public nurseries and schools

Like last year, we must commence again with the finding that the Ombudsman's recommendation regarding Article 72 of the Organisation and Financing of Education Act (ZOFVI), which prohibits the pursuit of confessional activities in public nurseries and schools, remains unrealised. Since media releases showed that the then Minister of Education, Science and Sport reported a case of prayer and blessing at the opening of a new branch elementary school to the Inspectorate of the Republic of Slovenia for Education and Sport, as she believed that this was a violation of the provisions of the ZOFVI, we addressed, in 2018, an enquiry to the Ministry of Education, Science and Sport about the Inspectorate's findings about the case reported by the Minister and what the Ministry's position was regarding the Inspectorate's findings from the aspect of pursuing the purpose of the provision of Article 72 of the ZOFVI prohibiting the pursuit of confessional activities in public nurseries and schools. The Ministry of Education, Science and Sport informed us that the Inspectorate, on the basis of the Minister's report, initiated proceedings and found that the event did not violate Article 72 of the ZOFVI, since the premises had not been transferred from the Municipality to the school for management and no classes were held that day at this school, since it was its day off. The Ministry did not want to state its position regarding the Inspectorate's findings by referring to Article 4 of the Inspection Act (ZIN), which stipulates that inspectors act independently when performing their duties. In this case, the problem did not seem to be the absence of a sanction for violating the prohibition of the pursuit of a confessional activity referred to in Article 72 of the ZOFVI; instead, according to the Inspectorate, such a violation cannot be established if the school's premises have not yet been transferred from the Municipality to the school for management and if no classes are held on the day of the confessional activity at the school due to the school's day off – and compare this to what we stated in our previous annual report, i.e. that the Inspectorate stated in its findings following supervisions at two elementary schools and one nursery (relying on the opinion of the Slovenian Bishops' Conference "that a blessing cannot be classified as an organised religious ritual"). We should also reiterate

that the same Inspectorate pointed out, in relation to an allegation that a lecture of a ‘healed homosexual’ was held on Bishop’s Day on the premises of a public school, to the director her duty to protect the autonomy of school premises.

The Ombudsman’s proposal last year for the Act to prescribe a sanction for violating the prohibition of the pursuit of a confessional activity in public nurseries and schools or for legislative amendments to be adopted, according to which organised religious rituals in public nurseries and schools will be allowed, received, during the discussion about the Annual Report at a session of the Commission for Petitions, Human Rights and Equal Opportunities, negative criticism from members of the deputy group of Levica, claiming that the second of both alternatives would be in contravention of constitutionally ordered separation of the state and religious communities. We believe that such criticism is unfounded. **Since Article 7 of the Constitution of the Republic of Slovenia stipulates that the state and religious communities are separate, the completeness of each statutory derivative action of the said constitutional principle is all the more important.** As we stated last year, the Ombudsman believes that the enactment of the prohibition of confessional activities in public nurseries and schools is at the legislator’s discretion. To support this, we wish to reiterate particularly the indications of the Constitutional Court of the Republic of Slovenia that the Constitution of the Republic of Slovenia “*determines the relation between the state and religious communities merely a matter of principle, while the meaning and content of the said principles [first and foremost, the principle of the separation of the state and religious communities referred to in paragraph one of Article 7 – note by the Ombudsman] are only taking shape*”. The European Court of Human Rights has also recognised that **it was not possible to discern in Europe a uniform notion of the meaning of religion in society – although the principle of the separation of the state and religious communities is “established as a fundamental modern principle in most modern constitutions and legislations in a more or less consistent form”, its interpretations must avoid excessive certainty, as it actually does not have an unambiguous meaning.**

According to the Ombudsman’s experiences reported over several years, the prohibition of organised religious rituals in public nurseries and schools referred to in Article 72 of the ZOFVI seems to be incomplete. It is clear that a proposal for a sanction for violating the autonomy of school premises with organised religious rituals or at least giving indicative examples of such rituals to amend the existing legislative text would not signify any excessive involvement in complex legal or other expert issues; instead, it is more a question of sufficient political will.

2.3.2 Allegations about the Ombudsman’s insensitivity to the rights of members of certain religious communities are still unfounded

We also received a letter from a complainant who stated “*that the basic human rights of religious persons (particularly Christians) are still treated according to the principle of Marxist ideological negative selection*” and that Christians “*were appalled by the Ombudsman’s silence as Christians are brutally insulted on a daily basis with hate speech of the ideological cultural combat*”. Such allegations are unfounded and unfair; therefore, we firmly reject them as such.

Beginning in the year when the Ombudsman commenced her term (in 2013), we may recall a case in which two complainants contacted the Ombudsman, who claimed that the director of Radio Slovenia had not responded to their expectations for the establishment of a religious editorial board. In November 2016 when a person damaged a precious statue of the Our Lady of Sorrow from the 15th century in Koper Cathedral, the Ombudsman reacted with a firm press release in which she expressed her outrage over the barbaric and insensitive behaviour of individuals who destroy precious cultural heritage monuments out of pure savagery and rudeness, and emphasised that sacred buildings of any religious community are holy places for religious persons and extremely important for the culture of a nation, and that such actions cause not only material damage but also stir up unrest among people who perceive such actions as an attack on their religion. The Ombudsman responded this year too to the invitation of the Archbishop of Ljubljana to attend a holy mass for the homeland at the St Nicholas’ Cathedral in Ljubljana on Independence and Unity Day (which was not the first time – as stated in the last issued Annual Report, she also responded to the invitation of the President of

the Slovenian Bishops' Conference, who invited her to attend a holy mass for the homeland at the St Nicholas' Cathedral on Statehood Day.

We wish to point out, particularly regarding "*brutal insults of Christians*", that when graffiti appeared with unambiguous expressions of hatred against Christians ("*Christians – we slaughtered you in 1945 – we will slaughter you in 2013*") during the term of the previous Ombudsman, this was also followed by a clear condemnations of such behaviour, and expectations were expressed that the police would do anything to find the perpetrator(s) and that other measures to carry out criminal proceedings would be taken. Similarly, the Ombudsman pointed out, in the Annual Report for 2006, that we dealt with expressions of hatred against Catholics in electronic media.

2.3.3 Christianophobia?

A complainant asked us whether the measures of the Slovenian Bishops' Conference which invites people to report "*Christianophobia*" were lawful. As the complainant stated, they had been collecting information on crimes or discrimination against Catholics and the Catholic church in Slovenia, and publishing them in a special chapter of the annual report of the Catholic church. With the help of religious people, they wanted to put together "*a transparent report on cases of Christianophobia and crimes against Catholics in Slovenia*" (potential acts of Christianophobia could then be reported on the website Point for reporting Christianophobia and vandalism against Slovenian Catholics).

Individual and collective realisation of the freedom of religion, the legal position of churches and other religious communities, the procedure of their registration, the rights of churches and other religious communities and their members, the rights of registered churches and other religious communities and their members, and the powers and responsibility of the authority responsible for religious communities are regulated by the Freedom of Religion Act (ZVS). Regarding the complainant's criticism of the involvement of clerics in "*general social life in Slovenia*" and related opinion that religion should be "*a private matter of individuals*", and the question "*where are the limits to the disrespect of the Catholic church for the Slovenian Constitution and law*", we should explain that Article 41 of the Constitution of the Republic of Slovenia stipulates that the profession of religious and other beliefs in private and public life is free. Freedom of religion also ensures that anyone, alone or together with others, privately or publicly, expresses their religion through religious service, instructions, practice and religious rituals or in another way (Article 2 of the ZVS). Article 39 of the Constitution of the Republic of Slovenia ensures freedom of expression of thought, freedom of speech and public appearance, and stipulates that everyone may freely collect, receive, and disseminate information and opinions.

2.4

FREEDOM OF EXPRESSION

Field of work	Cases considered			Resolved and founded		
	2017	2018	Index 18/17	No. of resolved	No. of founded	Share of founded among resolved (in %)
4. Freedom of expression	42	54	128.6	53	3	5.7
4.1 Freedom of expression	0	2		2	0	0.0
4.2 Ethics of public discourse	34	39	114.7	39	2	5.1
4.3 Access to public information	8	8	100.0	7	1	14.3
4.4 Freedom of expression – other		5		5	0	0.0

2.4.1 Response should be primarily the responsibility of the environment in which *hate speech* occurs.

In the first of six annual reports, including the present report, issued during the same term, the Ombudsman recommended “that deputies and other politicians adopt an ethical code and form an arbitration panel which would respond to individual cases of hate speech in politics, which should be publicly condemned”. The same recommendation was already included in the second of said annual reports; in the third report, it was addressed to *the National Assembly*; in the fourth report, the recommendation was provided to *deputies and politicians*; in the fifth report, it was provided again to *deputies and other politicians*, when we also commented that we were not informed that this recommendation *had indeed been realised* (five years had passed since then). As we explained, **it is important that a response is prompt and possibly comes from the environment where unacceptable statements are made** (i.e. if hate speech appears in politics, politicians should respond; if it appears on forums, the participants should respond, etc.), and that **it is good to have self-regulatory response mechanisms**. However, the Ombudsman believes that **the establishment of an arbitration panel of a political discourse must be approached responsibly, as it must not only be a convenient tool to silence the criticism of prevailing perspectives, destroy disagreeable different opinions or otherwise suppress political opposition**.

However, non-existence of a self-regulatory mechanism must not result in exoneration of expressions that still comply with the constitution or even promotion of disrespectful spreading of any opinions. As stated in the Ombudsman’s Annual Report, **educating people to be intolerant by using a few simple demagogic stereotypical statements is much easier than shaping a tolerant and participating society, which is primarily the responsibility of politicians and people who shape public opinion**. At the same time, it should be equally highlighted that **a different opinion does not necessarily mean public incitement to inequality, intolerance or violence, and is generally protected within the freedom of expression. It would be encouraging if we all strove to respect both**, e.g. during a (inevitably repeated) discussion about the fact that partners in a (non) formal civil union cannot adopt a child together.

As we have reported several times, the Ombudsman receives more or less directly expressed expectations regarding public responses to maintained so-called hate speech. Certain people also criticise our approach

to this field. Let us reiterate that **the Ombudsman condemns any incitement to hatred of, intolerance to, and inequality of people who think differently, and does not support the spreading of information based on stereotypes and limited knowledge of the content on which judgments and comments are shared.** As the main point of orientation when assessing whether to publicly react in such situations, the Ombudsman relies on the constitutional prohibition (Article 63) of any incitement to national, racial, religious, or other discrimination, and the inflaming of national, racial, religious, or other hatred and intolerance, as well as any incitement to violence and war. The Ombudsman's assessment that a manifested thought does not show signs of constitutionally non-freedom of expression and therefore, does not call (yet) for its public comment, is never motivated by a desire to contribute to the legitimacy of any form of hate speech. This statement is easily concretely supported, as the Ombudsman has decisively intervened several times against obvious expressions of constitutionally prohibited incitement to inequality and intolerance, and violence and war – even if they could not be attributed to any state authority, local self-government authority and bearer of public authority (in relation to which, the Ombudsman was established to protect human rights and fundamental freedoms in accordance with the Constitution (Article 159)). In this regard, the Ombudsman, for example, successfully intervened regarding *expressions of intolerance by around ten unaccompanied minors in a town with several tens of thousands residents*; or took action due to a decision that discriminated against members of the Roma community by a municipal council (*that the municipality does everything in its power to prevent unsupervised immigration of Roma from elsewhere*); or condemned *expressions of hostility and violence against the participants of a literary event the involved gay and lesbian literature at a pub Ljubljana*; graffiti with unambiguous expressions of hostility against Christians ("Christians – we slaughtered you in 1945 – we will slaughter you in 2013"), i.e. against the segment of society which is normally not deemed a particularly vulnerable group, also received the Ombudsman's public condemnation. On the other hand, to illustrate how certain people perceive *hate speech* to which the Ombudsman should react, we can recall a case described in our Annual Report last year, which included indications in letters from readers of a newspaper that "*confessional contents cannot be part of public space or state or local authority*".

We should basically not forget that *the Ombudsman should be independent in their work as explicitly stipulated by Article 4 of the ZVarCP. This statutory provision clearly shows that the Ombudsman's positions are their own and as such, not necessarily the same as positions of any other authority, individual or group – if this was not (or should not be) the case, it is obvious that the existence of this state authority as such would be meaningless.* At the same time, **the Ombudsman does not have (or want) a convenient option to focus merely on the rights of certain people** – which, in relation to *hate speech*, must mean giving suitable weight to the freedom of expression referred to in the constitutional list of human rights and fundamental freedoms. **It is undoubtedly equally significant that the Ombudsman, when considering concrete cases, does not act arbitrarily** – and we believe that **the Ombudsman's diverse practice so far (for illustration see the paragraph above) is telling enough to make it clear that potential insinuations of the opposite, i.e. selective responsiveness to any personal circumstance (nationality, race, age, language, religion, political or another belief, financial situation, birth, education, social position, disability etc.), may easily be proven erroneous.**

2.4.2 What can be expressed during an election campaign?

Posters of two political parties caused quite a stir in the public. More specifically, these were posters of the Social Democratic Party (SDS), which, in addition to images from the so-called migrant crisis, included the wording *We will protect Slovenia*; and of the Slovenian People's Party (SLS), which included the wording *SLOVENIA IS NOT ONLY AHMAD* and an outline of state borders below it, within which the name *JOŽE* and *EUR 500* were written several times, while the name *AHMAD* and *EUR 1930* were written several time elsewhere. The complainants who wrote to us regarding these posters stated that "*building one's political image and power on human tragedy is morally inadmissible and violates fundamental human rights*" or that these were "*xenophobic and primitive political boards*". They also asked us whether "*there was a legal aspect on the basis of which these posters had to be removed by persons who put them up*".

On its website, the Ombudsman published a press release *Pre-election posters: Politicians bear a special responsibility in public expression*. The Ombudsman also stated, for example, regarding a statement of a Slovenian journalist on Twitter ("*I would allow refugees to come within 500 metres to the Slovenian border, otherwise I would shoot them*"), in a press release (28 August 2015) that the statement undoubtedly interfered

with the freedom of expression, that it was unlawful and that it was also a morally twisted act; we also pointed out allegedly *poor practice of police workers in the field (individual police officers allegedly screamed and shouted at foreigners in Slovenian, and inappropriate, partly racist, xenophobic and scornful comments were allegedly also heard)*; we also reported on the Ombudsman's actions to expressions of intolerance by around ten unaccompanied minors in Nova Gorica. At the same time, we believe that said posters should not be equated with such examples. However, they may also be a reason to worry – **in its Resolution 1889, the Parliamentary Assembly of the Council of Europe recognised that, during election campaigns, certain candidates and political parties show migrants and refugees as a threat to, and burden for, the community, which produces more negative reactions to them among the public, and then explicitly reiterated that politicians have a special responsibility to exclude negative stereotypes or stigmatisation of any minority or migrant group from the political discourse, as well as during election campaigns.**

We should particularly not forget that voters have an opportunity at the elections to the National Assembly to show with the vote they cast what attracted – or deterred – them in the election campaign to prompt them to give their vote for a certain person/party. Pursuant to Article 21 of the Constitutional Court Act (ZUstS), the Constitutional Court of the Republic of Slovenia also decides on the unconstitutionality of the acts and activities of political parties, whereby, pursuant to Article 68 of the same Act, anyone may lodge a petition to review the unconstitutionality of the acts and activities of political parties. The Constitutional Court has the possibility to prohibit unconstitutional acts and activities of political parties with a decision.

2.4.3 Can a fairy tale incite inequality, intolerance and violence?

We were informed of a public call for competition of the Demokracija Magazine and the publishing house Nova obzorja, d. o. o. for an original Slovenian fairy tale which would be appropriate for children under 10 years of age. The public call for competition stated *inter alia* that the fairy tale “should address threats brought by multiculturalism and illegal migration”; that its main characters may be “*taken from existing Slovenian children's literature or fairy tales, but which should come to life in the new adventure in line with patriotic and family values (in the sense: Kekec goes to the Kolpa to defend the border...)*”; that the fairy tale’s “main characters may be personified animals, whereby positive heroes are presented by domestic animal species, while intruders or negative characters should be presented by invasive alien species”; the emphasis should be “*on the fact that it is wonderful to live in a traditional family (father, mother, children) and surrounded by fellow countrymen/own species*”.

According to the current case law of the European Court of Human Rights, statements which hurt, shock or upset either the state or any segment of the population also enjoy protection as part of the freedom of expression (paragraph one of Article 39 of the Constitution of the Republic of Slovenia), as this is required by the requirement for pluralism, tolerance and broad-mindedness, without which democratic society cannot exist. This right may collide with the right to personal dignity and equality, regardless of personal circumstances, and related prohibition of incitement to violence and war (Article 63 of the Constitution of the Republic of Slovenia). This value is also summarised in judgments of the European Court of Human Rights which, for example, in the case Gündüz v. Turkey stated that “*tolerance and respect for the equal dignity constitute the foundations of a democratic, pluralistic society. That being so, it may be considered necessary in certain democratic societies to sanction or prevent all forms of expression which spread, promote or justify hatred based on intolerance, provided that any measures imposed are proportionate to the legitimate aim pursued.*” Such a situation occurred in the concrete case.

In Slovenia, Article 297 of the Criminal Code (KZ-1) prohibits public incitement to hatred, violence or intolerance, but this description of the crime is narrower than the provision of Article 63 of the Constitution. Therefore, each unconstitutional incitement to intolerance is not a crime. It is well known that there is relatively little case law in this field, but it does show that Article 297 of the KZ-1 is interpreted narrowly – to fulfil all the signs of a crime, in addition to premeditated public incitement of hatred against a certain group, the possibility of words turning into violence or an unlawful act is also required. In view of the great response of the public to said competition, we did not doubt that the prosecution service knew of the potential crime. Regardless of this, the Ombudsman persistently points out the significance of immediate response in environments where

unacceptable statements appear. As far as we know, the Slovenian Writers' Association responded to the disputable competition with a protest.

We wish to add that a complainant stated that the Demokracija Magazine published the *Guide for parents: how to protect children against LGBT(Q) activists and multiculturalism* on its website. It allegedly includes proposals for parents to boycott certain content and calls on parents not to send their children to school; the feature allegedly uses the term "harmful LGBT activists" and marks LGBT minorities and multiculturalism as "*parasites, liars and a threat to schoolchildren*". Such wording could have signs of incitement to discrimination (Article 10 of the ZVarD) or harassment (Article 8 of the ZVarD); therefore, we explained that to the complainant and proposed that she consider whether she should first contact the Advocate of the Principle of Equality.

2.4.4 Depiction of Catholic church officials may also be disputable

A lady contacted the Ombudsman, requesting us to take a position on "the artistic image of a poster with which the Research Centre of the Slovenian Academy of Sciences and Arts (ZRC SAZU) invites to a symposium entitled "The End of Political Theology". The poster depicted Pope John Paul II with the papal cross lying on the ground under a rock. The complainant emphasised that, as a Catholic, she experiences the content of the poster as extremely disrespectful and that it may be understood that it supports the idea of violence against Catholics. She also understood the poster as a mockery of religious feelings of religious persons and religious symbolism.

We could understand that the complainant was upset by the said poster. The freedom of expression of religion, and religious feelings and beliefs of all individuals and members of religious communities must be respected. But it must also be pointed out that the freedoms in the concrete case were in obvious conflict with the freedom of expression, regarding which the European Court of Human Rights frequently states in its case law that it is one of the fundamentals of democratic society and the conditions for its progress and the development of each individual. The freedom to express views is deemed the essential element of democratic society required by pluralism, tolerance and broad-mindedness, regardless of the fact that information may shock, hurt or upset public authorities or any segment of the public.

In the first part of the present chapter, we explained in detail how the Ombudsman relies on Article 63 of the Constitution of the Republic of Slovenia. We pointed out that the Ombudsman reacted when graffiti appeared with unambiguous expressions of hostility against Christians ("Christians – we slaughtered you in 1945 – we will slaughter you in 2013"). We should also remind that, when a person damaged a precious statue of the Our Lady of Sorrow from the 15th century in Koper Cathedral, the Ombudsman reacted with a firm press release in which she expressed her outrage over the barbaric and insensitive behaviour of individuals who destroy precious cultural heritage monuments out of pure savagery and rudeness, and emphasised that sacred buildings of any religious community are holy places for religious persons and extremely important for the culture of a nation, and that such actions cause not only material damage but also stir up unrest among people who perceive such actions as an attack on their religion (referring to other religions, we should remind that similar damaging of symbols on Muslim graves was treated as a crime of public incitement of hatred, violence or intolerance only after the Ombudsman had intervened).

However, the Ombudsman believes that said poster that issued an invitation to a symposium should not be equated with examples pointed out in the paragraph above. An explanation would also be possible that, for example, this was harassment within the meaning of Article 8 of the ZVarD ("unwanted conduct related to any personal circumstance, which has the effect or purpose of creating an intimidating, hostile, degrading, humiliating or offensive environment for a person and which violates the dignity of that person"). Taking into account the provision of paragraph one of Article 7 of the ZVarD, harassment is a form of discrimination which is prohibited by paragraph two of Article 4 of the ZVarD. Pursuant to Article 39 of the ZVarD, a person who believes that they have been or are being discriminated against may file an action requesting the cessation of discrimination, the payment of compensation for discrimination or the publication of the ruling in the media. In addition, a person who believes they have been discriminated against may file a complaint for consideration at the Advocate of the Principle of Equality who inspects the implementation of the ZVarD (Article 33 of the ZVarD). All this was explained to the complainant.

2.4.5 Circumstances regarding the consideration of reports of violations of the right to rectification (or response) by the media inspectorate are alarming

Last year, we wondered how deficient inspections of the realisation of the right to rectification were. This issue seems to be even more critical than at that time.

In response to our enquiry, we received information in January 2018 from the Culture and Media Inspectorate of the Republic of Slovenia that they received seven reports in 2016 and 12 in 2017, which referred to alleged violations of the right to rectification or response. They also informed us that no inspection procedures were initiated on the basis of these reports. They ensured us that the reports would be addressed in 2018. **The Inspectorate's forecast was not realised.** After the end of 2018, we contacted the addressed Inspectorate with a question about how many of said reports from 2016 and 2017 had already been handled and what their result was (the number of inspection procedures initiated, the findings of the Inspectorate in these cases, and the number of fines issued on the basis of Article 148.a of the Mass Media Act (ZMed)), and received an explanation that, in view of the fact that the reports that refer to the right to rectification or response do not take priority according to the criteria for priority treatment (which are published on the Inspectorate's website), "**none of the reports from 2016 and 2017 was handled in 2018**". They commented "*that these are backlogs from previous years when the post of media inspector was vacant*" and that these backlogs "*will be handled in the next reporting period*". We also found out that, in 2018, the Inspectorate received four reports of alleged violations of the right to rectification or response in the media (one report was handled – an "*official note stating why the described action is not a violation and why the initiation of an inspection procedure would not be sensible in the concrete case*").

2.4.6 Access to public information: How to access standards which are deemed official texts and copyrighted work at the same time?

Pursuant to the Public Information Access Act (ZDIJZ), a complainant attempted to access standards that were attached to the *Order on the list of standards whose use creates a presumption of conformity of construction products with the requirements of the Construction Products Act* at the Slovenian Institute for Standardization. The Institute rejected the complainant's request by referring to the fact that standards were copyrighted work. Standards could be accessed at the Institute's library during working hours (once weekly from 8:00 to 12:00).

The Information Commissioner granted the complainant's appeal against the Institute's decision, and found also that the required documents are official texts pursuant to the provision of Article 9 of the Copyright and Related Rights Act (ZASP) and do not enjoy copyright protection. The Administrative Court of the Republic of Slovenia upheld the action of the Slovenian Institute for Standardization against the decision of the Information Commissioner and set it aside. The Court agreed that standards must be deemed official texts, but pointed out the duties of the Institute arising from its membership of international standardisation organisations and paragraph four of Article 22 of the Standardisation Act (ZSta-1), which stipulates that reproduction or distribution of Slovenian national standards, in parts or whole, is not permitted without the consent of the Institute. In a new decision, the Information Commissioner relied particularly on the provision of paragraph four of Article 22 of the ZSta-1 and rejected the complainant's request. The complainant initiated a new administrative dispute which was in progress before the court at that time. His position was that the said decision interfered with his "*fundamental human right that may easily be recognised, i.e. the right to free and unhindered access to laws and documents the application of which is prescribed by law*". He wondered whether "*human rights also include the right to unhindered access to legislation*".

Pursuant to Article 25 of the ZVarCP, the Ombudsman may submit their opinion from the aspect of the protection of human rights and fundamental freedoms to any authority in a case under consideration, regardless of the type or level of procedure that is in progress before these authorities. This option is only exceptionally used by

the Ombudsman, particularly when it comes to judicial proceedings, taking into account primarily the position of the judiciary and judges in the organisation of the state. We assessed that the concrete case was such a case. We believed that this case involved a wider issue relevant to the protection of human rights and fundamental freedoms, and to legal security (paragraph two of Article 9 of the ZVarCP), since it concerns the right to obtain public information (paragraph two of Article 39 of the Constitution of the Republic of Slovenia) in relation to equality before the law (Article 14 of the Constitution of the Republic of Slovenia), and wider, the provision regarding the rules of law (Article 2 of the Constitution of the Republic of Slovenia) and the provision that all regulations must be published prior to entering into force (Article 154 of the Constitution of the Republic of Slovenia).

When forming an opinion on whether an official text, which is the subject of the request to access public information, is copyright protected, the consequences of the position that an official text is copyright protected must be thoroughly studied, since several crucial questions regarding the requirements of the provisions of Articles 2, 14 and 154 of the Constitution of the Republic of Slovenia arise in this relation. If the right of the author of an official text to reproduction and distribution is recognised, they are recognised exclusive and absolute economic copyrights (Articles 23 and 24 of the ZASP) regarding which the author, having monopoly of the use of the work, decides: 1. if and 2. if yes, on which conditions, they will transfer entitlement to another person. However, the author may not be coerced into transferring copyrights (which does not apply to the regime of a lawful licence, Article 47 of the ZASP), the author may prohibit the use of their work, and the author decides on the amount of payment expected for the transfer of rights.

This puts legal addresses into an insecure position which is inadmissible from the aspect of legal security (Article 2 of the Constitution of the Republic of Slovenia) – they do not know whether or on which conditions they may obtain an official text. This may give rise to arbitrary situations that are also disputable from the aspect of Article 14 of the Constitution of the Republic of Slovenia (equality before the law) – the author could enable a certain legal addressee to freely reproduce their work, but would request another legal addressee to pay EUR 100 compensation or the third legal addressee to pay EUR 1000, while the author would deny reproduction to the fourth legal addressee. In addition, it must be taken into account that if the author of an official text is recognised the right to reproduction and distribution, the author is consequently also recognised moral rights to copyrighted work. If we consent to the explanation that an official text is copyright protected, i.e. the author preserved the right to the reproduction and distribution of this work, the author is also the holder of all moral copyrights (the so-called monism of copyright).

Moral copyrights cannot be transferred. From the aspect of the question under consideration, the (moral) right to withdrawal (Article 20 of the ZASP), within which the author may revoke the assigned economic right from its holder if they have serious reasons to do so and if they reimburse the damage incurred to the holder, has proven to be crucial. This means that the author of an official text, which is deemed copyrighted work, may change their mind and revoke its use. The author could even withdraw the official text they allowed to be used from a legal addressee on statutory conditions, which is again inadmissible from the aspect of the principle of legal security (Article 2 of the Constitution of the Republic of Slovenia). This shows again great importance of Article 9 of the ZASP, which lies in that fact that, by denying copyright protection to authors of official texts, it does not even recognise moral rights.

The Ombudsman believes that the statutory provision that “reproduction or distribution of parts or whole is not permitted without the consent of the Institute” may only be understood and taken into account up to the point when a Slovenian national standard is included in the system of legal regulations and becomes an official text. If the authority which included copyrighted work in its regulation did not obtain copyrights for this purpose beforehand, this may be subject to a special (compensation) procedure, but this circumstance should not affect the possibility to inform the public/legal addressees of the official text. We believe that, in a state governed by the rule of law and a democratic state (Articles 1 and 2 of the Constitution of the Republic of Slovenia), each legal addressee is entitled to obtain an official text or regulation that affects their legal position as part of the right to obtain public information (paragraph two of Article 39 of the Constitution) on the same conditions as other legal addressees (Article 14 of the Constitution), independently of the will of the creator of the text, freely and in a way that they may copy, scan and/or use it in any other way (Articles 2 and 154 of the Constitution).

2.5

ASSEMBLY, ASSOCIATION AND PARTICIPATION IN THE MANAGEMENT OF PUBLIC AFFAIRS

Field of work	Cases considered			Resolved and founded		
	2017	2018	Index 18/17	No. of resolved	No. of founded	Share of founded among resolved (in %)
5. Assembly, association and participation in the management of public affairs	18	21	116.7	21	2	9.5
5.1 Right to assembly and association	5	2	40.0	2	0	0.0
5.2 Right to vote	13	14	107.7	14	1	7.1
5.3 Right to vote in a referendum	0	1		1	0	0.0
5.4 Right to petition	0	1		1	0	0.0
5.5 Assembly, association and participation in the management of public affairs – other		3		3	1	33.3

2.5.1 Urgent amendments to electoral legislation take unacceptably long

In the annual reports for last year and the year before that, the Ombudsman reported on interferences in the active right to vote without a suitable legal basis – although a person's right to vote has not been revoked, they cannot vote, and the reason for such a violation of the right to vote is systemic, i.e. persons who have been unexpectedly deprived of liberty or admitted to hospital for treatment or in institutional care of a social care institution (e.g. remand prisoners, persons a ward under special supervision of the psychiatric hospital, etc.) less than ten days prior to voting cannot vote, since, in accordance with the applicable legislation, voters must declare their intention to vote by post at least ten days prior to voting. The state attempted to solve this problem for the first time in 2011, but has not succeeded. This means that **for more than half a decade, the state has failed to respond to the recognised (also by the state) deficiency in legislation, which does not anticipate voting by post for persons who had not expressed this intention at least ten days before voting, and it also does not regulate the position of those deprived of their liberty or admitted to hospital or in institutional care of a social care institution, and are thus unable to vote at a polling station or by post.** This is all the more alarming, since **the Ombudsman's reports show that such cases do occur in practice.** In June 2018 (early elections of deputies to the National Assembly of the Republic of Slovenia were held on 3 June 2018), the Ombudsman was contacted by a complainant who was taken to hospital a few days prior to the elections, and when he contacted the National Electoral Commission requesting an explanation on how

he could vote, he was told that the matter should have been resolved at least ten days prior to voting – in the complainant's case, this meant prior to the unexpected accident due to which he was taken to hospital.

2.6

NATIONAL AND ETHNIC COMMUNITIES

Field of work	Cases considered			Resolved and founded		
	2017	2018	Index 18/17	No. of resolved	No. of founded	Share of founded among resolved (in %)
6. National and ethnic communities	13	26	200.0	23	6	26.1
6.1 Slovenians abroad		1		0	0	0
6.2 Position and rights of the Italian and Hungarian national communities and their members		4		4	2	50.0
6.3 Position and rights of the Roma community and its members		13		11	4	36.4
6.4 Other national and ethnic communities		4		4	0	0.0
6.5 National and ethnic communities – other	11	4	36.4	4	0	0.0

2.6.1 Slovenians abroad

We decided to introduce a new special sub-field of work on Slovenians abroad. We have not had many complaints from Slovenians abroad; therefore, we expect that the Ombudsman will consider such problems on the basis of its own engagement.

So far, we have focused our activities on the establishment of the actual situation regarding Slovenians abroad. We will report in more detail on our findings in our next annual report; this time, we would like to point out as an interesting fact that our enquiry about experiences of the Government Office for Slovenians Abroad regarding proof of Slovenian descent or origin (in relation to Articles 59 and 60 of the Act Regulating Relations between the Republic of Slovenia and Slovenians Abroad (ZORSSZN)) and granting the status of a Slovenian without Slovenian citizenship (in relation to Articles 62, 63 and 64 of the ZORSSZN) was responded with an explanation that such a status “*has never been granted to anyone. At the time when the ZORSSZN, which introduced said status, was passed, the policy of obtaining Slovenian citizenship was radically liberalised. Thus, the status of a Slovenian without Slovenian citizenship was no longer interesting and no one applied for it. All individuals of Slovenian descent who are interested in a closer formal connection with Slovenia apply for Slovenian citizenship.*” **In ten years, the Government Office for Slovenians Abroad has not carried out any procedure for obtaining the status of a Slovenian without Slovenian citizenship.**

2.6.2 Position and rights of the Italian and Hungarian national communities and their members

Operation of courts in Hungarian

A member of the Hungarian national community maintained "*discrimination on grounds of nationality and Hungarian official language*" to the Ombudsman. The complainant was a debtor in an enforcement case on the basis of an authentic instrument, which, taking into account the provision of Article 99.a of the Courts Act (ZS), is, at first instance, within the exclusive jurisdiction of Ljubljana Local Court. In the letter, the complainant attached the decision of Ljubljana Local Court rejecting his application in Hungarian, as he had not corrected it to be drawn up in Slovenian. In relation to this problem, the complainant contacted the Supreme Court of the Republic of Slovenia, which, in its response, explained legal channels to claim potential violations of rights and stated its position that "*Ljubljana Local Court does not operate in the language of the national community*". Due to the violation of equality under Article 131 of the KZ-1, the complainant filed a complaint with the District State Prosecutor's Office in Murska Sobota, which rejected the complaint, since "*Ljubljana Local Court is not part of the area with the Hungarian national community; therefore, Hungarian is not used by said court*". The decision rejecting the complaint was submitted to the complainant in Slovenian and Hungarian, in relation to which the complainant pointed out that the District State Prosecutor's Office in Murska Sobota "*does not have its head office in a bilingual area but operates, must operate, bilingually*".

On the basis of the available documents, we concluded that the complainant did not use legal remedies against the decision of Ljubljana Local Court rejecting the application in Hungarian. In this regard, we agreed with the explanation sent to the complainant by the highest court in the country, stating that parties "*claim potential substantive or procedural violations in proceedings with suitable regular or extraordinary legal remedies, since this is the only suitable way to contest court decisions which they deem incorrect and unlawful*". Nevertheless, we contacted the Ministry of Justice to state its position on the applicable regulation from the aspect of the protection of rights of national minorities.

Article 15 of the Claim Enforcement and Security Act (ZIZ) stipulates that the provisions of the Contentious Civil Procedure Act (ZPP) apply *mutatis mutandis* in enforcement and security proceedings, unless otherwise stipulated by this Act or another act. Article 6 of the ZPP stipulates that civil proceedings are conducted in the official language of the court, while Article 104 stipulates that the parties and other persons involved in the proceedings file actions, appeals and other pleadings in Slovenian or in the language of the national community officially used by the court.

Paragraph two of Article 5 of the ZS stipulates that, in areas with the Italian or Hungarian national community, respectively, courts also operate in Italian or Hungarian, respectively, if the party who lives in this area uses Italian or Hungarian, respectively. Article 61 of the Court Rules stipulates that, in areas with Italian or Hungarian national community, respectively, courts also operate in the language of the national community if the party who lives in this area uses Italian or Hungarian, respectively.

In the considered case, Article 99.a of the ZS has proven to be crucial; it stipulates that Ljubljana Local Court has exclusive territorial jurisdiction over decisions on proposals for enforcement on the basis of an authentic instrument and appeals against decisions on the basis of an authentic instrument at first instance. Said provision was adopted with the Act Amending the Courts Act in 2006. The explanation of the proposed act shows that "*follows the proposed Act Amending the Claim Enforcement and Security Act (ZIZ-G)*" and "*findings of the Twinning project – the elimination of judicial backlogs regarding enforcement, and determines exclusive territorial jurisdiction of one local court in the country due to rationalisation, the use of technological options and the speeding up of enforcements on the basis of an authentic instrument*". However, the legislative material **does not seem to show that the consequences of this organisational reform for the position of members of national communities were considered, particularly in the sense of preserving the achieved level of minority protection, i.e. the use of the language of national communities in enforcement proceedings**. We wondered whether the reasons for rationalisation and the speeding up of enforcements outweigh the interference with the rights obtained by members of a national community or whether the legislator depleted the

right of members of national communities to use Hungarian or Italian, respectively, with (poorly) thought out reorganisation of the judiciary, particularly related to the rights of national communities referred to in Article 5 of the Framework Convention for the Protection of National Minorities and Article 9 of the European Charter for Regional or Minority Languages.

Being aware that this was not the only case of statutory exclusive territorial jurisdiction of the court which is not in the area with the Italian or Hungarian national community, respectively, we requested that the Ministry of Justice provide its opinion on said problem, and we took the opportunity to also ask whether the publication of websites of the courts which operate in ethnically mixed areas, including Hungarian and Italian, was planned, and (in relation to the Ombudsman's findings on the operation of courts in the languages of national communities referred to on page 122 of the Ombudsman's Annual Report for 2017) whether problems with envelopes, invitations and forms in Hungarian and Italian were tackled in 2018.

Regarding the last question, the Ministry of Justice explained that **problems still had not been tackled, but that they would carry out further activities; however, they did not say (despite our explicit question) when the problem was expected to be handled.** Regarding the availability of websites of the courts in the languages of national communities, they informed us that the management of the websites is not the responsibility of the Ministry of Justice and that the Supreme Court of the Republic of Slovenia explains that, within the *Procedural Fairness* project, two leaflets were drawn up in the languages of national communities, which are also published on the websites. The leaflets contain information on the right to use Italian and Hungarian in judicial proceedings, the selection of a counsel, free legal aid and how to obtain information on proceedings.

Regarding the provision of Article 99.a of the ZS, which determines exclusive territorial jurisdiction of Ljubljana Local Court, the Ministry of Justice explained that the establishment of the Central Department for Authentic Instruments was one of the most important measures in the organisation of the judiciary. They stated that judicial specialisation and centralisation was a measure intended to strengthen an individual's constitutional right to judicial protection, and that this measure was urgent to ensure payment discipline and protect the legal position of creditors, since it significantly reduced the time taken to resolve proposals for enforcement on the basis of an authentic instrument, and significantly increased the effectiveness of enforcements and repossession, whereby they supported these statements with statistical data. According to the Ministry, the determination of exclusive jurisdiction cannot be disputable; however, **they also have questions regarding the actual exercise of the rights of both national communities, particularly regarding the use of languages in such judicial proceedings.** The Ministry believes that the aforementioned requires "*in-depth and lengthy consideration for the systemic aspect, and perhaps consultations with constitution experts*".

What about the language of operation of public utility companies in ethnically mixed areas?

We considered a complaint in which a complainant stated that the company Saubermacher - Komunala Murska Sobota d.o.o. only informed residents of Dobrovnik/Dobronak in the Municipality of Dobrovnik of its services, instructions and information in Slovenian, despite the fact that this is an ethnically mixed area where members of the Hungarian national community reside, and where Hungarian is also an official language in addition to Slovenian. The complainant supported his statements by attaching an eight-page publication *Waste removal timetable for 2018* in Slovenian. In response to our enquiry, the company stated that teams for waste collection and the reception office include workers who speak Hungarian fluently, and that members of the Hungarian national community can use their mother tongue. They also sent us the link to their website where they provide information on the prices of services, and the distribution of volumes of collected municipal and biological waste by municipalities by months in Hungarian. They also sent us a hard copy of an example of instructions for separate waste collection and a notification on actions of hazardous and special waste collection, both in Hungarian. They attached a photo of bilingual information boards on waste containers and a copy of bilingual notifications and information published in the newsletter of the local community.

Following the Ombudsman's intervention, the company published the *Waste removal timetable for 2018* in Hungarian of its own accord, and notified users of it on the bill for services in January, which is commendable. However, it did not take into account the Ombudsman's proposal to send the publication in Hungarian by post to users in the ethnically mixed area like it did with the Slovenian version. The company referred to rational

operations and the circumstance that neither its head office nor a branch office nor business premises are located in the ethnically mixed area.

By referring to Article 11 of the Constitution of the Republic of Slovenia, Article 14 in relation to Article 3 of the Public Use of the Slovene Language Act (ZJRS), and to points 7 and 12 of Decision of the Constitutional Court of the Republic of Slovenia no. U-I-380/06 of 11 September 2018, the Ombudsman insisted on its initial proposal. **It may be deduced from the provisions of Article 14 in relation to Article 3 of the ZJRS that they oblige anyone pursuing a registered activity in the municipalities with the Hungarian national community to operate in Hungarian, regardless of their head office, branch offices or business premises.** It is natural that waste removal, which is the company's basic activity, is also carried out in ethnically mixed areas, which is also shown by bilingual information boards on waste containers supplied by the company and other measures of the company mentioned above to ensure bilingualism. The publication *Waste removal timetable for 2018* refers to the conditions for pursuing the waste removal activity: it determines the timetable, provides instructions for separate municipal waste collection and hazardous waste management, and other information. Thus, the publication presents the basic information and general conditions on the pursuit of the company's basic activity in the ethnically mixed area; therefore, this publication is a form of the company's operation within the meaning of the provision of Article 14 of the ZJRS. In addition, this is information on the activity pursued as a mandatory local public utility service of municipal waste collection and transport, which is why it is all the more important for this information to be provided to users in ethnically mixed areas in the same way, regardless of the language they use. Only in this way, may the national community and its members be equally included in social life. This means that it is not sufficient for said publication to be published on the company's website, as this does not put members of the Hungarian national community in Slovenia (even at the symbolic level) in the same position as the majority population. In addition, it is very likely that many members, particularly older members, of the Hungarian national community do not have access to the internet or know how to use it.

In response to the Ombudsman's opinion, the company informed us that the Ombudsman's proposal would be taken into account and that they would distribute the publication in Hungarian to their users in the ethnically mixed area in April.

How free can expression at a session of the Hungarian self-governing national community be?

The Ombudsman received a letter from a member of the Hungarian self-governing national community of the Municipality of Dobrovnik, who claimed that the president of the community violated Article 19 of the Universal Declaration of Human Rights and Article 39 of the Constitution of the Republic of Slovenia under the miscellaneous item at the 18th regular session as member of the Council by first allowing him to speak, but when he wanted to critically report on the operation of the umbrella political organisation of Hungarians in Prekmurje in relation to the Institute for Culture of the Hungarian Ethnicity, by "*forcefully silencing him and closing the session*".

We assessed that it is most sensible to point out certain provisions of the Statute of the Hungarian self-governing national community of the Municipality of Dobrovnik. Its Article 12 stipulates that the Council of the Hungarian self-governing national community of the Municipality of Dobrovnik has seven members. They elect the president and vice-president at their founding meeting (Article 17). Article 19 stipulates that the Council reaches a quorum if more than half of its members are present at its sessions, and that decisions are valid if more than half of its members present at a session vote for them, unless otherwise stipulated in the Statute. From the aspect of the considered case, Article 22, which stipulates that the Council is convened, chaired and represented by its president and that the work of the Council is regulated by the Rules of Procedure, and Article 26, which stipulates that the president convenes meetings and proposes agendas, are also important.

The submitted material shows that the 18th regular session was convened by the president of the Hungarian self-governing national community of the Municipality of Dobrovnik in a way determined by the Statute, including the proposed agenda. When preparing the agenda, the president is not bound by the proposals of members of the Council, and therefore, was not obliged to put items on the agenda of the 18th regular session, which had been initially proposed by the complainant by email and then changed orally at the session. Five present members of the Council voted on them, with four votes against them; for this reason, the proposed

item was not put on the agenda of the session. Nevertheless, the complainant wished to discuss the item proposed at the beginning of the session under the miscellaneous item, but the president interrupted him. Therefore, regarding the latter, we disagreed with the complainant that such an action was an inadmissible interference with his freedom of expression. This could only be established if the president's action violated the provisions of the Statute or if the provisions were disproportionately strict, which, in our opinion (based on the circumstances of the concrete case), was not the case. (6.2 - 4 / 2018)

2.6.3 Position and rights of the Roma community and its members

Generally on the so-called *Roma problem*

The general comment of the situation regarding the so-called *Roma problem* in Slovenia was updated in our previous annual report. The situation has not changed significantly, and to avoid repetition, we refer the reader to said report, to which we add the following for 2018.

In 2018, the European Court of Human Rights did not rule on the case Hudorovič and Novak and others v. Slovenia, in which the complainants from the Roma settlement of Goriča vas in the Municipality of Ribnica and Dobruška vas in the Municipality of Škocjan state that the situation with drinking water and sanitation was problematic. In the reporting year, we met the delegation of the European Commission against Racism and Intolerance (abbreviation: ECRI) of the Council of Europe, which visited Slovenia to report within the fifth monitoring cycle of countries, and the United Nations Special Rapporteur on minority issues (Dr Fernando de Varennes), and discussed the so-called *Roma problem* with all of them. We received draft reports from both, but none was officially issued in 2018; therefore, we hereby add that **the ECRI recognised the relevance of the Ombudsman's activity to combating racism and discrimination, and the United Nations Special Rapporteur on minority issues stated that he was impressed with the Ombudsman's work and research.**

We should also mention that the Government of the Republic of Slovenia received the fifth report on the position of the Roma community in Slovenia at its session on 18 July 2018. While discussing it at the session on 28 November 2018, **the National Assembly of the Republic of Slovenia adopted a recommendation to the Government on the basis of Articles 41 and 111 of the Rules of Procedure of the National Assembly (PoDZ-1) "to immediately take measures to improve the position of the Roma community in Slovenia, and to prepare suitable amendments to the Roma Community in the Republic of Slovenia Act (Official Gazette of the Republic of Slovenia, No. 33/07) in cooperation with representatives of the Roma community, representatives of self-governing local communities and other stakeholders".**

On page 57 of the Government's response to the Ombudsman's Annual Report for 2017, we could discover the information that the *Inter-ministerial Working Group on Resolving Spatial Problems of Roma* established on 11 May 2017 with Decision of the Government of the Republic of Slovenia no. 01201-5/2017/6 concluded its work on 31 May 2018 and prepared the report on its work *Final Report on the Work of the Inter-ministerial Working Group on Resolving Spatial Problems of Roma*. However, as evident from the press release following the 9th session of the Commission of the Government of the Republic of Slovenia for the Protection of the Roma Community on 13 December 2018, **not even a proposal for government material had been prepared by the end of the year – at said session, the Commission "invited the Ministry of the Environment and Spatial Planning to prepare a proposal for government material on the Final Report on the Work of the Inter-ministerial Working Group on Resolving Spatial Problems of Roma as soon as possible and send it to the Government for discussion, since this material is crucial in the field of regulation prepared by the Inter-ministerial Working Group".**

In November, local elections of representatives of the Roma community (20 of the municipalities itemised in the Local Self-Government Act (ZLS) (paragraph six of Article 39) must ensure the right of the Roma community residing in the Municipality to have up to one representative on the municipal council) took place – and the realisation of the active and passive right to vote for members of municipal councils. We did not receive any complaints in this regard.

The nature of the Roma problem means that it cannot be addressed merely in the office. Therefore, **the Ombudsman visits Roma settlements of its own accord, directly checking the situation**. This was also the case in 2018.

We were informed of two judgments in 2018, which provide a welcome insight in criminal and civil case law involving the Roma.

In Judgment Ref. No. VII Kp 48649/2017 of 10 May 2018, the Higher Court in Ljubljana, in a criminal case of unlawful occupation of real property pursuant to paragraph two of Article 338 of the KZ-1, granted the appeal of the defence counsel of the defendant (Roma) and changed the contested judgment of Novo mesto Local Court so that the indictment, which stated that the defendant gradually, until the end of 1995, unjustifiably built on the agricultural land on land owned by the Krka Novo mesto Agricultural Cooperative and the Municipality of Škocjan in contravention of Article 67 in relation to Articles 3, 27 and 35 of the Construction Act (ZGO-1) and Article 80 of the Spatial Management Act (ZUreP-1) and without the permission from the owner of the land, and that, by constructing, he occupied foreign real property and gradually built a wooden residential house on solid foundation and a wooden commercial building for commercial activity until the end of 1995 on a part of the land owned by Kmetijska zadruga Krka z.o.o., with which he unjustifiably occupied foreign land owned and managed by KZ Krka z.o.o. Novo mesto without permission, was dismissed for a reason referred to in point four of Article 357 of the Criminal Procedure Act (ZKP). The appellate court agreed with the defendant's defence counsel that the criminal prosecution for the criminal offence of which the defendant was found guilty with the contested judgment had lapsed. The criminal offence was not deemed an ongoing criminal offence. As it further stated, the definition whether the criminal offence in question was an ongoing criminal offence was crucial in the considered case, since, with regard to criminal offences with which perpetrators produce an unlawful situation with a repetitive consequence, it is deemed that the statute of limitations commences with the termination of such a situation. It did not agree with the court of first instance, which defined the criminal offence in question as an ongoing criminal offence, and took the position that the criminal offence in question is a so-called current criminal offence or a criminal offence which ends with the occurrence of a prohibited situation as its consequence, while maintaining the unlawful situation is not part of the criminal offence. It was deemed that the description in the indictment shows that the defendant unlawfully occupied foreign land to use it for construction by gradually building a wooden residential house on solid foundation and a wooden commercial building for agricultural activity until the end of 1995, whereby the indictment did not accuse the defendant until when the unlawful situation was maintained due to which the criminal offence of unlawful occupation of real property pursuant to paragraph two of Article 338 of the KZ-1 ended with the occurrence of a prohibited situation as its consequence (the built residential house and commercial building), while maintaining the unlawful situation (the residential house and commercial building are still on the property) is not part of the criminal offence. The defendant ended committing the criminal offence by the end of 1995, which meant that the lapse of the criminal prosecution (paragraph one of Article 91 of the KZ-1) commenced on 31 December; since a fine or imprisonment of up to one year is prescribed for the criminal offence of unlawful occupation of real property pursuant to paragraph two of Article 338 of the KZ-1, criminal prosecution pursuant to the provision of point five of paragraph one of Article 90 of the KZ-1 is no longer allowed if six years have passed since the criminal offence was committed.

In Judgment Ref. No. I Cp 2918/2017 of 30 May 2018, the Higher Court in Ljubljana dismissing the appeal by the plaintiff and upheld the judgment of Kočevje Local Court in the litigation of a Roma, who was the plaintiff, against the defendant ELEKTRO LJUBLJANA, podjetje za distribucijo električne energije, d. d. in relation to the conclusion of a contract on electricity supply. With the action, the plaintiff requested the finding that he had the right to access the electricity grid regardless of the legal position of the real property as a vulnerable user pursuant to Article 51 of the Energy Act (EZ-1) and that the defendant had to conclude a contract on the provision of electricity with him. Following the dismissal of his entire claim at first instance, he appealed due to the erroneous application of the substantive law. He believed that the provision of Article 51 of the EZ-1 was discriminatory and unconstitutional, as it does not take into account the specific features of the actual and legal position of the Roma minority. Allegedly, it is generally known that Roma settlements were built on foreign land which was tolerated by local authorities. Since land cannot be purchased, buildings in Roma settlements are illegal, but the state and local communities do not do anything despite their statutory duty and initiatives of the Roma community. Therefore, residents in Roma settlements cannot connect to the electricity grid in a valid manner. In the Roma settlement where he resides, there have been no changes in the

field of spatial problems for 36 years. In his opinion, security and technical reliability of electricity supply could be ensured by taking into account technical standards, but in the case of the Roma community without the required building permit and formalised ownership of real property. He also pointed out that without electricity, his children do not have access to suitable education. The court's job should be to eliminate the systemic deficiency by suspending the proceedings in question and file a request for the review of the constitutionality of the said provision of the EZ-1. However, the appellate court agreed with the court of first instance that the disputable statutory provision that regulates the position and rights of vulnerable users, and the conditions for urgent electricity supply was not unconstitutional, and in his case, not even applicable. It took the position that the plaintiff was not a (vulnerable) user of electricity, since he had not been connected to the grid (yet). The building in which he resides is illegal and therefore, meets neither the conditions referred to in Article 147 of the EZ-1 for connection to the grid nor the prescribed technical requirements referred to in Article 149.č of the EZ-1. Special rights claimed by the defendant as a member of the Roma community for himself in relation to access to the electricity grid were in obvious conflict with the right to safety, on which the court of first instance stated reasonable and sound reasons. Therefore, the appellate court deemed that the fact that the plaintiff's building was illegal and that the plaintiff was not the owner of the real property where his building was located is a significant barrier due to which the plaintiff cannot conclude a contract on the provision of electricity with the defendant, which is why the plaintiff also cannot obtain a consent for connection even if he met the prescribed technical and security requirements. The court concluded that the defendant was not responsible for resolving spatial issues, which is the responsibility of the state and local communities (Article 5 of the Roma Community in the Republic of Slovenia Act (ZRomS-1)); for this reason, the plaintiff cannot obtain any other decision in this litigation even by referring to constitutional and convention rights.

On ageing or old age as a factor when considering members of the Roma community

As the Ombudsman paid special attention in 2018 to older people, we wish to say a few words about ageing as a factor when considering members of the Roma community. As stated in 2017, in our experience, **older people must also be specially mentioned** in relation to emphasised vulnerability – **not only due to their reduced psychophysical abilities and related health risks, but also due to the fact that they are exploited by others**. When given the opportunity to speak to older Roma residents, it frequently turns out that it is especially difficult to establish the actual, and particularly legal, state of their situation (e.g. receipt of social benefits), since they cannot produce any documents in most cases; many of them are illiterate; it is obvious that they can hardly understand their position, including the rights they have; they must frequently speak to us in the presence of other family members or acquaintances, which gives rise to the question how much they would rather not say, etc.

Regarding their own attitude to their elders, there is definitely room for improvement to be made by Roma themselves. We could see that this attitude was less than commendable on the field. During our visit to a Roma settlement in Dolenjska, we spoke to an almost 70-year-old illiterate Roma woman, who had only good things to say about health care institutions and their staff despite her frequent visits, and she only found that her transport to the institutions was rather expensive – it turned out that she was charged for “transport services” by her own sons, who were willing to take their mother with health issues to see the doctor but only as long as she paid them, like she said, for *petrol and other things*. We should point out the case of another old Roma woman from Dolenjska, *who was also illiterate and showed us a heap of unsettled bills in her name, including a bill for internet services (although it was obvious that she could not use it)*. **It should also be clear that uprooting such or similar immoral or even unlawful practices cannot be carried out only by measures of public authorities; Roma themselves will have to surpass many things too.** We do not want to say that exploitation or any other abuse of older people does not occur among the majority population – **the World Health Organization (WHO) and the International Network of the Prevention of Elder Abuse (INPEA) have even recognised the abuse of older people as a significant global problem.**

In certain cases, the difficulty of the situation may manifest itself in other dimensions. In relation to the above-mentioned lady, we should add that she lives in a house without a toilet, water, electricity or heat, together with her daughter, her daughter's partner and their children. In such cases, it is not difficult to imagine at least a few everyday problems of an older person with health issues related to the respiratory organs, who, as she

pointed out herself, does not have room to enjoy some—undoubtedly, at least occasionally needed—peace and quiet in such a situation.

Including inadequate legal and municipal or infrastructural services in Roma settlements opens up new room for old age being a relevant factor. In this regard, points 49 and 50 of one of the most known judgments of the European Court of Human Rights (hereinafter: ECHR) in relation to Roma, i.e. the judgment in the case Yordanova and Others v. Bulgaria of 24 April 2014, final on 24 September 2012, are most telling, as they show that said Court intervened to prevent the eviction of the applicants before *detailed information on any preparation of the authorities to ensure accommodation for children, older persons, disabled persons or otherwise vulnerable individuals* were sent to it. In such cases, we may initially rely on standards that are not explicitly aimed at the protection of Roma as a vulnerable social group, for example the standard referred to in point 17 of the General Comment No. 17 of the UN Committee on Economic, Social and Cultural Rights according to which *evictions should not result in an individual's homelessness or exposure to violations of other human right* – but we can also find certain more applicable standards, e.g. a standard from the practice of the European Committee of Social Rights that *evictions must not result in the homelessness of persons involved and that the principle of equal treatments implies that states must take measures relevant to the special circumstances of Roma to protect their right to residence and prevent them from becoming homeless as a vulnerable group* (said Committee stated that during evictions, *the dignity of persons involved is also violated, due to the disregard for the presence of older people*).

The Ombudsman recommended that the Government of the Republic of Slovenia pay special attention to the elderly Roma in preparation for the next National Programme of Measures for the Roma, and then decide whether their care should be placed among the basic strategic objectives and also determine concrete measures thereof.

Along with all that has been stated, the responsibility to improve one's own position must be pointed out. As part the visit to the Roma settlement of Brezje, representatives of the Ombudsman also visited a 61-year-old complainant with a severe lung disease. She said that she was satisfied with health care and doctors' attitude, but that she had problems using the oxygen machine she had been given at the hospital (oxygen concentrator), since her electricity supply was not reliable. In addition, she did not have a toilet and was only supplied water through her neighbours to whom she could not walk due to her disease. She said that she urgently needed a sanitary container and more reliable electricity supply. Following our enquiry with a social work centre, it was confirmed that the lady lived in unsuitable conditions. Regarding electricity supply, the social work centre believed that the problem no longer existed, "*since a power cord was drawn from her husband's sister*"; they also believed that **the complainant's situation would have significantly improved if she requested to be accommodated in a retirement home – they informed her of this option but she declined**. We deem the latter a personal choice which must be respected – however, responsibility for its consequences must be assumed together with such a decision (in certain circumstances, we could also discuss how free the will of a specific older person regarding such decisions really is (may be) – for example, due to dementia, not to mention the question of the (too) drastic change in the environment at an old age in view of the very specific way of Roma life). For this reason, we did not establish any violations of the complainant's rights in the concrete case. **Older members of the Roma community, whose living conditions are poor, have, generally speaking, the opportunity to improve them by being accommodated in a social care institution.**

Right to free transport to school for Roma children

In April 2018, the Ombudsman visited five Roma settlements in the Municipality of Šentjernej (Draškovec, Mihovica, Drama, Roje and Trdinova ulica) of its own accord and in cooperation with the local Roma councillor. During a conversation with residents of Draškovec and Roje, members of the Roma community pointed out problems with the transport of schoolchildren to school. In Draškovec, residents said that their schoolchildren regularly attend an elementary school but were not ensured free transport to school, despite the fact that the school is rather far away from their home and that the path leading to the school is dangerous (no pavements, street lights, marked pedestrian crossings and similar). They pointed out that five or six more children from their settlement enrolled in the Šentjernej Elementary School, who will begin attending this school in September. Similar was stated by the residents of Roje. Parents of six children stated that their first three children go to the

elementary school, while two daughters will begin school in September. They emphasised that the fact that there was no school bus was a serious problem, which is why they have to drive them to school themselves, which is a problem for them (costs of petrol, their car breaks down, etc.). Also in this case, the distance between their home and the elementary school is long and the path is dangerous (no pavements, street lights, marked pedestrian crossings and similar).

The right to free transport to school is regulated by Article 56 of the Basic School Act (ZOsn). Paragraphs one and two of said Article stipulates that pupils have the right to free transport if their home is more than four kilometres away from the elementary school and that pupils have the right to free transport regardless of the distance between their home and the elementary school in the first grade, while in other grades, they have this right only if the competent road safety authority establishes that the pupil's safety on their way to school is at risk. Pursuant to Article 82 of the ZOFVI, funds for the transport of elementary school pupils are provided from the funds of the local community. The ZVarD prohibits discrimination on grounds of any personal circumstance (paragraph two of Article 4). Article 3 of the Roma Community in the Republic of Slovenia Act (ZRoms-1) stipulates that **members of the Roma community must also be able to realise their special rights in relation to education.**

In its responses, the Municipality did not manage to explain why Roma children from Draškovec and Roje, which are both more than four kilometres away from the school, must walk to bus stops in settlements which are both less than four kilometres away from the school. The Municipality **did not show that, when planning free bus transport, it took into account the special position of children of members of the Roma community (there are no pavements and street lights from Roma settlements to the bus stop; poor living conditions of children; no organised access to drinking water, toilets and electricity; uneducated and unemployed parents; poor economic situation; do not go to nursery; poor educational achievements of children** – in this regard, the Municipality states the information that less than one per cent of the Roma population successfully complete elementary school; etc.). It seems particularly unacceptable that the distance of 2 or 1.5 kilometres on an unlit and dirt track road without pavements must be covered by first graders from Draškovec and Roje, who the Municipality, prior to the Ombudsman's enquiries, even believed were not entitled to free transport to school. All these circumstances have an additional adverse effect on children who are not even properly stimulated to be included in school at home.

In summary, **the Ombudsman believes that, when ensuring the right to free transport to school for Roma children, a municipality must take into account circumstances, such as poor educational achievements of members of the Roma community, their economic situation, remoteness of Roma settlements from (road) infrastructure and special rights of the Roma community in the field of education (Article 3 of the ZRoms-1).**

Are members of the Roma community given promises too easily?

From the aspect of the principle of good administration, the Ombudsman is critical of assurances of representatives of authorities regarding the manifestations of the so-called Roma problem, which then remain unrealised and set a poor example or send a poor message regarding relationships and trust among the majority population and the Roma community. In this context, we reported on statements of Government representatives (the then Prime Minister and the director of the Government Office which also monitors special rights of the Roma community and is responsible for their protection) on electricity supply in a Roma settlement in Dolenjska. We would like to add that **regarding the so-called Roma problem, establishing the actual situation, particularly who really said something to someone and what really happened, is post festum a very difficult and thankless task.** Most frequently, this includes statements on various interactions we did not witness when they happened. We frequently hear of many kinds of *informal conversations* among members of the Roma community and many people who officially represent local or state authorities; we also notice explicit preference for ignorant communication (also in relation to the Ombudsman after they intervene with official writing), particularly by attempting to solve or 'solve' many things over the phone, probably to avoid the traceability of the content and related proving; we frequently ask ourselves about the cultural aspects of verbal communication with the Roma population and related more or less sincere misunderstandings or '*lost in translation*', etc. **We are not indifferent about the fact that members of the Roma community, particularly their representatives on municipal councils, may have a purely personal interest which differs greatly from**

the professed interests, due to which they may act out of calculation or more or less truthfully. However, we frequently hear their severe criticism of each other (absent at the time) (an elected representative of the Roma community on a municipal council said incidentally that an elected representative of the Roma community in another municipality in Dolenjska “*lies and deceives people*”).

We repeat that the assurance of special protection of the Roma community and its members should not be equated with protection against any responsibility for unlawful conduct.

The Ombudsman's position in principle is that inadequate legal and municipal services in Roma settlements pose a threat to the realisation of human and special rights of the Roma community and its members on the one hand, and the realisation of human rights and fundamental freedoms of other residents who live there on the other – both may feel hurt about their dignity, personality rights, property rights, equality before the law and trust in the rule of law.

Also in 2018, we **received comments saying that the Ombudsman excessively stood up for Roma people.**

A complainant, for example, pointed out that Roma in Dobruška vas alienated his sunglasses and a Lacoste bag in which he kept money, and alleged that the Ombudsman stood up for thieves, that they support “*a crowd that has not worked a single hour*” but ignores workers, pensioners and single mothers, who live below the poverty threshold; he also proposed the Ombudsman reimburse damage he sustained from her personal account, claiming that “*she was responsible for these events due to her advocacy*”. We responded with an explanation that, in relation to subjects who do not have public authorisation, including individual Roma and their families, the Ombudsman did not any responsibility or powers stipulated by the ZVarCP; therefore, the Ombudsman cannot intervene with them directly. We went on to say that it was not true the Ombudsman in their work ignored the position of citizens living below the poverty threshold. We have been highlighting this problem for years, which is supported by Ombudsman's Annual Report for 2017, in which the Ombudsman points out this problem in her assessment of the respect for human rights and legal security in the country on page 18. In addition, the Ombudsman (successfully) contested Article 28 of the Exercise of Rights from Public Funds Act (ZUPJS) before the Constitutional Court of the Republic of Slovenia, which put tenants in non-profit dwellings in an unequal position, or stood up for pensioners when they contested the provisions of the Fiscal Balance Act (ZUJF). The Ombudsman also contributed to a single mother having water supply. In short, very concrete cases may easily be stated, which attest to the fact that allegations of the Ombudsman's indifference to workers, pensioners and mothers were misguided. However, it is not difficult to understand why the complainant was upset. In this regard, we would like to point out that the customs and habits of members of the Roma community do not justify their unlawful actions. Even special rights provided to the Roma community by Article 65 of the Constitution of the Republic of Slovenia do not refer to failure to disclose or prosecute their criminal or minor offences. We point this out on numerous occasions – during a working visit with the Secretary-General of the Government, her deputy and secretary at the Office on 2 October 2017, the Ombudsman highlighted the urgency of police presence in Roma settlements where various violations of order and peace or other minor or criminal offences occur (this was stated in the press release). On page 13 of the Ombudsman's Annual Report for 2017, the Ombudsman reiterated that the special protection of members of the Roma community should not be equated with protection against any responsibility for unlawful conduct.

There should be no doubt that the police must also respond to events in Roma settlements, which involve violations of order and peace or other minor or criminal offences.

We also received a letter from representatives of the village community of Mihovica, in which the sense of endangerment due to impossible living conditions, i.e. inconsiderate, disconcerting and harmful behaviour of Roma, were pointed out. They stated that “*the situation has become chaotic, loud music is played almost daily, constant use of our land and meadows without our permission, threats to neighbours and even physical fights with two neighbours who resisted the Roma's behaviour*”. They also emphasised that “*if no radical changes are made, civil residents of Dolenjska will soon reach boiling point*” and that they hoped we would “recognise the seriousness of the matter which must be solved immediately”; otherwise, we will also be responsible if “*serious conflicts among civil residents and Roma arise*” for failing to carry out our duty. Depending on the circumstances of individual cases, only lawsuits for trespassing on property or for refraining from provocation before the competent court, or perhaps a criminal prosecution (e.g. due to damage to third party property

pursuant to Article 220 of the KZ-1), which may be initiated by a private lawsuit, on proposal or *ex officio*, could be considered in cases of unlawful interventions in movable or immovable property. A criminal offence for which the perpetrator is prosecuted *ex officio* may be reported by anyone (Article 146 of the ZKP), and indictment is submitted to the competent state prosecutor in writing or orally (Article 147) – if an indictment is submitted to the court, police or the competent state prosecutor, they accept it and immediately send it to the competent state prosecutor; a private lawsuit is filed with the competent court (generally, the court in the territory of which the criminal offence was committed or attempted has territorial jurisdiction; a private lawsuit may also be filed with the court in the territory of which the defendant permanently or temporarily resides), while a proposal is filed with the state authority which must accept the criminal complaint. Pursuant to Article 4 of the ZNPPol, the tasks of the police, which stem from its fundamental duties, are to protect the life, personal safety and property of people, prevent, detect and investigate criminal and minor offences, discover and apprehend the perpetrators of criminal and minor offences and extradite them to the competent authorities, and to collect evidence and investigate circumstances relevant to establish proceeds from criminal and minor offences, and to maintain public order, and to supervise and organise traffic on public roads and unclassified public roads. In certain situations described by said village community, action by an inspectorate could be considered. Since they also sent us a file with a recording of shooting with automatic firearms, we invited them to inform us whether they had contacted the police or a state prosecutor's office or if they had detected any irregularities in the actions of any of them. They did not respond.

We received a letter from two complainants from the Kočevje area, claiming that "*Roma outbursts in Kočevje have intensified*" (a fight with basketball players from the local club in front of the new sports hall, attack on a complainant), due to which it was decided that "*people in Kočevje will step together to defend themselves from the Roma terror*", since the law should "*be the same for civilians and Roma*" ("*Roma can drive a car without a licence and drive unregistered cars, they bully people, are involved in crooked business, etc.*"). In this case, the same explanation applies as above, which we discussed at a working meeting in Kočevje, where we went at the invitation of the deputy mayor to be presented activities and their views of this field.

2.6.4 Other national and ethnic communities

More expectations regarding national communities not explicitly mentioned by the Constitution

In 2018, the Ombudsman was contacted by the Association of Cultural Societies of the German-speaking National Community in Slovenia. They forwarded us a letter to the Prime Minister of the Republic of Slovenia, in which they called on Slovenian authorities "*to recognise the Serbian, Croatian and German national communities pursuant to Article 64 of the Constitution of the Republic of Slovenia, and to implement the European Charter for Regional or Minority Languages in places where the Serbian, Croatian and German national communities in Slovenia live*", and asked us to help to the best of our abilities.

The protection of the rights of minorities and national communities is an integral and inseparable part of the law of human rights, and their respect must be universally ensured. The Constitution protects the rights of minorities with various provisions, e.g. the prohibition of discrimination (Article 14) or the prohibition of inequality, and incitement to hatred and intolerance, particularly on grounds of the nationality of injured parties (Article 63). The foundation of protection of minorities is also the freedom to express affiliation with their nation or national community, and the right to express their culture, and to use their language and script (Article 61 of the Constitution of the Republic of Slovenia). This Article of the Constitution is similar to Article 27 of the International Covenant on Civil and Political Rights, which means that all ethnic, linguistic (and religious) minorities enjoy international legal protection.

In its nature, "the recognition of the Serbian, Croatian and German national communities pursuant to Article 64 of the Constitution of the Republic of Slovenia" is, first and foremost, a political issue. The regulation of the special rights of national communities (e.g. Following the example of the regulation of the position of the Italian and German national communities in Slovenia) is the responsibility of the National Assembly of the Republic of Slovenia. This means that the Ombudsman cannot directly contribute to the recognition of the

Serbian, Croatian and German national communities in Slovenia, but we pointed out to the competent national authorities the need to state their position on the requirements to recognise the (special) status of minorities.

2.7

FOREIGNERS

Field of work	Cases considered			Resolved and founded		
	2017	2018	Index 18/17	No. of resolved	No. of founded	Share of founded among resolved (in %)
7. Foreigners	127	103	81.1	77	6	7.8
7.1 Acquisition and termination of citizenship	8	5	62.5	5	0	0.0
7.2 Entry, exit and residence of foreigners in the country	119	62	52.1	47	2	4.3
7.3 International protection, temporary protection and the principle of non-refoulement		9		9	0	0.0
7.4 Unaccompanied minors		14		10	4	40.0
7.5 Foreigners – other		13		10	0	0.0

On persons whose illegal residence is tolerated by the state for too long

In 2015, the Ombudsman began using the notion of long-term tolerating of illegal residing of persons who reside in the territory of Slovenia for a long time without an arranged status of a foreigner, and the state tolerates such inadequate arrangement. From the aspect of the Republic of Slovenia, these are citizens of other countries, although certain people do not have citizenship in the state of their nationality, as they have lived in Slovenia since the disintegration of the SFRY. To respect the right to family and private life referred to in Article 8 of the European Convention on Human Rights, the Ombudsman believes that these persons must not be removed.

They have **lived in this country for a long time, in many cases, over ten years**. During this time, they created their lives with social, cultural, linguistic or family ties. The complainants live in the Republic of Slovenia without valid permits and the state tolerates such illegal residence. **What all complainants have in common is that they attempted to arrange their status of a foreigner, but failed for various reasons.** In accordance with its migration policy, the state has not removed them from its territory, although it is aware of their situation and permits it by tacit consent. The complainants are left to themselves and the consequences of the inefficiency of legal provisions, which frequently brings them to a situation when they have to limit their basic life activities. The complainants are **under psychological and social pressure, since, due to the inadequate arrangement of their status, they do not have health insurance (which means that they have to pay for health care or receive health care in pro bono clinics for persons without health insurance), cannot be employed and have no opportunity to receive social transfers.**

According to the Ombudsman and the ECHR case law, **such persons cannot be removed from a state territory, as they have established cultural, social and family ties with their long-term residence (albeit illegal).** The Ombudsman believes that their removal would violate the right to family and private life provided by Article 8 of the European Convention on Human Rights, and such persons could face additional problems if they are

removed to the country of origin, as they no longer have any contacts and maintained environment there. **Regarding social and cultural inclusion of such persons in our society, their expulsion is an unsuitable and particularly disproportionate measure.**

On the basis of complaints received, the Ombudsman established that these persons may be divided into three groups on the basis of the reason for their inadequately arranged status.

The first group includes persons who were erased from the register of permanent residents – the so-called erased, who did not manage to arrange their status on the basis of the legislation planned to regulate their status. In 1999, the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia (ZUSDDD) was passed for the first time, after the Constitutional Court of the Republic of Slovenia established in 1999 that the erasure from the register of permanent residents was unlawful and decided that the then Aliens Act (ZTuj) was unconstitutional, as it did not regulate the legal status of persons who were subsequently erased. The ZUSDDD stipulated a three-month period to apply for permanent residence permits with the basic condition being that the person has lived in the Republic of Slovenia since the erasure. The ZUSDDD was contested again before the Constitutional Court which repealed certain parts of it and ordered the legislator to adopt suitable legislative amendments in 2003. With this decision, it reopened the deadline for applying to arrange the permanent residence permit according to the ZUSDDD, which applied from the introduction of the new ZUSDDD, which was passed only seven years after the decision of the Constitutional Court, i.e. in 2010. The ZUSDDD-B determined a three-year deadline for applying which expired on 24 July 2013. The complainants from the first group could not arrange for various reasons their status in the period when it was possible to do so, but they remained in the territory of the Republic of Slovenia and reside here without the status of a foreigner.

The second group is composed of persons whose asylum applications were denied, but the state cannot or could not return them to the country of origin due to the non-refoulement principle. The non-refoulement principle prohibits states from returning persons who have not been granted the status of a refugee to places where their lives or freedom could be at risk due to their race, religion, nationality, membership of a particular social group or political opinion.

The third group is composed of persons who illegally reside in the Republic of Slovenia for a long time for other reasons apart from the ones stated above (persons have remained in the territory after their visas or residence permits have expired).

The complainants in this group have resided in the Republic of Slovenia for so long (55 years is the longest time) that they have created a family life here and the centre of their interests is here. Due to their inadequately arranged status, they live in uncertainty and encounter numerous obstacles in their everyday lives. **Certain complainants are children who moved here with their parents when they were very young or were born here.** Minors are a particularly vulnerable group; their inadequately arranged status is also an obstacle in their education. At this point, we should point out the provision of the EU directive on returning, which stipulates "that respect for family life should be a primary consideration of Member States when implementing this Directive", but that "the 'best interests of the child' should be a primary consideration of Member States". In numerous cases when it decided on potential violations of Article 8 of the European Convention on Human Rights, the ECHR highlighted the duty of states to protect the best interests of the child when implementing their migration policies.

The ZTuj-2 has already been amended to expand the opportunity for the issue of temporary residence permits to foreigners whose removal from the country is not possible only due to the non-refoulement principle but also for other reasons stated in Article 73 of the ZTuj-2. Amendments to the ZTuj-2 expanded the group of persons entitled to a temporary residence permit whose removal from the country is not possible (not on the basis of the non-refoulement principle), and there are justified reasons and special personal circumstances which justify their residence in the Republic of Slovenia. The reasons for which foreigners are allowed to stay in the Republic of Slovenia are itemised in Article 73 of the ZTuj-2, and are as follows: if a foreigner's removal from the country is not allowed due to the non-refoulement principle; if a foreigner does not have and cannot obtain a valid travel document of the state of which they are a citizen; if a physician advises against a foreigner's immediate removal from the country due to their medical condition; if a foreigner

must prolong the time allowed to them to reside in the country due to the death or severe disease of a family member who resides in the Republic of Slovenia; if a foreigner must attend proceedings before a state authority in the Republic of Slovenia; if a minor foreigner attends elementary school in the Republic of Slovenia until the end of the school year; if the country whose citizen a foreigner is or where a stateless person had their last residence is not willing to accept the foreigner; if removal is not possible because the transport of a foreigner from the country cannot be provided by land, air or water; if removal is not possible because the country whose citizen a foreigner is or where a stateless person had their last residence faces circumstances, such as natural and other disasters, which prevent the foreigner's return; if this is requested by the guardian of a minor unaccompanied foreigner for special cases.

According to the Ombudsman, said amendment is insufficient, since these persons must initially be subjected to the procedure of removal from the country, and, due to the impossibility of removal, then obtain a permit to stay which is issued and extended for six months. After meeting the condition of 24 months, they may apply for a temporary residence permit and arrange their status for two years. A permit to stay only means the right to stay in the territory of the Republic of Slovenia and does not provide an opportunity to be actively involved in society.

Persons who are allowed to stay in the Republic of Slovenia do not have the right to be employed, and cannot have health, pension and disability insurance. In addition, the Ombudsman established on the basis of the cases considered that foreigners frequently cannot arrange their status "on another legal basis" following two years of staying on the basis of a temporary residence permit, as stated by the Ministry of the Interior and the Government of the Republic of Slovenia in their responses. Complainants are also frequently not granted a request to extend a temporary residence permit on the basis of Article 51 of the ZTuj-2, finding themselves in the same situation as they were in prior to the issue of the temporary residence permit. Persons who are allowed to stay in the Republic of Slovenia have the right to urgent health care in accordance with the Health Care and Health Insurance Act (ZZVZZ). Schoolchildren have the right to attend elementary school in accordance with the ZOsn. They also have the right to basic care on the basis of the ZTuj-2, which includes the right to the payment of financial assistance in the amount and manner specified for financial social assistance by the Social Assistance Benefits Act (ZSVarPre) and provided by the Government Office for the Support and Integration of Migrants. Such persons do not have the right to free access to the labour market on the basis of a permit to stay.

The protection of the rights of persons who reside in the Republic of Slovenia on the basis of a permit to stay is minimal and enables them to merely survive, while they have almost no opportunity to develop, prove themselves and make progress. If they want to meet the condition to obtain a temporary residence permit, these persons must live on the basis of a permit to stay for 24 months, which means inability to work and receive further education (apart from basic), and the consequences which occur for this reason. In addition, these persons never know when and if they will have to leave the country and return to the country of origin with which they have largely lost any contact. Such lack of information may bring severe psychological trauma, and hinders natural making of contacts and building relationships with the surroundings. Such a situation is in contravention of Article 34 of the Constitution of the Republic of Slovenia, which determines that "*everyone has the right to personal dignity and safety*".

The Ombudsman established with an analysis of the actual situation that temporary residence permits are not frequently extended in practice, regardless of Article 51 of the ZTuj-2 providing such an opportunity. This means that persons in such a situation must initiate the procedure to obtain the status at the beginning, i.e. reapply for a permit to stay, and after 24 months, they may reapply for a temporary residence permit. Therefore, it is not a wrong conclusion that said amendment facilitates the issue of a residence permit which is a temporary solution for their status and not a permanent solution, meaning that we cannot say that such a measure solves the problem in a satisfactory manner. The current regulation is insufficient in terms of opportunities to obtain a permit to stay for persons who have resided in the Republic of Slovenia for many years, creating life interests, social and cultural ties, and perhaps also a family environment (but not necessarily), and violates Article 8 of the European Convention on Human Rights.

Duties of states to prevent the statelessness of persons according to international conventions

To protect stateless person, and to limit and prevent the occurrence of statelessness, the UN adopted the Convention relating to the Status of Stateless Persons in 1954 and the Convention on the Reduction of Statelessness in 1961. Statelessness is a phenomenon that affects many people worldwide, and prevents them from equally enjoying human rights and access to travel and personal documents, and having a decent life, and required urgent regulation at the level of international law, which would determine minimum standards of care or consideration of these persons. Numerous principles are stated in the conventions, which have been supplemented by, and defined in more detail in, other legal acts in the field of international law of human rights and regional agreements.

The Convention relating to the Status of Stateless Persons from 1954 is a fundamental international legal act aimed at regulating the legal status of stateless persons and establishing a legal framework for the standardised treatment of these persons in signatory states. The purpose of the Convention relating to the Status of Stateless Persons is to protect basic human rights and needs, which would enable stateless persons to be included in society and have a decent life, strengthening solidarity, social connections and stability in the region. By signing the Convention relating to the Status of Stateless Persons, signatory states were called to speed up the integration and naturalisation of the persons who reside in its territory to its community.

The preamble stipulates the principle of respect for human rights and fundamental freedoms of all people without discrimination. In the Convention relating to the Status of Stateless Persons, a stateless person is defined as a person who is not considered as a national by any state under the operation of its law. The protection by the Convention relating to the Status of Stateless Persons excludes persons who are protected by another UN agency instead of the UNHCR. Protection also excludes persons who are provided by the same rights by their host state as its citizens, and persons when there are serious reasons for considering that they have committed a crime against peace, a war crime or another serious crime which is in contravention of the principles of international law and the principles of the UN. The basic principle of the Convention relating to the Status of Stateless Persons is the prohibition of discrimination. Stateless persons must be treated either the same as citizens of the host state or as other foreigners, and the Convention relating to the Status of Stateless Persons also grants them certain rights directly. The parties to the Convention must treat stateless persons the same as other foreigners in terms of the right to acquire property, the right to employment, particularly in terms of wages and conditions for self-employment, and the right to freely choose a place of residence and to the freedom of movement within the state. The Convention relating to the Status of Stateless Persons requires favourable treatment of stateless persons, which must achieve the level of treatment applied to foreigners in general, as well as regarding accommodation, the right to associate, the recognition of certificates of education and the right to education after completing elementary education. A higher level of protection, i.e. equal treatment to citizens of the host state, is provided by the Convention relating to the Status of Stateless Persons regarding the right to freedom of religion, which includes the right to religious rituals and religious education for children, regarding the right to judicial protection and access to legal aid, regarding intellectual property rights and regarding the right to elementary education. Equal treatment to citizens is also required in the field of labour law relations, social security and tax obligations. The Convention relating to the Status of Stateless Persons grants stateless persons the right to non-discriminatory treatment as to race, religion or country of origin, and the right to a personal document if they do not have valid travel documents. A state may refuse to issue a personal document only if this was justifiably opposed by reasons of the protection of public peace and security. The Convention relating to the Status of Stateless Persons prohibits its parties from expelling stateless persons lawfully residing in their territory, unless there are reasons of the protection of public peace and security, but also in this case, the state must respect procedural guarantees. The last section of the Convention relating to the Status of Stateless Persons addresses the duty of the states to strive, to the best of their abilities, for assimilation and naturalisation of stateless persons into their community. The parties to the Convention relating to the Status of Stateless Persons must implement its provisions in their national legislation, thus ensuring that minimum standards of protection transferred from its provisions are respected in practice. They must report on this duty to the Secretary-General of the UN.

There are 90 parties to the Convention relating to the Status of Stateless Persons, including the Republic of Slovenia.

-The Convention on the Reduction of Statelessness describes numerous situations in which individuals are at risk of losing citizenship and provides instruments which would protect persons with ties to a certain state from losing their status. In this way, states that did not sign the Convention are provided with a principle particularly in terms of setting criteria that must be met with legal regulation of this problem, and identifying problematic provisions and voids in existing national legislation.

It stems from both Conventions that each Member State of the international community must actively strive to reduce the number of stateless persons and respect human rights in general. Certain basic provisions of the Convention relating to the Status of Stateless Persons even became part of customary international law, binding for all international legal entities, regardless of whether they signed this international treaty or not. The preambles and objectives pursued by both Conventions state that a state must attempt to integrate stateless persons into its community, not discriminate against them, and provide them with a decent life, but has to limit the right to education, work, social security, freedom of movement and to legal protection, and other freedoms which enable a person to have a decent life. Such integration is only possible with a fair legal framework that will enable stateless persons to arrange their status if they prove that they meet the criteria set in legislation. By ignoring all persons who reside in its territory in a situation without rights for a long time, the Republic of Slovenia does not pursue the objectives of the Convention relating to the Status of Stateless Persons, to which it was committed upon gaining independence, since it does not provide security, dignity or suitable protection to these persons who are in a particularly vulnerable position and face numerous problems on a daily basis.

The Ombudsman believes that the state should take decisive and suitable measures to prevent the described violations of the provisions of the European Convention on Human Rights and the Constitution of the Republic of Slovenia. It is our opinion that this is a systemic legal void, and that the most suitable way to handle the problem would be either to amend existing acts or to pass a special act that would only refer to persons who illegally reside in the territory of the Republic of Slovenia for a long time.

On foreigners' fingerprints

In 2018, we received (a carbon copy of) a letter regarding a foreigner who allegedly had to submit his fingerprints to the Slovenian embassy in his country of origin (not to a diplomatic or consular post abroad). Since we received only a carbon copy of the said letter, we would like to comment at this point that the Ombudsman has pointed out several times the problem of submitting fingerprints (and proposed amendments to the ZTuj-2, which would allow fingerprints to be submitted in Slovenia in exceptional cases; however, the proposal was not successful). This is a rather complex problem related to the legal requirement that foreigners must obtain the first temporary residence permit prior to entering the Republic of Slovenia.

The Ombudsman roughly distinguishes two types of situations.

The first situation is about regulating the status of persons who have created private and family life in our country within the meaning of Article 8 of the European Convention on Human Rights (e.g. have lived here since they were very young, got married here, became a parent here) although they resided here without documents. We believe that the protection of the rights referred to in Article 8 of the European Convention on Human Rights in such cases outweighs the sovereign entitlement of the state to independently determine the rules on the entry of migrants, the condition for issuing residence permits, work permits, etc. Therefore, such persons must be enabled to obtain a residence permit (the basis for obtaining a temporary residence permit in the ZTuj-2 is Article 51 – other justified reasons). The Ombudsman believes that requiring such persons to go to the Slovenian embassy in their country of origin to submit their fingerprints and wait for a decision is unacceptable from the aspect of Article 8 of the European Convention on Human Rights.

The second situation includes persons who are left without a status for various reasons (e.g. unsuccessful asylum seekers) and have not created a private or family life in this country within the meaning of Article 8 of the European Convention on Human Rights (otherwise, they would apply for a residence permit on the basis of Article 51 of the ZTuj-2 or family reunification). Such persons find a Slovenian employer who is willing to employ them, but instead, encounter an obstacle that they have to obtain a uniform residence and work permit in their country of origin or that such a permit must be provided to them there. In such cases, the

Ombudsman does not see any arguments from the aspect of human right protection, which would outweigh the sovereign entitlement of the state to require a person to obtain a work permit prior to entering the country at the Slovenian embassy abroad in order to obtain a work permit (prevention of illegal labour migration).

Are international protection procedures in the Republic of Slovenia too lengthy?

A decision granting/denying international protection status must be rendered as soon as possible and without delay, but not at the expense of the fairness of the procedure. Applications of minors for international protection must be addressed as a priority pursuant to Article 48 of the International Protection Act (ZMZ-1). Applications of minors are excluded from being handled in accelerated procedure, meaning that they are handled in regular procedures but, as mentioned above, as a priority. The act does not stipulate any more details about what this means, but at least a teleological explanation may be of assistance. Pursuant to the ZMZ-1, minors are deemed vulnerable persons with special needs. They are particularly vulnerable individuals who have problems handling stress and uncertainty in relation to their future and survival. The ZMZ-1 also prescribes priority treatment and consideration of higher standards than usually applicable to other persons. It is crucial that the procedure is conducted speedily, with additional attention to the best interest of the child (Article 15 of the ZMZ-1) in order to reduce the psychological burden on minors and their swift integration if international protection status is granted.

On the basis of nine concrete cases, the Ombudsman established that minors were interviewed on average slightly over five months from the filing of an application, while the average decision-making time on individual application of minors was eight and a half months. In relation to families, the statistics of decisions and personal interviews are slightly worse. In three cases, an average of seven months passed between the filing of an international protection application and a personal interview, while the average decision-making time on individual international protection applications was ten months. This also included decision-making outside legally determined deadlines, since, pursuant to Article 47 of the ZMZ-1, decisions in regular procedures should be made no later than within six months.

In cases of minors and families, the Ministry of the Interior referred to a significantly higher number of international protection applications as a legally admissible reason for lengthy wait for a personal interview or a final decision faced by applicants. Therefore, we focus below on the claimed statutory reason and violations which the Ombudsman believes arise from the actions of the Ministry of the Interior when making decisions on the considered cases.

The state has been facing a higher number of applicants since last year. It seems that the number of applications is not so high as to prevent the situation regarding international protection from being manageable and in accordance with all statutory standards or human right standards with certain suitable organisational and other measures. Such a conclusion was also made by Nils Muižnieks, Council of Europe Commissioner for Human Rights, in his report on the visit to Slovenia between 20 and 23 March 2017, in which he stated among other things that the current number of persons under international protection and asylum seekers in Slovenia was limited and manageable. At the same time, he proposed that the authorities consider certain systemic adaptations of the asylum system for it to be able to consider more asylum seekers than in the past, and to ensure the quality of the procedure, particularly in terms of the duration of asylum procedures. In its annual reports, the Ombudsman pointed out several times that the workload or excessive workload of state authorities (courts, inspectorates, etc.) and insufficient staffing are not and cannot be a justifiable reason for the lengthiness of individual procedures or decision making.

Another important fact should be emphasised, i.e. the fact that implies a systemic problem when solving international protection applications, which, however, is not related to a higher number of applications filed in the last two years – **since 2010, the Ombudsman has reported in its annual reports on the lengthy decision making in procedures for granting international protection**. In 2010, a complaint about the lengthy procedure to be granted international protection was considered, in which the complainant received a response from the competent authority only following two Ombudsman's interventions. In 2011, the Ombudsman received certain complaints about the lengthy international protection procedure and established that the Ministry of the Interior did not act in accordance with the provision of Article 31 (on written notification in the case of a delay

in decision making) of the then applicable International Protection Act (ZMZ). In this report, the Ombudsman explicitly stated that this was pointed out the year before, but the situation did not change. The Annual Report for 2012 states again that the Ombudsman cannot report on progress in this field, and for this reason, the Ombudsman addressed its opinion on the unacceptability of (excessively) lengthy asylum procedures to the Ministry of the Interior. The Ministry of the Interior claimed that procedures, at least at first instance, do not take too long and that the fact that these are complex administrative procedures must be taken into account. The Ministry ensured that they would strive to make swift decision on international protection applications by also establishing support mechanisms within the European Asylum Support Office. In relation to 2013 and 2014, the Ombudsman also highlighted the unchanged situation of lengthy international protection procedures. In 2014, the Ombudsman established a violation of the right to equal protection of rights referred to in Article 22 of the Constitution of the Republic of Slovenia, which requires the competent authorities to make decisions within a reasonable time, due to a lengthy search for an interpreter, an international protection procedure. In this case, the Ombudsman expected the Ministry of the Interior to explain the methodology used to calculate the length of international protection procedures, but did not receive a response. Additionally in this concrete case, the Ombudsman requested a notification on potential measures to avoid further systemic irregularities that were established – the response of the Ministry of the Interior was that this was an extreme and individual case, and it denied any systemic irregularities.

2.7.1 Unaccompanied minors

According to the latest data obtained from the Government Office for the Support and Integration of Migrants, unaccompanied minors are now accommodated at the Asylum Centre (seven unaccompanied minors with the status an applicant for international protection), the Postojna Hall of Residence (13 unaccompanied minors, of which nine have the status of an applicant for international protection, and four international protection status), the Vič Hall of Residence (two unaccompanied minors with international protection status), the Nova Gorica Hall of Residence (one unaccompanied minor with international protection status) and the Maribor Hall of Residence (one unaccompanied minor with international protection status), while one person with the status of an applicant for international protection lives with a foster family. We did not receive a response to our question of whether there were other accommodation locations in the country to accommodate if necessary (again or for the first time) unaccompanied persons younger than 18. It is interesting that the Aliens Centre is not mentioned anywhere.

Shifts in the establishment of age

Last year, we reported that we established alarming circumstances regarding the establishment of age – a total of five expert opinions on age were prepared in five years and with all international protection procedures in which applicants were unaccompanied minors. Page 146 of the Response Report of the Government of the Republic of Slovenia to the 23rd Annual Report of the Human Rights Ombudsman for 2017 states among other things that the Ministry of the Interior “*is in discussions with the Institute of Forensic Medicine of the Faculty of Medicine of the University of Ljubljana regarding the possibility to prepare expert opinions*”.

This time, we may state that the Ministry of the Interior informed us that “*they have agreed with the Institute of Forensic Medicine in Ljubljana to prepare expert opinions on the actual age of international protection applicants regarding whom there will be doubts as to their age. To prepare expert opinions, experts at the Institute need images of both clavicles, both wrists and a dental x-ray. To reduce exposure to x-rays, images of clavicles and wrists will be obtained by magnetic resonance imaging. There is no alternative to the dental x-ray which would not include radiation; the dental x-ray will be carried out with a modern machine with minimum radiation. Prior to imaging, experts at the Institute will perform a short interview with applicants and their routine medical examination. Applicants and their legal representatives will be informed of the referral to the procedure to establish their age. Applicants will be accompanied by their legal representatives and interpreters at all stages of the procedure to establish their age. Only applicants regarding whom there will be doubts as to their age will be referred to the procedure to establish their age.*”

In view of the initially mentioned statistics, the question arises as to how frequently doubt about age will be actually recognised as clear.

Were there indeed any shifts regarding information?

We did not receive any convincing explanations of the Ministry on how the manner the rights and obligations of applicants are explained actually adapts to the age and level of mental development of unaccompanied minors. In this regard, page 146 of the Response Report of the Government of the Republic of Slovenia to the 23rd Annual Report of the Human Rights Ombudsman for 2017 only stated that "*it has initiated a procedure to prepare a customised manner to inform minors, which will be adapted to their level of mental development*".

To our enquiry how the manner of informing minors was adapted to their level of mental development so far, the Ministry of the Interior responded with an explanation that "*it is currently conducting a public tender for new brochures and video material for various categories of applicants. Due to legislative amendments, reorganisation, the need for new linguistic versions and desire to upgrade the provision of information, the brochure will be renewed and applicants will be given an opportunity to obtain information through video material.*" They also explained that the brochure and video material will include information on the course of the procedure to be granted international protection, the procedure to determine the Member State responsible, rights and obligations, options for legal remedies and other information relevant to the international protection procedure and to suitable provision of information to participants in this procedure. The last few pages of the brochure will be adapted to unaccompanied minors, "*as it will include information relevant only to this category of international protection applicants, such as an application of legal representatives, options for age assessment, etc. The video material will be divided into two parts, of which one will be intended to inform illiterate or poorly literate persons and the other to inform minors, particularly unaccompanied minors.*"

2.8

RESTRICTION OF PERSONAL LIBERTY

Field of work	Cases considered			Resolved and founded		
	2017	2018	Index 18/17	No. of resolved	No. of founded	Share of founded among resolved (in %)
8. Restriction of personal liberty	157	159	101.3	135	26	19.3
8.1 Remand prisoners	20	26	130.0	20	4	20.0
8.2 Prisoners	91	65	71.4	59	5	8.5
8.3 Psychiatric patients	15	18	120.0	15	1	6.7
8.4 Persons in social care institutions	19	26	136.8	23	9	39.1
8.5 Minors in youth homes, residential treatment and other institutions	2	4	200.0	4	2	50.0
8.6 Illegal foreigners and asylum seekers	4	12	300.0	7	3	42.9
8.7 Persons at the unit for forensic psychiatry	5	5	100.0	4	1	25.0
8.8 Other	1	3	300.0	3	1	33.3

2.8.1 General findings

This chapter contains findings relating to the restriction of personal liberty, which include individuals deprived of liberty or whose freedom of movement was restricted. These include remand prisoners, convicted persons serving sentences in (home, alternative) confinement, persons at the unit for forensic psychiatry, minors in juvenile remand, correctional and residential treatment institutions and special education institutions, certain people with mental disorders or diseases in social and health care institutions, and foreigners at the Aliens Centre or the Asylum Centre. Initially, we present the treatment of persons whose liberty has been deprived (remand prisoners and convicted persons serving prison sentences), and the remaining complaints in this field will be presented below by individual topical sub-fields.

General observations – complaints by remand prisoners and convicted persons

In 2018, 26 complaints by remand prisoners were handled (2017: 20 cases) and slightly fewer complaints by convicted persons serving prison sentences than the year before (65, 2017: 91).

In this field, professional assistants solved quite a few issues in telephone conversations; therefore, there was no need to consider these cases in further more formal procedures. In addition to handling complaints, we also continued to visit prisons to implement the tasks and powers of the National Prevention Mechanism (NPM), which is presented in a special report.

As in all of the previous years, 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 regarding the human personality and dignity. **When convicted persons are subject to penal sanctions, they must be ensured all fundamental human rights, except those explicitly taken away from them or restricted by law.** This is also pointed out by the European Court of Human Rights (ECHR) in its convictions of our state due to established violations of the rights of prisoners, and expressed in lawsuits by prisoners for compensation payment due to unsuitable conditions during the serving of a prison sentence and/or remand,

The complaints of remand prisoners and convicted persons were verified (in some cases with visits) with the competent authorities (e.g. courts), particularly with the Prison Administration of the Republic of Slovenia, prisons or the Ministry of Justice. Individual topics in this field (e.g. the strategy to prevent suicides of prisoners) were discussed at meetings with representatives of the Ministry of Justice and the Prison Administration.

If a procedure was initiated in a certain case (e.g. regarding major irregularities or obvious arbitrariness), prisoners were informed of the replies to our enquiries with the competent authorities, and of our findings and possible other measures, e.g. recommendations to the competent authorities. To establish a basis for further action, the complainants were sometimes asked to inform the Ombudsman if the clarifications they had received were suitable or perhaps inaccurate and insufficient. If complainants did not respond, we were unable to continue our enquiries. **Considering the aforementioned and the fact that we intervened only if the authorities responsible for the case failed to state their position on a matter or did not consider it, this is reflected in the share of closed cases by justification in the field of handling the complaints of prisoners.**

The data on continuing the trend of reducing the number of prisoners is also encouraging; however, certain prisons are still overcrowded regardless of the fact that there are fewer prisoners in comparison with other countries. **Ljubljana Prison is still among overcrowded prisons, which together with the non-functional building that hosts Ljubljana Prison calls for the construction of new accommodation facilities in Ljubljana;** however, the problem of overcrowding (as we keep reiterating) cannot be solved merely by building new prisons.

Complaints from female convicted persons and remand prisoners from Ig Prison on poor conditions (such as inappropriate rooms for visits from their children, and inability of their partners and children to spend the night) confirm the correctness of the decision that a major overhaul of this prison is required. Absence of parents who serve a prison sentence also affects their children, particularly if they are minors. The Ombudsman has already pointed out the importance of preserving contacts between children and their imprisoned parents. In this regard, the Prison Administration has introduced activities to better regulate this field. Among them, the decision of the Prison Administration to print a leaflet featuring ten questions of children of imprisoned parents should be pointed out. These included questions most frequently asked by children of imprisoned parents and proposals how to answer them. The leaflets are a useful tool to help many understand the problem. Contacts between children and their imprisoned parents are also addressed in the chapter on children's rights.

Prisoners also live in poor living conditions in the open unit of Ljubljana Prison and in certain other prisons, which calls for necessary measures to be adopted to ensure respect for human rights of prisoners, particularly their personality and dignity. Convicted persons are sentenced to the deprivation of liberty but not to the deprivation of human dignity.

We also determined that the organisation of activities and the provision of work for all prisoners capable of working and who wish to work remain weak points in prisons. Therefore, we reiterate that the period of a prison sentence should be preparation periods for convicted persons to return and reintegrate into society. We particularly point out the need to follow the recommendation of the CPT. During a visit to Slovenia in 2017, they recommended that Slovenian authorities keep attempting to ensure a satisfactory activity programme for all prisoners, i.e. remand prisoners and convicted persons. The objective should be for all prisoners and remand prisoners to spend a significant portion of the day (i.e. eight or more hours) outside of their rooms, participating in useful activities: work, which is possibly professionally useful, education, sports, recreation or socialisation.

It may be expected that **the operation of the probation service** will contribute to more frequent use of alternative sanctions, reducing the number of prisoners; therefore, the Ombudsman welcomes the operation of this service.

In 2018, the ZIKS-1 was amended again with the ZIKS-1G. We participated in the preparation of the amendment with our comments. Certain comments were taken into account by the authority preparing amendments or the authority states its position on (most of) them, which is not always the case. We especially welcome the fact that certain recommendations and proposals of the Ombudsman regarding the implementation of penal sanctions were taken into account and implemented in the preparation of the amendment. We may mention better arrangements of the so-called intermittent sentence, supervision of house arrest carried out by the probation unit not the police, obtaining extracts from criminal records at the beginning of the sentence, informing injured parties of exits, releases or escapes of convicted persons, and particularly better arrangements of placement under a stricter regime, including the role of physicians – which takes into account the positions of the CPT. We also welcome a friendlier arrangement of telephone contacts between convicted persons and persons outside prison. We believe that preserving contacts with persons close to convicted persons is useful, as it may contribute to prisoners being better prepared to return to society after serving their sentence and prevent social exclusion. We also applaud the introduction of volunteering.

We participated with our comments in the preparation of **new Rules on the exercising of the powers and duties of prison officers**. These Rules govern in greater detail the implementation of the tasks and powers of prison officers stipulated by the ZIKS-1, the training programme and professional examination programme for prison officers and candidates for prison officers at the Prison Administration, the required content of the training for prison officers who acquired the status of an authorised official outside the Prison Administration, and the form of a special identity card for prison officers.

We may mention that we **participated in the training programme for newly accepted prison officers in 2018 (May and November)** by Deputy Ombudsman, Ivan Šelih, presenting the work of the Ombudsman to prison officers in Gotenica, and Ombudsman's adviser, Robert Gačnik, presenting the work of the NPM.

2.8.2 Realisation of the Ombudsman's recommendations regarding complaints of remand prisoners and convicted persons

In **recommendation no. 11 (2017)**, the Ombudsman recommended adopting all necessary measures to consistently observe the rules and standards on the basis of which the state committed to respect human rights when depriving people of their liberty, particularly regarding the human personality and dignity, with the Constitution and international conventions. **The guarantee of the Prison Administration that this was an ongoing task is encouraging; therefore, we do not reiterate this recommendation, but we expect it to remain the motto for the work of staff in the system of the enforcement of penal sanctions.**

In recommendation no. **12 (2017)**, the Ombudsman recommended that prisons and the Prison Administration take into account the comments and recommendations provided by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), and eliminate all established deficiencies. The Prison Administration explains that, following its visit, the CPT prepared 30 recommendations and initiatives which refer to the tasks and powers of the Prison Administration. The response report of the Government of the Republic of Slovenia shows that the Prison Administration accepted all initiatives and recommendations of the CPT as sensible. **Certain initiatives of the CPT** (for example recommendation no. 57 regarding the possibility to apply for a doctor's appointment with a sealed envelope); **the realisation of certain recommendations requires constant efforts of the Prison Administration** (for example recommendation no. 48 on the expansion of sets of activities for persons under stricter regimes); **and the Prison Administration will strive to realise certain recommendations in accordance with its abilities and working conditions** (for example recommendation no. 40 on minimum standards of living areas for prisoners).

In recommendation no. **13 (2017)**, the Ombudsman called for prompt realisation of recommendations from a special thematic report to improve conditions for the accommodation and treatment of vulnerable prisoners (elderly, ill and disabled persons, and others). In a special thematic report, the Ombudsman stated four recommendations on the imprisonment of persons with special needs and their security (health care and rehabilitation). **The Prison Administration was informed of the report and responded to it, and stated its position on specific recommendations.** It explained that, regardless of its efforts so far, it lacks staff to which the strategy could refer to implement a potential special strategy on the treatment of persons with special needs. In addition, the small size of the Slovenian prison system means that the population of persons with special needs serving a prison sentence is small and very diverse. Apart from general (known and applied) principles, such as facilitating the exercise of the right to health care and other constitutional rights, more detailed instructions that would support prisons in their work and treatment of persons with special needs could not be defined in the strategy.

The Prison Administration also disagrees with the Ombudsman's recommendation to uniformly regulate the manner and conditions to facilitate support for persons who need assistance with care. According to the findings of the Prison Administration, options of prisoners to utilise care and assistance services vary significantly in concrete cases. Certain prisoners access such services on the basis of their eligibility for services in the field of social security and health care. In practice, measures applied by the Prison Administration to supplement services to which individual prisoners are entitled under general regulations vary significantly; therefore, the Prison Administration believes that the adoption of uniform practice would not bring any additional privileges to the treatment of such persons.

The remaining two recommendations of the Ombudsman refer to adapted rooms or units to make them suitable for persons with special needs. The Prison Administration fully agrees with that. Certain established deficiencies regarding the equipment in rooms have already been eliminated by the Prison Administration. Deficiencies the elimination of which requires significant funds will be eliminated in the future, depending on available funds. The Ombudsman welcomes the elimination of established deficiencies, and encourages the Prison Administration to adopt all necessary measures to improve conditions for the accommodation and treatment of vulnerable prisoners, such as elderly, ill and disabled persons, and others, to ensure conditions suitable for serving a sentence.

In **recommendation no. 14 (2017)**, we pointed out that prison staff must make sure that extraordinary events are consistently recorded, that the competent authorities are suitably informed of such events, and that records and other documents are suitably filled out or written to ensure safe remand and imprisonment, and respect human personality and dignity. In its response to this recommendation, the Prison Administration explains that the task to consistently record events is imposed on prisons by Article 104 of the Rules on the implementation of prison sentences. **Since the task of the Head Office of the Prison Administration is to supervise, monitor and guide the work of prisons, the responsibility for measures to secure suitable recording of extraordinary events is one of the Prison Administration's ongoing tasks.**

In **recommendation no. 14 (2017)**, the Ombudsman recommended, along with a suitable number of employees in prisons, adopting necessary measures for better work organisation to reduce the number of prisoner escorts. Most times when prisoners have to be escorted, they are escorted to court hearings and health care institutions. The Prison Administration cannot influence the number of court hearings and health care needs of prisoners, which require prisoners to be escorted from prisons; therefore, its ability to significantly change the number of escorts is limited. **However, the Prison Administration guarantees that it strives to influence the number of escorts required by providing dedicated exits to convicted persons whenever they do not have to be escorted, depending on security circumstances, which has been implemented by prisons.** We also establish that the Ministry of Justice (supported with proposals of the Prison Administration) sent proposals to the Supreme Court of the Republic of Slovenia in 2018, which could contribute to reducing the possibility of cancelling escorting and are a matter of the courts, and requested it to provide other proposals and propose measures which would contribute to solving the problem of cancelling escorting of convicted persons and remand prisoners to court for them to attend, or participate in, certain procedural actions. The Supreme Court studied the said proposals, stated its position and expressed agreement in principle with some of them. To this end, the Prison Administration has been carrying out numerous additional measures that contribute to fewer

cancellations of escorting to courts and health care institutions. The Ministry of Justice reiterated that it will continue to work hard to ensure escorting as much as possible.

We should mention that the Ombudsman has been dedicating special attention to the wider problem of prison officers and the protection of their rights. We are well aware that the situation in prisons also depends on the organisational climate and that the right of each employee to dignity is crucial. For that reason, we discussed the situation in prisons and urgent changes with the competent authorities several times (also in 2018) and demanded solutions. The Ombudsman establishes that progress is noticed in the provision of more appropriate work equipment and clothing, and agrees with the findings of unions that staff shortage is still severe.

2.8.3 Remand prisoners

Similar to past years, most complaints of remand prisoners in 2018 referred to decisions on remand, which can usually (only) be enforced in court proceedings with ordinary and extraordinary legal remedies. In addition, complaints referred to the enforcement of remand, such as poor living conditions and other circumstances in remand. **In these cases, we kept encouraging remand prisoners to use internal complaint channels as provided by Article 70 of the Rules on the implementation of remand.** Remand prisoners may complain to the president of the relevant district court or the Director General of the Prison Administration if they believe that prison staff are not treating them correctly.

The treatment of remand prisoners is supervised by the president of the district court. **The president of the court or a judge appointed by the president must visit remand prisoners at least once a week, and if they consider it necessary, ask them how they are even without the presence of prison officers.** They must do everything necessary to eliminate irregularities noticed when visiting prisons. The appointed judge must not be an investigating judge. The president of the court and the investigating judge may at any time visit remand prisoners, talk to them and receive complaints (Article 213.d of the ZKP).

During our visit to Maribor Prison as the NPM, we had a conversation with an 88-year-old remand prisoner who pointed out problems he encountered on remand due to his age and health problems (along with other health problems, he also has problems with sight and hearing).

Therefore, we proposed to the president of the District Court in Maribor to thoroughly check the circumstances of his remand as a supervisor of the treatment of prisoners, and particularly who provides the necessary assistance to ensure the prisoner's basic needs are met and to what extent. We also proposed to adopt necessary measures together with Maribor Prison to ensure humane treatment of the remand prisoner and respect for his personality and dignity. In her response, the president stated that a report had been requested by Maribor Prison which confirmed that the remand prisoner required constant presence of health care staff. They proposed to study the possibilities for alternative remand. Nevertheless, the remand prisoner had remained on remand at Maribor Prison for a few months until he commenced his sentence at Dob pri Mirni Prison (where he was taken by ambulance). In addition to suitable accommodation, it was arranged for an external caregiver to visit him twice a week (or more frequently if necessary), who helps him with basic hygiene, makes sure that his basic needs are met and assists him with his health problems. **This example shows the need to realise the recommendations for the special thematic report to improve conditions for the accommodation and treatment of vulnerable prisoners (recommendation no. 13 (2017)) as soon as possible, particularly the need to set up adapted rooms or units with necessary care to make them suitable for prisoners with special needs.**

It must be taken into account that remand prisoners cannot freely decide to attend the funeral of a close relative due to the fact that they are on remand and under the authority of the state. In one of the cases considered, Ig Prison explained to the complainant that she could not be escorted to a funeral due to staff shortage. Thus, they prevented her from saying goodbye to a relative together with her family, which is a unique and irreplaceable event.

Example:

Prevention from attending the funeral of a close relative

The complainant informed the Ombudsman that the prison prevented her from attending the funeral of her grandmother, although she had expressed her wish in time and ensured funds to pay for the costs related to her being escorted to the funeral. The death of a close relative is undoubtedly a situation which significantly affects the (family) life of a person; therefore, the Ombudsman expects the prison to not only allow exits but to actively solve the matter by obtaining a suitable permit from the court as soon as possible. In this case, the judge stated in her response to the Ombudsman that, in her opinion, there were no obstacles as to why a permit could not be issued. However, she did not issue a permit as the prison informed her that the remand prisoner could not be taken to the funeral.

Following an enquiry at the Prison Administration, we wrote in our final response sent to the Prison Administration that, generally, staff problems must not be an excuse or even an apology for denying a request to attend the funeral of a close relative. **The Ombudsman believes that, whenever the attendance of an event, such as the funeral of a close relative, cannot be approved for reasons related to the state, another suitable way should be sought to provide necessary staff (e.g. by reassignment from other prisons).** The prison should have informed the Prison Administration as soon as it had established that it could not provide an escort in view of its capacities to jointly find a suitable solution.

If the state deprives a person of liberty, it must also be prepared for situations similar to this one. In such cases, which may significantly interfere with the right to respect for private and family life referred to in Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), it would be more appropriate for prisons to obtain the position of the Director General of the Prison Administration beforehand if they had to cancel escort merely due to staff problems. At the management level, this would ensure a prompt test whether the aim of the deprivation of liberty pursued by the state is proportional to the individual's right to family life, and whether the original prison or other prisons cannot arrive at any other sensible solution.

2.1-10/2017

2.8.4 Prisoners

In 2018, we also received complaints from convicted persons which referred to various aspects of imprisonment, such as the summons to serve their sentence, the commencement of sentences, poor living conditions, the regime of imprisonment or relocation from a more liberal to a stricter regime, relocations to other prisons or units (or premises), interruptions or suspensions of imprisonment, endangerment by, or the violence of, fellow prisoners, possibilities for work, granting (or withdrawing) various privileges, visits and other communication with the outside world (e.g. correspondence), confiscation of personal belongings, health care, inclusion in addiction treatment programmes, urine testing, diet, escort and production by prison officers, the use of coercive measures, parole, etc.

Such complaints (as in the case of complaints by remand prisoners) were, as is customary, also verified if necessary (in some cases by visits) with the relevant authorities, particularly with the Prison Administration, the Ministry of Justice or the relevant prison. During the verification of claims from an anonymous complaint, the Ombudsman visited Ig Open Unit of Ljubljana Prison. During our visit at the end of 2017, we **proposed**, in view of the established low temperature in the hall in front of rooms (14.5°C, while the external temperature was 10.3°C) **to study options to warm up the unit**. We had already found that it was cold in the hall in front of rooms during the previous visit of the NPM. Statements of convicted persons that those of them who are assigned as janitors always receive a cold snack, although the menu at the unit states a warm snack, was confirmed by the head of the unit.

We requested the Prison Administration to state its position regarding the Ombudsman's findings and inform us of potential measures. On the basis of the explanations received, the Ombudsman did not establish any

need to adopt further measures. **The Prison Administration informed us that the prison improved heating conditions in the hall by ordering the installation of two additional heaters and by repairing certain windows. The convicted persons who are assigned as janitors were provided with a warm snack; they sign up for a warm snack with the prison officer, which is subsequently ordered at Ig Prison.** The realisation of our recommendations will be thoroughly verified during our next visit.

It is encouraging that the Ministry of Justice supervises lawful treatment of convicted persons, and therefore, we welcome such forms of supervision.

Physical searches of convicted persons

We received an anonymous letter from convicted females at Ig Prison who complained about physical searches on their return to the prison from enjoying privileges outside prison and dedicated exits without escort by prison officers pursuant to Article 236.f of the ZIKS-1. **Among other things, they pointed out that the fact that they had to undress in front of female prison officers every week or several times a week was humiliating, because some of them had been victims of sexual abuse and physical examinations bring back memories of these events.** Exits from prison require a certain degree of trust from the management of the prison, making them a reward. Nevertheless, convicted persons must undergo a physical search, demeaning them each time they return to the prison. Even if they return from a doctor's appointment, they must undress when they return, regardless of whether they are pregnant or ill. Some of them feel so uncomfortable that they even think about not utilising the option to exit prison. For this reason, they requested that we check what the point of Article 236.f is, since it only brings humiliation to them.

Article 236.f of the ZIKS-1 stipulates that a prison officer carries out a physical search of a convicted person:

- upon admission for their prison sentence, unless the convicted person is admitted to a separately located semi-open or open unit;
- upon return from enjoying privileges outside prison and dedicated exits without the escort of prison officers, unless the convicted person serves their sentence at a separately located semi-open or open unit;
- prior to being tested for illicit psychoactive substances;
- prior to being placed in a special room; and
- whenever there is a suspicion that the convicted person is concealing prohibited items, and these items cannot be detected by means of a security search.

It also stipulates that a convicted person is informed of the reasons for, and course of, a physical search prior to the search. A prison officer performs a physical search of a convicted person by ordering the convicted person to hand over for search all items and clothing on them, and reviewing the surface of the convicted person's body and scalp. Replacement clothing is provided to convicted persons for the duration of the physical search.

Article 50 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) stipulates that the laws and regulations governing searches of prisoners and cells must be in accordance with obligations under international law and must take into account international standards and norms, keeping in mind the need to ensure security in the prison. Searches must be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity. Article 52 emphasises in particular that intrusive searches, including strip and body cavity searches, should be undertaken only if absolutely necessary. Prison administrations are encouraged to develop and use appropriate alternatives to intrusive searches.

Certain other standards and recommendations point out that, in view of the severity of the intrusion upon an individual's privacy, physical searches of prisoners may be used as the ultimate measure and only if absolutely necessary to preserve prison order and security, and if they are proportional to their purpose. The threat to security and order must be real and severe to prevent the performance of systematic and routine searches of all prisoners. The necessity to carry out a physical search must be assessed on a case-by-case basis, i.e. individually or on the basis of a reasonable suspicion. Physical searches may only be carried out if surface (security) searches do not suffice to preserve security.

Taking into account the statements of convicted females, regulations and recommendations that refer to physical searches of prisoners, the Ombudsman had serious reservations about whether the existing legal arrangements, which generally allow physical searches in all cases upon return to prison from enjoying privileges outside prison and dedicated exits without escort of prison officers (unless the convicted person serves their sentence at a separately located semi-open or open unit) without assessment on a case-by-case basis, i.e. regardless of the trust of the management enjoyed by a prisoner and other circumstances of each case, are proportional, legal and necessary.

To this end, we requested the Prison Administration to define the circumstances pursued by the said provision of the ZIKS-1, which is the legal basis of physical searches. At the same time, we enquired how a physical search pursuant to Article 236.f of the ZIKS-1 is carried out, whether documents are kept separately for each case, and whether physical searches are carried out upon each return, and if so, how such practice justifies the request for the extremeness and necessity of such intrusions upon a prisoner's privacy, particularly the privacy of vulnerable groups, such as women. We also enquired which other measures (if any) are applied by the prison to eliminate the need for physical searches of prisoners.

The Prison Administration explained that, in recent years, it had noticed increased influx of illicit items and substances to the prison. The number of drugs, pills and drug consumption equipment discovered has been increasing in recent years, i.e. to over 400 discoveries annually, while previous years had seen between 200 and 288 discoveries annually despite more prisoners. **The Prison Administration established and recorded that, in addition to receiving illicit items and substances in packages and by throws over walls, one of the weakest points was influx through the main entrance to the prison, since they did not have any basis to search all prisoners who served their sentences at closed units of the prison.** In view of the above mentioned, the proposed amendments to the ZIKS included the expansion of powers of prison officers regarding physical searches of prisoners. The proposal was submitted for inter-ministerial coordination and did not receive any comments; therefore, the ZIKS-1 contains legal authorisation and the duty to carry out physical searches of prisoners pursuant to Article 236.f.

The Prison Administration also explained that the management of Ig Prison had informed convicted females in the prison community of amendments to the Act, including the duty to carry out physical searches upon said return, unless the convicted female serves her sentence at a separately located open unit, prior to the entry into force of the amended Act and prior to the implementation of physical searches pursuant to the said provision.

In addition, it was explained to them in one of the prison communities, where physical searches were emphasised as humiliating, that they understood their distress but that this is a manner that contributes to the preservation and provision of security, order and discipline at the prison. When discussing the subject, convicted females did not have any remarks regarding the procedure of physical searches by female prison officers and claimed that the searches were carried out correctly.

At Ig Prison, such searches were carried out in a dedicated room, safeguarding personal integrity of the prisoner. Searches are carried out by two female prison officers (or exceptionally one); a prisoner is first invited to hand over for search all items and clothing on them, and the surface of their body and scalp are then searched. Replacement clothing is provided to prisoners for the duration of the physical search. **This makes the time when a person is completely stripped short and the procedure less stressful for prisoners, and gives prison officers more time to thoroughly inspect the person's clothing.**

Pursuant to Article 77 of the Rules on the exercise of the powers and duties of prison guards, prisons record all required data on physical searches carried out. The Prison Administration explained that such physical searches do not include physical searches of convicted females who serve their sentences under an open regime and live in a separate facility next to the main building (so-called open unit). At Ig Prison (and most other prisons), convicted females under closed and semi-open imprisonment regime serve their sentences in the closed unit. Convicted females who serve their sentences under a closed regime live on the second floor, while those who serve their sentences under a semi-open regime live on the first floor; nevertheless, their complete separation cannot be provided due to the architectural design of the facility, which also enables stronger prisoners to put pressure on weaker prisoners in terms of bringing illicit items and substances to the prison in a grey area of prison subculture. Particularly convicted females who utilise privileges outside prison

or dedicated exits without escort of prison officers in accordance with the safety assessment are exposed to various pressures. Consistent physical searches make sure that such convicted females do not endure pressure from stronger convicted females. In addition, the utilisation of privileges outside prison and dedicated exits without escort of prison officers always carries a certain risk of bringing in illicit items and substances despite the trust of the prison management enjoyed by the convicted females.

We saw reasons that led to the expansion of powers of prison officers regarding physical searches. However, we doubted that legal authorisation and the duty to carry out physical searches as foreseen by Article 236.f of the ZIKS-1 take into account international standards and recommendations.

We could not ignore that, in view of the severity of the intrusion upon an individual's privacy, physical searches of prisoners may be used as the ultimate measure and only if absolutely necessary to preserve prison order and security, and if they are proportional to their purpose. The threat to security and order must be real and severe to prevent the performance of systematic and routine searches of all prisoners. **The necessity to carry out a physical search must be assessed on a case-by-case basis, i.e. individually or on the basis of a reasonable suspicion.** Physical searches may only be carried out if surface (security) searches do not suffice to preserve security.

Therefore, as we addressed this problem, we turned to the Ministry of Justice, as we were interested in their position particularly on compliance of Article 236.f of the ZIKS-1 with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). **We also believed that prisoners must not be victims of unnecessary intrusion upon privacy due to inability to provide complete separation between individual regimes by referring to architectural obstacles in a prison.** As stipulated by Article 11 of the Nelson Mandela Rules, the different categories of prisoners must be kept in separate institutions or parts of institutions, also taking account the necessities of their treatment. **We proposed thinking about potential necessary amendments to the provision of the ZIKS-1 in question to make physical searches of prisoners the ultimate measure and only if absolutely necessary to preserve prison order and security, and if they are proportional to their purpose.** We also proposed thorough monitoring of the effects of the implementation of this power of prison officers and studying its effect on the influx of illicit items and substances to prisons prior to, and following, the introduction of this power. We particularly pointed out the need to change the practice of physical searches, which obviously allows the searched person to be completely stripped (although for a short period). Such practice is in direct contravention (among other things) of recommendations of the CPT.

The Ministry explained that the said amendments to the ZIKS-1 had been prepared on the basis of findings in relation to the monitoring and assessment of the consequences of the applicable legislation in practice. To this end, suitable legal basis had to be provided for correct and consistent regulation of powers of prison officers, which had been mainly regulated at the implementing level prior to the adoption of the amended ZIKS-1G, which was incorrect; therefore, the Ministry put in additional efforts to (originally) regulate these powers in more detail at the legislative level as required by Article 87 of the Constitution of the Republic of Slovenia.

Prior to the entry into force of the ZIKS-1G, the provisions regarding physical searches of convicted persons had been regulated by Article 238 of the ZIKS-1 which provided prison officers with powers to perform searches but not to define the content of searches or the circumstances in which searches can and must be carried out. Thus the new Article 236.f of the ZIKS-1 regulates by law the said aspects of physical searches of convicted persons; however, the provision of the Act does not imply that physical searches of prisoners must be carried out automatically, which is not its purpose. The above stated also arises from Article 29 of the ZIKS-1, which stipulates activities that must be carried out upon acceptance of a convicted person to prison; however, the said article does not stipulate physical searches as mandatory. **Therefore, the Ministry of Justice reiterated that the institute of physical searches of convicted persons must be interpreted and applied within the framework of the ZIKS-1 as a whole.**

In the light of the need to respect the principle of proportionality (Article 2 in relation to paragraph three of Article 15 of the Constitution of the Republic of Slovenia) and personal dignity, the correct interpretation of Article 236.f of the ZIKS-1 can only arise from its connection with the principles of proportionality, legality and necessity referred to in Article 235.c of the ZIKS-1. This means that this power is available for use, **and must not be used automatically** but only in suitable circumstances and on the basis of the principle of proportionality

and other principles, which must be taken into account by prison officers when exercising their powers, and which interfere with, or limit, the basic rights of individuals. In addition to Article 29 of the ZIKS-1, arguments in favour of such interpretation and application of the Act lie in paragraphs one and two of Article 239 of the ZIKS-1; paragraph one stipulates the use of coercive measures against convicted persons only if other powers cannot be used to prevent escapes, assaults, self-harm or major material damage, while paragraph two stipulates the use of coercive measures against other persons (who are not convicted persons) without the criteria to use a milder measure (since severe situations are involved). **This means that the difference in interpretation of the principle of proportionality (paragraph two of Article 239 of the ZIKS-1 includes a lower level of proportionality in comparison with a stronger explanation in Articles 236.f and 235.c of the ZIKS-1) means that physical searches of convicted persons must be assessed in view of suitable circumstances and by taking into account the principle of proportionality.**

Regarding compliance of Article 236.f of the ZIKS-1 with the Nelson Mandela Rules, the Ministry explained that they limited the admissibility of physical searches at the normative level only to cases itemised in Article 236.f and not wider out of respect of the said Rules. Regarding the said provisions of the Rules, the Ministry points out that they must be observed even at the implementation level. Article 236.f must not be applied automatically; prison officers must take into account the general principle of proportionality and other principles regarding the use of powers determined in Article 40 of the Rules on the exercise of the powers and duties of prison guards. In view of the above mentioned, the Ministry of Justice assessed that Article 236.f of the ZIKS-1 follows international standards and recommendations. In 2018, training in the content and meaning of solutions referred to in the amended ZIKS-1G was carried out, which included the renewed institute of physical searches. Regarding the problem referred to in the letter from convicted females and our letter, **the Ministry of Justice decided that additional training in, and presentations of, the correct implementation of the power to physically search convicted persons were required. It ensured that, while taking into account their supervisory function, it also monitors the effects of the implementation of this power of prison officers prior to, and after, the entry into force of Article 236.f of the ZIKS-1, and emphasises that the amended article applies a shorter period; however, to provide a real assessment, the effects must be monitored over a longer period.**

In view of everything mentioned above, the Ministry believes that the interpretation and conditions of the implementation of physical searches as regulated by Article 236.f of the ZIKS-1 in practice can successfully pursue the desired aim, i.e. to reduce the influx of illicit psychoactive substances to prisons, ensuring order and security.

The Ministry of Justice proposed the Prison Administration to carry out suitable applicative measures and inform the Ministry thereof by the beginning of September 2018.

The Prison Administration acted on the proposal and communicated that, on 29 August 2018, it informed all prisons and the correctional institution with a letter that physical searches of convicted persons must not be carried out automatically, but prison officers must take into account suitable circumstances, the principle of proportionality and other principles stated in Article 40 of the Rules on the exercise of the powers and duties of prison guards when exercising their power.

To protect the convicted person's right to personal dignity, the Prison Administration proposed a different arrangement of physical searches of convicted persons in the Rules on the exercise of the powers and duties of prison guards. When preparing the proposed amendments, the Prison Administration took into account the Guidance Document on the Nelson Mandela Rules, which determine that the searched person must not be completely stripped at any given time. On the basis of the said Guidance Document, it proposed that **the search of convicted persons' clothing be carried out in two stages**. Following the search of lower body clothing (from the waist down), convicted persons can put them on and then submit upper body clothing (from the waist up) to be searched.

The Prison Administration also communicated that it will keep pointing out to prisons that **searched persons may only be completely stripped during physical searches for the absolutely necessary time, and that convicted persons must be ensured replacement clothing during physical searches**. It also announced that

additional training of prison officers and inspections of physical searches ion practice will be used to ensure that physical searches are carried out in accordance with the aforementioned.

The Ombudsman welcomed the taken measures and will continue to monitor the problem as part of the consideration of complaints of prisons and during visits as the NPM.

Critical assessment of the use of coercive measures

Prison officers may use coercive measures in in cases provided by law. The Ombudsman pointed out in the past that, while considering certain cases in which prison officers used coercive measures (and accommodated persons in a special room) in different prisons, it established that prisoners had not always been allowed to make a statement on their own view of the event or this was not evident from the justification assessment of the use of coercive measures. **Therefore, we reiterate that prisoners against whom prison officers use coercive measures must always be given the opportunity to make statements or provide their view of the procedure and the circumstances in which coercive measures were used.** We believe that an opinion about justification, legality and professionalism of the use of coercive measures may only be provided if an explanation of the affected convicted person is available, i.e. their statement, but not solely on the basis of statements of prison officers who used the coercive measure. 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. This is also required by the principles of fair correctness and legality assessment of the use of coercive measures.

Example:

Insufficient content of a report on the use of coercive measures

A complainant informed the Ombudsman that prison officers used physical force against him unjustifiably. To check his statements, we visited and interviewed him at Dob pri Mirni Prison, and obtained from the management a copy of the justification assessment of the use of coercive measures against the convicted person and the report of the internal committee that investigated the circumstances of the extraordinary event.

We discerned from the justification assessment of the use of coercive measures that the assessment was carried out on the basis of interviews with prison officers involved, their written records (only one out of six prison officers wrote one) and a recording of events in the halls of the unit. It was not clear from the report who interviewed the convicted person against whom coercive measures had been used. We did not find his statement in the report. We established other deficiencies in the justification assessment procedure regarding the use of coercive measures. To this end, we proposed to the Prison Administration to study, while taking into account Article 114 of the Rules, the need to obtain additional explanations or enquires, which would provide a suitable criticality of the assessment of the use of coercive measures, along with already collected evidence, in the procedure of the said assessment, since we believe that the assessment of the internal committee which refers to the use of coercive measures against the convicted person was made too rapidly.

The Prison Administration explained that, in the specific case, the Head Office of the Prison Administration was informed of the use of coercive measures in writing; however, since there was no suspicion about its unjustified, unprofessional or inappropriate use, no internal committee that would study the use of coercive measures in detail was appointed, as stipulated by paragraph two of Article 114 of the Rules. On the basis of paragraph two of Article 202 of the ZIKS-1, the Director General of the Prison Administration appointed an internal three-member committee to investigate all the circumstances of the event and the correctness of the actions of Dob Prison in relation to the event that involved several convicted persons. The committee particularly pointed out to the prison management the established deficiency (subsequently also pointed out by the Ombudsman) that the report did not disclose whether the convicted person had had the opportunity to provide his view of the events. The committee also pointed out that employees should also interview all other convicted persons who were present in the room during the use of coercive measures. The prison management allegedly assured the committee that interviews had been carried out with the complainant as well as other convicted persons.

On the basis of the explanations received, the committee advised the prison management to make sure that all interviews in similar cases are written and suitably recorded. The committee also emphasised that, in the specific case, all prison officers who were present at the event should have made official notes on the event, although the report includes their statements. Regardless of the established deficiencies, the committee concluded, on the basis of its inspection of written documents and oral explanations, that the use of coercive measures against the complainant was justified.

The Prison Administration fully agreed with the Ombudsman's position that it is particularly important to critically assess the use of coercive measures to allow a prisoner against whom such measures were used to provide their view of the event; it is equally important to record events, measures and interviews. The Prison Administration ensured that it would pay special attention to this in the future and would act if inappropriate actions were established. **2.2-46/2017**

Telephone expenses in prisons skyrocket

The Ombudsman has pointed out several times that contacts with the outside world prevent social exclusion.

Prisoners are not entitled to free telecommunication services, which, nevertheless, does not justify significantly higher call rates than outside prison, when this is not supported by higher costs arising from special requirements related to imprisonment (e.g. adjustment due to blockage of calls, prepayment system, etc.). Regarding high call rates, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has proposed several times that states enable prisoners access to telecommunications at rates comparable to rates in the wider society (e.g. CPT/Inf (2012) 9 and CPT (2016) 62).

At the beginning of 2018, the Prison Administration informed us in detail of the arrangement of telephone calls, which is uniform for all prisons. The Prison Administration stated that telephone services in all prisons are supported by Telekom Slovenije in accordance with the agreement with the Prison Administration. The basis of the agreement was the decision of the Agency for Communication Networks and Services of the Republic of Slovenia (AKOS) that issued a decision determining the provider of the universal service to Telekom Slovenije. The Prison Administration pointed out that, unfortunately, it cannot influence call rates, but that she called on Telekom Slovenije to adjust its price list to general changes in call rates.

Since the analysis of ensuring public phone booths published in May 2014 by the AKOS, which is responsible for the provision of the universal service, showed that there was no need for prisons to insist on public phone booths, we were surprised that the Prison Administration had not yet switched to a more suitable system that would also be more cost efficient.

When selecting high-quality products and services, we expected the Prison Administration to take into account, among other criteria, the price of the service which, in accordance with the law, must be paid by persons under the authority of the state, due to which they cannot choose a cost-efficient service that would best meet their needs. **The information that the rate of a mobile network call that exceeds two minutes is higher than EUR 1 and that if the call is made abroad, it exceeds this rate after just one minute, attests to the fact that, from the aspect of consumers, this is an unreasonably expensive system compared to general call rates.**

The need for changes in the field may also be based on the European Prison Rules (see point 24.5 of the Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules) saying that prison authorities should assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so. Fair and reasonable call rates, which will not unjustifiably deviate from the rates of the same services in the market, undoubtedly contribute to such welfare support.

Therefore, the Ombudsman pointed out to the Prison Administration that insistence on such a situation could, in the worst case scenario due to high call rate or when they or their family members do not have sufficient funds, create a dilemma for convicted persons and their family members whether to allocate

part of their funds to maintaining contacts with the prisoner or spend all funds to meet their basic needs.

We proposed to the Prison Administration to state its opinion on the said positions and take them into account when implementing procedures that will be in accordance with regulations that govern public procurement in order to contribute to call rates for prisoners to correspond to the actual situation in the market.

The Prison Administration assessed the Ombudsman's analytical display of the problem of prisoners' calls as significant assistance in its discussions with telephone service providers to achieve more favourable call rates for prisoners. Within its activities, the Prison Administration informed us that it had explained the significance of maintaining social contacts of prisoners during imprisonment and the necessity to use the phone at a meeting of the Telecommunications Council of the Republic of Slovenia (Council) in May 2018, which put the problem of call rates in prisons on the agenda at the initiative of the Consumer Protection Institute. When reviewing rates, the Council established that Telekom Slovenije sets the same prices for telecommunication services in prisons as in public phone booths, although phone booths in prisons are not included in the universal service. **On this basis, the Council proposed to the said company to reduce call rates in public phone booths in prisons and generally in Slovenia.**

Since Telekom Slovenije did not reduce rates or come up with other favourable solutions despite this and despite additional calls from the Prison Administration, the latter decided to seek technical solutions that would enable prisoners to call at low prices similar to prices for natural persons in the market. The Prison Administration informed us thereof in October 2018; the Ombudsman will continue to monitor activities and intervene if necessary.

A "prison case" before the ECHR also concluded in an important manner.

At the end of 2018, a case before the ECHR (Application no. 60503/15) related to the Slovenian prison system also reached its epilogue. We have been considering the case since 2014 and reported on it (see particularly pp. 95–98 and 129–131 of the Annual Report for 2015). In said case, the ECHR summarised the Ombudsman's findings (point 19) in the Statement of facts in 2017 and posed a question to parties whether the deprivation of the applicant's liberty between 31 May 2014 and 9 June 2014 was ordered "in accordance with the procedure prescribed by law", particularly taking into account the findings of the Slovenian Human Rights Ombudsman. The same year, the Ombudsman requested to be allowed intervention as a third party relying on Article 36 of the ECHR and paragraph three of Article 44 of the Rules of said court (see p. 26 of the Ombudsman's last year's annual report). As an amicus curia of the ECHR, the Ombudsman presented the most significant amendments to national case law (e.g. the Decision of Ljubljana Higher Court of 12 December 2014 in case Kp 57270/2012), legislation (amendment to Article 12 of the ZIKS-1 in the amended ZIKS-1F) and implementing regulations (instructions on implementing the procedure to provide urine and control testing), most of which were the result of our criticism of the consideration of the convicted person's case before national administrative and judicial authorities.

In said proceedings before the ECHR, the state eventually made a statement explicitly stating (this is our unofficial translation; for the original text see point 23 of Decision of the ECHR of 13 November 2018 in said case): "The Government of the Republic of Slovenia acknowledges that there was no suitable legal basis to change the applicant's prison regime from the intermittent sentence to the closed regime due to his inability to provide a urine sample and was not in accordance with the requirements of Articles 5.7 and 8 of the Convention, and the applicant was not ensured fair proceedings regarding the change of regime as stipulated by Article 6 of the Convention." The applicant did not accept compensation offered by the state in the amount of EUR 12,500 (EUR 10,000 for material and non-material damage incurred and EUR 2,500 for the costs of the proceedings). The ECHR took the position that the state had already made relevant changes to provide a clearer legal basis to change the prison regime in cases of illicit drug abuse as well as more precise rules for testing urine for illicit drugs, including the provision that regulates proceedings when a prisoner claims that they cannot or actually cannot provide a urine sample. Referring to the amendments to the legislative framework and the amount of compensation offered by the state, the court concluded the case with said decision.

2.8.5 Unit for forensic psychiatry

General findings

The Unit for Forensic Psychiatry of the Department of Psychiatry at Maribor University Medical Centre (hereinafter: the Unit) is still responsible for implementing **obligatory psychiatric treatment and custody in a health institution** and the **hospitalisation of remand prisoners and convicted persons** if they require psychiatric treatment, and, if necessary, it also performs **observations for the purposes of drafting psychiatric expert opinions** on one's sanity or ability to participate in a procedure.

In view of the purpose of the security measure of mandatory treatment, even outpatient, we believe that it is sensible to carry it out as soon as possible (not, for example, after serving a prison sentence). The security measure of compulsory psychiatric treatment (even if carried out at liberty) is a curative measure which includes medical treatment of the perpetrator. Its purpose is to eliminate the threat for perpetrators to repeat crimes due to their medical condition. Compulsory psychiatric treatment at liberty is not completely incompatible with serving a prison sentence according to another judgment; however, in such a case, the court (in cooperation with the prison) must ensure that such a measure is implemented in a manner provided by law.

The complaints considered referred to the imposed measure of compulsory treatment, consideration at the unit and certain other aspects, including consideration of various addictions. We pointed out the need to consider various addictions at the unit during our visit at the end of 2017. In response to our recommendation, the Department of Psychiatry stated that there is currently not enough staff working at the unit where the implementation of the programme to treat persons addicted to psychoactive substances (prisoners or persons with the measure of compulsory treatment and protection) is also foreseen. Staff will be fully trained when there is enough staff at the unit foreseen by the systematisation of the rules on the implementation of measures. The consideration of prisoners addicted to psychoactive substances who come from prisons is sensible if prisons also provide suitable accommodation of the considered persons. The programme is partially carried out at the unit, but suitable conditions in the prison have not yet been established. **Therefore, we again urge all competent authorities to take all necessary measures for the unit to be able to fully implement this programme.**

Realisation of the Ombudsman's recommendations

In **recommendation no. 16 (2017)**, we recommended again to the Ministry of Health to put in its best effort to compose and publish a list of health care institutions that meet the conditions for implementing security measures as soon as possible. We also pointed out the need for this recommendation to be realised to the Minister of Health during our introductory discussion. The Ministry of Health explained that it had sent the order with a list of health care institutions which carry out the security measure of compulsory psychiatric treatment and protection in a health care institution, and compulsory psychiatric treatment at liberty to the Ministry of Justice to approve it. Since only one health care institution met the conditions, the Ministry of Justice did not approve it. Therefore, the Ministry of Health announced that it would invite health care institutions to express their interest in the implementation of the security measure of compulsory psychiatric treatment at liberty. **The Ombudsman again encourages the adoption of all measures necessary to promptly compose and publish a list of health care institutions that meet the conditions for implementing both security measures of compulsory treatment.**

Decision making on the duration of the security measure of compulsory treatment only with the participation of the person

In its work, the Ombudsman has been informed several times of a case in which the court did not examine the perpetrator prior to making a new decision on the duration or change of the measure of compulsory psychiatric treatment and protection in a health care institution or compulsory psychiatric treatment at liberty.

On the basis of our consideration of the case, we wrote in the Annual Report for 2017 (p. 158) that Article 496 of the Criminal Procedure Act (ZKP) stipulates that the court examines the perpetrator prior to making a decision if this is necessary and if the perpetrator's state allows. We pointed out that the Act requires examination for a judge to form an opinion on the state of the person on whom they make a decision in judicial proceedings or to give the person an opportunity to say what they wish. The person in such proceedings has the right to say what they wish, and the court must study the person's legally relevant statements and take them into account when decision on further implementation of the imposed measure.

Regarding the problem in question, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recommended during a visit to Slovenia in 2017 that Slovenian authorities take necessary measures – including at the legislative level – to ensure that all patients under the security measures of compulsory psychiatric treatment and protection in a health care institution are personally examined by a judge within the six-month review of the security measure. In its response to a CPT response (CPT/Inf (2017) 28) regarding the said recommendation, the Government of the Republic of Slovenia stated that legislation already contains a suitably prescribed system of six-month repeated decision making which is under the competence of independent judiciary, and that it would point the said report out to the judiciary by sending the text by the CPT, emphasising the content and significance of this recommendation.

We pointed out this problem to the Supreme Court of the Republic of Slovenia in 2018. **In response to our intervention, the Supreme Court communicated that all judges had been informed of our letter and reminded of the legislative framework regarding the implementation of examination as stipulated by Article 496 of the ZKP, which includes taking into account recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.**

2.8.6 Persons with restricted movement at psychiatric hospitals and social care institutions

In the field relating to the deprivation of the freedom of movement or liberty due to a mental disorder or illness, we discussed 18 complaints involving restriction of movement in psychiatric hospitals in 2018 (three more than in 2017: 15). We considered several cases also in the field of persons in social care institutions, i.e. 27 complaints in comparison with 19 in 2017. We continued to visit these institutions in the capacity of the National Preventive Mechanism (more is provided on this in a special report).

The proportion of justified complaints remains high in the field of people in social care institutions. Most of these complaints were related to the Mental Health Act (ZDZdr) and unresolved systemic problems, such as the accommodation of persons in secure wards of social care institutions on the basis of court decisions. This problem received attention also during thematic visits as the NPM.

Open problems were still resolved directly with representatives of the competent ministries and managements of institutions, and in inter-ministerial working groups. During the introductory working visit of the new Minister of Health and his team on 5 November 2018, the Ombudsman particularly pointed out the need to realise the Ombudsman's recommendations in this field. She especially pointed out the need to establish a child and adolescent psychiatry unit at the Ljubljana University Psychiatric Hospital.

We met representatives of the Association of Social Institutions of Slovenia and addressed numerous problems most frequently encountered retirement homes around Slovenia. We also met the secretary of the Association of Centres for Social Work of Slovenia and established during our discussion that the situation in retirement homes was critical, since they have almost no bed vacancies.

Similar to previous years, the complaints in 2018 also referred to admission to treatment without consent in a ward under special supervision of psychiatric hospitals or the admission and discharge of persons from secure wards of social care institutions, and requests for relocation, the possibilities of going outdoors, exits etc. Certain complaints handled also referred to living conditions, treatment, care and the attitude of medical and other staff to patients or people in care in these cases, and to the (still unsettled) payment of the costs of accommodation in secure wards of social care institutions.

Complainants' claims were further verified by making enquiries at the competent authorities, and complainants were then informed about the Ombudsman's findings and explanations regarding procedures for admission to treatment and accommodation in social care institutions. We also answered their questions. We were available to complainant at a dementia-friendly point where information may be obtained by people with dementia, particularly those in the early stages of the disease, who are still independent and active, their relatives and others who wish to obtain more information on how to help people with dementia.

An important role in the field of treatment of persons with mental disorders or diseases is played by advocates of rights of persons in the field of mental health. They are able to inform a person in a suitable manner of the content of the rights, methods, and possibilities for exercising their rights, provide specific guidelines for exercising rights, and propose possible solutions, advise a person on exercising their rights, and make efforts for these rights to be observed. To this end, we continued advising complainants to seek their assistance. **We welcomed a proposal from the Ministry of Labour, Family, Social Affairs and Equal Opportunities for all social care institutions with secure wards to turn for cooperation directly to representatives who operate in the field of each institution to outline their operation and provide the institution with leaflets and posters.**

It is encouraging that 2018 saw the adoption of the Resolution on the National Mental Health Programme 2018–2028, which is the first strategic document with a comprehensive and long-term development strategy in the field of mental health.

In 2018, we organised together with the Judicial Training Centre of the Ministry of Justice (Centre), the Ministry of Labour, Family, Social Affairs and Equal Opportunities, the Ministry of Health and Association of Centres for Social Work of Slovenia **mental health days**. The main topics of this year's conference were supervised and community treatment. These are important institutes which facilitate the treatment of a person who, due to mental disorders, requires special health care, social care and other services provided outside the psychiatric hospital in the domestic environment of the person or in the community. They may significantly contribute to deinstitutionalisation.

The conference was attended by over 170 judges, psychiatrists, social workers, psychologists, attorneys, experts, representatives, coordinators of supervised and community treatment, non-governmental organisations, employees at the Ombudsman's office and other from various services and professions. It was an excellent opportunity for meetings, exchange of experiences and best practices, addressing open issues and obstacles in the work of everyone who is involved in such important topics in the ten years of the application of the ZDZdr. An amended ZDZdr is being drafted: therefore, this meeting was also an opportunity to establish necessary improvements of the legislative framework that determines these topics. In addition, all decisions taken at the meeting and the attendance of numerous stakeholders in this field reaffirmed the need to organise such meetings annually. For this reason, the Ombudsman expects such meetings to become constant and encourages all competent authorities to listen to, and realise, useful proposals for improvements in this field.

Realisation of the Ombudsman's recommendations

In recommendation no. 17 (2017), the Ombudsman urged all competent authorities to promptly realise the recommendations issued by the National Assembly of the Republic of Slovenia when considering the Ombudsman's Special Report on violations of human rights of persons with mental disorders in their involuntary accommodation and treatment in secure wards of social care institutions. Unfortunately, we find that no special progress was made in this field. **When handling received complaints in this regard and during visits as the NPM, we established again in 2018 that the situation had not changed.** In relation to the problem, we received new cautions from the Association of Social Institutions of Slovenia and numerous cautions from special social care institutions, other institutions and courts pointing out intolerable conditions in secure wards of social care institutions. The inadmissibility of such a situation was also pointed out at a special press conference at the Hrastovec Social Care Institution on 8 May 2018.

Therefore, we decided to repeat the thematic visit of the NPM in this field in 2018. **On the basis of visits to special social care institutions, we established that the situation regarding (over)crowding had not significantly improved since our visits in 2017; moreover, overcrowding in certain cases was even worse**

one year and a half later. Particularly worrisome are cautions that secure wards in all visited institutions had been overcrowded in the last year and a half to the extent where we could hardly speak (despite great efforts of individual institutions) of suitable living conditions of residents accommodated beyond capacities. It is not insignificant that the overcrowding makes living conditions of other patients worse and the workload of staff too great.

We support the announcements of the Ministry of Labour, Family, Social Affairs and Equal Opportunities to take measures in this field, including the announced provision of new facilities (the construction of a secure ward intended primarily for persons with dementia at Nina Pokorn Home in Grmovje and preparations to reconstruct C ward at Dom Lukavci), which will be partial (temporary) solutions for the said institutions. **However, we believe that the Ministry of Labour, Family, Social Affairs and Equal Opportunities should be more active and efficient in this field, since we do not think that the planned measures will solve the problem of constant overcrowding at Dom na Krasu and other institutions; in addition, we must be aware that a long-term solution of the addressed problem of overcrowding of all secure wards at special social care institutions is urgent.** Therefore, we again call on the adoption of measures to ensure more suitable involuntary admission and treatment of persons with mental disorders in social care institutions pursuant the Mental Health Act together with suitable spatial capacities and staff, which will enable adequate social care services to these persons.

In **recommendation no. 18 (2017)**, the Ombudsman recommended to the Ministry of Health to promptly prepare necessary amendments to the ZDZdr, which will provide a high level of respect for the fundamental rights of persons during treatment in a ward under special supervision of the psychiatric hospital or treatment at a secure ward of a social care institution. In its response, the Ministry of health stated that an amendment to the said act is being prepared and the proposal will be submitted for public discussion by the end of 2018. The Ombudsman points out that the working group that is preparing draft amended act had been appointed on 3 November 2016, but at the end of 2018, the public was not informed of the proposed amendments to the Act. **Three years had also passed since the Constitutional Court of the Republic of Slovenia, with Decision no. U-I-294/12-20 of 10 June 2015) repealed the third sentence of paragraph two and the third sentence of paragraph three of Article 74 of the ZDZdr in the constitutionality review procedure initiated on the Ombudsman's request.** Thereby, it decided that the repeal was to enter into force one year following the publication of the Decision in the Official Gazette of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, No. 46/2015 of 26 June 2015). It reached such a solution because the complexity of the regulated areas makes it impossible to immediately rescind the part of the ZDZdr in question. In order to provide legislators with sufficient time in which the procedure for admitting persons without legal capacity to secure wards of social care institutions must be regulated in compliance with the Constitution, taking into account the reasons provided by the Decision, the Constitutional Court of the Republic of Slovenia postponed the effect of the repeal for the maximum possible period of one year. Therefore, we must point out again that it is inadmissible that the legislator did not arrange the admission procedure in compliance with the Constitution by the deadline.

In recommendation no. **19 (2017)**, the Ombudsman recommended to the Ministry of Labour, Family, Social Affairs and Equal Opportunities to regularly publish information on the number of vacancies in all (verified and unverified) secure wards of social care institutions. The Ministry of Labour, Family, Social Affairs and Equal Opportunities assured us that vacancies are monitored weekly in all verified secure wards (there are no vacancies due to overcrowding), and that it publishes a list of secure wards (for persons with dementia, while for persons with mental health and/or development problems, also unverified secure wards are published) on its website. The Ombudsman encourages the provision of an updated and clear overview of vacancies in secure wards of social care institutions to assist the competent authorities (particularly courts) in decision making regarding accommodation in secure wards pursuant to the ZDZdr or others interested in vacancies in secure wards. It must be taken into account, however, that by the expiry of the transitional period referred to in Article 13 of the Rules on staff, technical and premises requirements for institutional care providers and Social Work Centres providing mental health services, and on the verification procedure thereof (Rules), the status of all secure wards – with regard to accommodation pursuant to the ZDZdr – is equal (see Decision of the Constitutional Court no. U-I-129/10 of 10 November 2011). This position is followed in the implementation of the ZDZdr, since courts (may) accommodate persons in verified secure wards and secure wards of social care institutions which have not yet been verified.

2.8.7 Minors in residential treatment institutions and special education institutes

General findings

In this field, we did not receive any complaints from minors in residential treatment institutions or special education institutes in 2018. **We visited certain residential treatment institutions and special education institutes as part of the implementation of tasks and powers of the NPM** (more on this in a special report). Individual topics in this field were also discussed directly during discussions with representatives of the Ministry of Education, Science and Sport.

Realisation of the Ombudsman's recommendations

In **recommendation no. 20 (2017)**, we recommended to the Ministry of Education, Science and Sport to prepare an updated educational programme and necessary systemic solutions following the evaluation of the project of comprehensive treatment of children with emotional and behavioural problems in residential treatment institutions. **In response to this recommendation, the Ministry of Education, Science and Sport assured us that, following the evaluation of the project, it would update the educational programme and prepare the required systemic solutions.**

In **recommendation no. 21 (2017)**, the Ombudsman recommended to the Ministry of Education, Science and Sport to comprehensively solve the problem of returning to residential treatment institutions minors who have run away from them. The Ministry of Education, Science and Sport informed us that the problem of returning minors who run away and were accommodated in residential treatment institutions by a social work centre is regulated in rules that regulate norms and standards for the implementation of educational programmes for children with special needs, as agreed within the inter-ministerial working group that operated at the Ministry for this purpose. The working group described the situation and legal bases, and proposed potential solutions, while at a joint meeting of state secretaries from all ministries, it was agreed that the Ministry of Education, Science and Sport would enable professional assistants to be on standby at home if a minor ran away. Article 49.a of the Rules on norms and standards for the implementation of educational programmes for children with special needs now stipulates: *"During school holidays, at night, on Saturdays and Sundays or holidays or work-free days, the principal of a residential treatment institution may order a maximum of two professional assistants to be on standby at home if an escape or escapes of children or adolescents with emotional and behavioural disorders from this institution are reported to the police. Standby duty means that a professional assistant is available by phone or other means and to come to work or a place where urgent work must be done. Standby duty is ordered in writing and also includes the duration of standby at home."* According to the Ombudsman, this is a step forward towards solving this problem, while a comprehensive solution could be brought by a new act on residential treatment institutions. We pointed out to the entities responsible for drafting this act that the use of the expression "escape" may only refer to cases of involuntary accommodation of adolescents in residential treatment institutions, and that only in such cases would the activation of the police be justified.

Expecting a systemic regulation of the operation of residential treatment institutions

It is encouraging that the Inter-ministerial Working Group on Monitoring the Work of Residential Treatment Institutions commenced operation in 2018. Its tasks include reviewing the normative regulation of the operation of residential treatment institutions, defining problems in the operation of residential treatment institutions from the aspect of individual ministries, determining and harmonising the competences of individual ministries, and preparing a proposal for a uniform or harmonised normative regulation.

In 2018, the Ministry of Education, Science and Sport in cooperation with this group prepared a draft proposed act on residential treatment institutions, of which we were informed and provided additional proposals and

comments. We particularly welcomed the objective of the proposed act, which is to fund a uniform, systemic solution of the comprehensive treatment of children with emotional and behavioural problems in residential treatment institutions which operate under several ministries. We are particularly pleased that the proposed act took into account many of our previous comments and recommendations. We believed that the draft proposed act was a good basis for its further preparation; however, more precise reassessment is required in terms of terminology and certain changes which should provide clear statutory solutions of the comprehensive treatment of children and adolescents in residential treatment institutions. After studying the first draft proposed act, we believed that its systemic deficiency was the fact that it did not regulate potential complaint channels that would be available to adolescents and children and their parents any time they disagree with individual aspects of their treatment in residential treatment institutions. This and other comments we had made were taken into account in the amended draft proposed act on residential treatment institutions. We also proposed to the Ministry of Education, Science and Sport to particularly thoroughly study comments and proposals made by experts, particularly residential treatment institutions, in the further preparation procedure of the act. If the comments and proposals are cogent, they should be taken into account, while for others, explanations as to why they cannot be taken into account must be provided.

Living conditions in residential treatment institutions

The Ombudsman in the role of the NPM establishes that living conditions in residential treatment institutions, which are visited regularly, are not suitable in view of the structure of children and adolescents. The Norms for the construction and equipment of institutions for secondary school students in the Socialist Republic of Slovenia from 1976 still apply. They state that the size of living and other facilities per individual are 9.43 to 11.30 m², and the size of study surfaces is 65 x 60 x 73 cm, while they do not address lights and illumination of working surfaces for study purposes. There are no norms for residential and educational groups. The construction was planned according to the Housing Act, which does not define the number of occupants in a room.

We must not ignore the fact that the structure of children and adolescents accommodated in residential treatment institutions or youth homes has changed significantly. The number of children and adolescents with severe mental health problems with associated violent and hetero-aggressive behaviour is growing. We believe that these children and adolescents need even more space for movement due to their special traits. Therefore, the act that will comprehensively regulate the problem of the operation of residential treatment institutions must pay suitable attention to living conditions in them.

The NPM has been proposing to the Ministry of Education, Science and Sport for years to allocate funds to replace worn and torn furniture, and to maintain and reconstruct residential treatment institutions; however, the lack of funds is obviously still the reason for not implementing improvements.

2.8.8 Foreigners and applicants for international protection

General findings

In this sub-field, we discuss possible complaints by foreigners dealing with the restriction of movement or deprivation of liberty. Other complaints by foreigners are included in the chapter on administrative matters – citizenship and foreigners, while the visit of the NPM to the Aliens Centre is subject to a report on the implementation of the tasks and powers of the NPM. Individual problems in this field were discussed with representatives of civil society (non-governmental organisations) and refugee counsellors who are deeply involved in the work with refugees or migrants, and with representatives of the Ministry of the Interior or the Police. **The need to do so was based on increased number of migrants and refugees.**

In Recommendation no. 23 (2016), the Ombudsman recommended that, after the evaluation of the project of the accommodation of, and care for, unaccompanied foreign minors outside the Aliens Centre that received them in 2016, the Government of the Republic of Slovenia should prepare as soon as possible systemic solutions for their adequate treatment and for them not to be accommodated in a closed institution, like the Aliens

Centre. At its session on 27 July 2017, the Government of the Republic of Slovenia evaluated the project of the accommodation of unaccompanied minors at the halls of residence in Nova Gorica and Postojna, and recognised the project as an example of best practice. The Government also decided to continue with the project of the accommodation of unaccompanied minors at the Postojna Hall of Residence pending a suitable systemic solution.

We pointed out in our 2017 report that problems still occur. This problem was also the topic of our visit in the role of the NPM to the Aliens Centre in December 2017. During our visit, three unaccompanied minors were accommodated in this institution. We established that between 1 January and 30 November 2017, this centre accommodated 39 minors (including four women) aged between 11 and 17, and the average duration of their accommodation was 11 days. Therefore, we also prepared special recommendations to improve the situation within the scope of this visit. **We proposed to the Government Office of the Republic of Slovenia for the Support and Integration of Migrants (UOIM) to ensure that the said decision of the Government of the Republic of Slovenia, which states that unaccompanied minors must be accommodated at the Postojna Hall of Residence without exception is fully implemented.** Regarding the accommodation of accompanied minors, we proposed seeking alternative accommodation options which will take into account – respect the welfare of the child and care for the child's mental and physical health and development to a greater extent.

The Government Office for the Support and Integration of Migrants explained that it respects said decision and that it was not informed that the Aliens Centre attempted to accommodate unaccompanied minors at the Postojna Hall of Residence. However, it was informed that they had not undergone a medical check-up when they were treated at a police station, but these check-ups are crucial prior to accommodation in the Hall of Residence. Regarding the implementation of point two of said decision, the Government Office for the Support and Integration of Migrants explained that, with the decision on the appointment, composition, tasks and manner of work of the Inter-Ministerial Working Group on Establishment of a Systemic Form of the Accommodation and Treatment of Unaccompanied Minors as a separate unit for comprehensive treatment based on age of 27 November 2017, this group was established. Its task is to prepare systemic forms of the accommodation and treatment of unaccompanied minors. The group is composed of representatives of the Government Office for the Support and Integration of Migrants, the Ministry of the Interior, the Ministry of Labour, Family, Social Affairs and Equal Opportunities, the Ministry of Education, Science and Sport, the Ministry of Health and non-governmental organisations (Slovenian Philanthropy and the Legal Information Centre). The group will, on the basis of best practices in Slovenia and abroad, propose systemic solutions for the accommodation of unaccompanied minors. The Government Office for the Support and Integration of Migrants also emphasised that everyone is aware of deficiencies regarding the accommodation of unaccompanied minors who have the status of migrants without legal status, which will be taken into account in the preparation of systemic solutions. **The Ombudsman believes that seeking solutions for the accommodation of unaccompanied minors outside the Aliens Centre is an example of good practice, but a systemic form of the accommodation and treatment of unaccompanied minors as a separate unit for their comprehensive treatment has not been established yet, which means that minors may still be accommodated at the Aliens Centre.**

After being processed by the police pending the filing of an application for international protection, an applicant of intent, i.e. a citizen of a third country or a stateless person who is in the Republic of Slovenia and has expressed before official authorities that they wish to file an application for international protection, **is accommodated in the reception area of an asylum centre or other accommodation facilities of the state**, where they receive suitable food, toiletries and access to urgent treatment. The ZMZ-1 also states that an applicant of intent who leaves the reception area of an asylum centre or other accommodation facilities of the state on their own volition is treated in accordance with the act governing the entry, exit and residence of foreigners in the Republic of Slovenia. The applicant of intent must be informed of this immediately upon being accommodated in a language they understand, which is confirmed by their signature (Article 81 of the ZMZ-1).

We received explanations from the Government Office for the Support and Integration of Migrants that applicants of intent are not deprived of liberty, as they can move around in the yard of the Asylum Centre or near the reception area; however, we establish that this is not the case in practice. When we visited the Asylum Centre again at the end of 2018 as the NPM, we could see that applicants were accommodated in locked rooms under video surveillance, and each exit is monitored by the security service. It could not be indisputably established whether they were allowed to go out as they waited for their application to be accepted.

Among the reasons why applicants of intent could not be accommodated in the Asylum Centre due to their status prior to the acceptance of the application was that they had not undergone a medical check-up. **However, we point out that such treatment which indicates the deprivation of freedom of movement requires a suitable legal basis for each restricted movement or infringement on a person's personal freedom or a different organisation of work.**

Handling of claims of allegedly unsuitable treatment of Slovenian police officers

On the basis of media reports and reports of non-governmental organisations, the Ombudsman was informed in June 2018 of cases when foreigners provided accounts of allegedly unsuitable treatment of Slovenian police officers. Cases considered included a complaint of a foreigner who allegedly entered our country twice and applied for international protection, but was returned to Croatia both times. According to the findings of non-governmental organisations and the media, police officers rejected the submission applications for international protection when they apprehended foreigners on the border between the Republic of Croatia and the Republic of Slovenia and inland.

These claims surprised us, since we had not handled any such claims regarding the work of Slovenian police officers. To verify indications referring to the position of foreigners who illegally cross the national border in the area of Črnomelj and Metlika police stations, the Ombudsman visited said police stations without prior notice on 19 June 2018. On the basis of the findings obtained during the visit and by studying documents obtained, we performed additional enquiries at the Ministry of the Interior. The consideration of this topic was not concluded in December 2018. However, we proposed to the Ministry of the Interior **to take measures to more consistently document all circumstances of police procedures involving foreigners (including their statements), ensure the implementation of return agreements will not promote the adoption of disputable decisions about returning, and adopt measures for appropriate informing of foreigners about international protection procedures and their position within the return procedure in a way that will ensure that police officers, prior to submitting a person to foreign security authorities, do not overlook the fact that this might be a person who needs such protection.**

To additionally examine the claims about the situation of foreigners illegally crossing the national border and to directly monitor the procedures conducted by police officers which involve foreigners, the NPM decided to pay several unannounced visits to police stations. We were of the opinion that this method would contribute to an effective investigation of complaints about the conduct of Slovenian police officers in these procedures and would help strengthen trust in their work; furthermore, we would be able to confirm that Slovenian Police fully observe the rights of aliens when carrying out their procedures, including the right to access the procedure for international protection. While implementing the tasks and powers of the NPM, the Ombudsman visited three police stations without prior notice in cooperation with representatives of the selected non-governmental organisation: Črnomelj (4 September for the first time and 13 September), Ilirska Bistrica (5 September) and Metlika (6 September). The main purpose of these thematic visits was to verify whether police officers fulfil their obligations when conducting procedures involving foreigners who illegally cross the national border.

On the basis of findings obtained during visits, the Ombudsman in the role of the NPM provided several recommendations and proposals to improve the situation. We expect that our findings and well-intentioned proposals and recommendations will help the police in otherwise very responsible and challenging work in this field. We also expect that our proposals will contribute to the elimination of detected deficiencies and irregularities, and the preparation of suitable guidelines for its work. **We also believe that more attention must be dedicated in the future to monitoring these procedures, particularly to independent, impartial and professional discussion of claims against police officers, and also when processing migrants and refugees.** The need to enhance awareness of the importance of the role of civil and other supervision of police procedures must not be neglected, and on the basis of findings, it is necessary to strive to improve the standards of protection of human rights in all police procedures.

We pointed out to the Ministry of the Interior online news involving claims of irregularities of Slovenian police officers and proposed to (if it had not) study it thoroughly and respond on the basis of its findings to media

reports. The Ministry of the Interior followed the proposal of the Ombudsman. It informed us that the police did not consider an event that could be connected with police procedures in terms of time, place or anything else, as described on the link in question. Therefore, they sent a denial to the editorial board of the published article, which was published by the Ministry of the Interior on its website and the website of the Police. This reflects the need to critically assess the credibility of online publications.

Alleged questionable conduct of non-governmental organisations in relation to migrants

In one of its responses regarding the problem in question and publicly (e.g. at a press conference of the Ombudsman on 7 September 2018), the Ministry of the Interior pointed out alleged questionable conduct of non-governmental organisations, i.e. they announce at police stations that foreigners (certain foreigners were allegedly still in Croatia at the time) will express intent to apply for international protection. The police allegedly discovered that apprehended foreigners had written instructions from non-governmental organisations received by foreigners in Bosnia and Herzegovina. It was announced that the police consult about the potential punishability of such conduct pursuant to Article 308 of the Criminal Code (KZ-1) with state prosecutors.

Since the allegations regarding the conduct of non-governmental organisations were serious, we asked the Ministry of the Interior at the end of the year whether the announced consultations had already taken place and if so, what the competent state prosecutor had done in this regard and regarding the pretrial investigation. **We deduced from the response that the conduct of non-governmental organisations was not recognised as punishable by prosecutors. The police could not establish a basis for a criminal complaint, since, in this relation, it had only submitted reports pursuant to paragraph ten of Article 148 of the ZKP to the state prosecutor's office.** When we intervened with the Ministry of the Interior, we stated that, since there was no solid basis for such serious allegations regarding the conduct of non-governmental organisations, we would expect the Ministry of the Interior to be more considerate and attentive when spreading such information, since non-governmental organisations play an important role in promoting and protecting human rights. Rash publicity that is harmful to injured persons or organisations may constitute unjustified pressure on their operation, tarnish their reputation and even constitute intimidation. If the investigation of these allegations was completed and the allegations regarding the conduct of non-governmental organisations turned out to be unjustified, we requested the response to be supplemented with the information whether and how the Ministry of the Interior would inform the public about this, since it was this ministry that publicly exposed such operation of non-governmental organisations as questionable.

The Ministry of the Interior informed us that it had assessed that no additional explanations were necessary regarding the conduct of non-governmental organisations in relation to the treatment of migrants, since no positions that should be changed had been released to the public. It also commented that they would like non-governmental organisations to supplement their public statements regarding police violence against migrants, since the police had thoroughly verified all procedures and established that there was no basis for, or evidence of, that. **The message that the Minister of the Interior would pursue an inclusive policy in relation to non-governmental organisations during his term of office is encouraging.** As part of this policy, the Ombudsman expects that all open issues regarding the alleged questionable aspects of the conduct of certain non-governmental organisations will be resolved.

Consideration of other topics related to restricted movement

In our 2017 report, we pointed out certain aspects of the problem regarding restricted movement due to returns to competent states under the Dublin Regulation, which had been pointed out by refugee counsellors. We urged the Ministry of the Interior to state its position on the views and proposals of refugee counsellors, and if necessary (including legislative amendments) take measures to improve the situation, and ensure that, whenever an applicant is deprived of liberty, it will act swiftly and without delay, enabling acts in the so-called Dublin procedure to be carried out professionally and responsibly in the shortest time possible. **We also enquired whether (particularly on the basis of the judgment of the Court of Justice of the European Union in case C-528/15) additional amendments to the International Protection Act (ZMZ-1) or additional more lenient measures to enable more individualised treatment of applicants for international protection**

and thus more effective procedures, particularly lesser interference with the right to personal liberty, are foreseen relating to defining objective measures on which grounds for suspecting that the applicant for international protection may abscond are based. We also pointed out to the Ministry that the new ZMZ-1 revoked the right of applicants for international protection to appeal against a judgment at first instance.

With regard to cautions of certain refugee counsellors on the (lack of) speed of actions in the so-called Dublin procedure on the basis of which applicants for international protection are deprived of liberty and their movement is restricted, **The Ministry of the Interior believed that procedures under the Dublin Regulation, in the case of applicants whose movement is restricted, are carried out swiftly and without undue delay and not in the slowest way possible allowed by the Regulation.**

The next aspect of the problem in question referred to the **maximum time limit of restricted movement in Dublin procedures.** The maximum time limit of restricted movement of applicants in procedures under the Regulation should, according to the Ministry, be determined on the basis of the purpose of restricted movement, which, in these cases, is to ensure transfer to the Member State responsible for processing individual applications, which is also pursued by the ZMZ-1. This Act excludes applicants in said procedure from the provision on the time limit of restricted movement. The Ministry believes that the directly applicable provisions of the Regulation on detention sufficiently ensure that applicants are not detained longer than required to carry out necessary procedures pending transfer, subject to the principles of necessity and proportionality.

The aspect pointed out by refugee counsellors was **also the issue of extreme flight risk.** In this relation, the Ministry stated that no amendments to legislation in relation to the definition of extreme flight risk are currently planned. Such amendments also depend on amendments required to renew the legislation in the field of international protection. If the Ministry assesses that this is required, it will propose suitable amendments to legislation with the next amendment to the ZMZ-1, which will comply with the Union acquis and relevant case law.

We also highlighted the issue of the lack of alternatives to restricted movement.

On this subject, the Ministry explained that, in the procedure of preparing the proposed ZMZ-1, it studied several alternatives to restricted movement of applicants for international protection as facilitated by Article 8 of Directive 2013/33/EU (regular reporting to the authorities, the deposit of a financial guarantee). The Directive does not state the number of more lenient measures an EU Member State must ensure, only that EU Member States ensure that rules on alternatives to detention are determined in national law. On the basis of discussions with the participating parties in the procedure of harmonising the proposed act (particularly with representatives of non-governmental organisation and the Ministry of Justice), the Ministry believed that a more lenient measure of mandatory stay in the Asylum Centre is the only alternative to detention referred to in Directive 2013/33/EU which is realisable in practice, as it had been implemented prior to the applicable act. It also announced that it would study again the possibility to introduce more alternatives to restricted movement with the next amendment to the ZMZ-1.

Pursuant to Articles 19 and 23 of the Constitution of the Republic of Slovenia, and paragraph four of the ECHR and Article 6 of the Charter of Fundamental Rights of the European Union persons deprived of liberty have the right to swift and efficient judicial protection or access to court. The Foreigners Act (ZTuj-2) which stipulates that the police may restrict a foreigner's movement for certain reasons enables foreigners to request a judicial test of legality of this measure. However, it does not enable foreigners who do not understand the official language and do not have the means for legal aid to obtain free legal aid. This problem was explicitly pointed out by the Administrative Court of the Republic of Slovenia in a filed request for a constitutional review of paragraph two of Article 79.a of the ZTuj-2 (Decision of the Constitutional Court of the Republic of Slovenia no. U-I-134/15-8 of 28 January 2016) when it established that the ZTuj-2 does not anticipate a written or oral translation of a detention decision to a language they understand or free legal aid for foreigners to bring action against a detention decision; therefore, it believed that judicial protection determined in this way is not efficient.

The Ministry of the Interior confirmed the finding that the ZTuj-2 does not anticipate a translation of a detention decision to a language foreigners understand; however, the police must conduct these procedures in accordance with the ZTuj-2 and the General Administrative Procedure Act (ZUP). The ZTuj-2 is primarily

a substantive regulation; for this reason, the police must act according to the ZUP in such cases, Article 62 of which provides individuals with an opportunity to follow the procedure in a language they understand. If the police cannot communicate with a foreigner against whom the procedure is conducted, a translator is always included in the procedure to facilitate communication and inform the foreigner (in a language they understand) with the content of the decision, obligations and rights in accordance with the issued decision. The Ministry of the Interior stated that all foreigners who are issued a decision on return may utilise free legal counselling through the Legal Information Centre of NGOs (PIC). The PIC informs foreigners of the situation and possibilities in a specific case, or file legal remedies on their behalf.

In addition to the possibility for a foreigner to request a judicial test of the legality of the ordered measure of restricted movement, the legislator regulated in Article 79.a of the ZTuj-2 *ex officio* judicial supervision of so-called periodic tests of further legality of the ordered measure to detain a foreigner.

According to this provision, if the restricted movement referred to in Article 79.a of the ZTuj-2 is longer than three months, the Administrative Court carries out a test of the restricted movement *ex officio* within three months from the decision on restricted movement. If the court establishes that the reasons for restricted movement cease to exist, it orders the police to immediately release the foreigner from the Aliens Centre.

In the filed request for a constitutional review of paragraph two of Article 79.a of the ZTuj-2, the Administrative Court of the Republic of Slovenia pointed out the vagueness of this provision, since the linguistic explanation of the provision regarding Article 79.a of the ZTuj-2 could lead to a position that a judicial test of the justification of a detainment measure *ex officio* is carried out for the first time only if detention is extended after six months, i.e. prior to the expiry of nine months since the order. This could pose a problem from the aspect of the standard of a swift judicial test, which stems from the case law of the European Court of Human Rights. **Therefore, we recommended that the Ministry of the Interior take necessary measures to efficiently carry out judicial supervision pursuant to Article 79.a of the ZTuj-2 in order to ensure a regular and swift judicial test of the measure of deprivation of liberty *ex officio* as required by paragraph five of Article 9 of Directive 2013/33/EU of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).** We also enquired whether the Ministry of the Interior as the authority preparing legislation on foreigners is preparing amendments to the regulation of the problematic aspects pointed out by the Administrative Court of the Republic of Slovenia in said request for a constitutional review regarding foreigners' access to court in the case of ordered measure of restricted movement (i.e. regarding legal aid and translation).

Regarding comments that the Administrative Court of the Republic of Slovenia does not have information on foreigners for which a test of the justification of restricted movement at the Aliens Centre should be carried out on the basis of Article 79.a of the ZTuj-2, since it has allegedly received only one proposal to verify the conditions of restricted movement from the police since the decision was enforced, i.e. since 29 April 2014, the Ministry of the Interior emphasised that the police strictly follows legislation. If the period of restricted movement is extended pursuant to Article 79.a of the ZTuj-2 prior to the expiry of the first six months of restricted movement, it sends the Administrative Court of the Republic of Slovenia a decision and all pertaining documents for it to test the justification of the ordered measures to extend the period of restricted movement at the Aliens Centre *ex officio*. At the same time, it confirmed the indication of the Administrative Court of the Republic of Slovenia that, by the end of 2018, it had only received one such request since the enforcement of this decision, since the police issued a decision extending the period of restricted movement to only one foreigner in this period. Most foreigners have been accommodated at the Aliens Centre for less than three months. For all foreigners who were accommodated at the Aliens Centre for over three months, a procedure pursuant to paragraphs one and three of Article 79.a of the ZTuj-2 was carried out. According to the Ministry of the Interior, the implementation of this provision is not problematic and no amendments to this article are foreseen.

Restricted movement of applicants for international protection is also stipulated by the ZMZ-1. Also in the case of ordered measure of restricted movement, the president of the Administrative Court may decide, on the basis of paragraph five of Article 84 of the ZMZ-1, that direct supervision needs to be carried out of the implementation of the measure referred to in paragraphs one and two of said Article, and appoint a judge or judges of the Administrative Court to carry out supervision within the time limits and in the locations determined by the president or regarding certain applicants, and to report on it. If a judge of the Administrative

Court establishes as part of the supervision that the reasons for the restriction of movement for a certain applicant no longer exist, he or she shall order the measure to be eliminated.

In practice, the Administrative Court of the Republic of Slovenia performs direct supervision (only) of known applicants (i.e. those who brought action) by enquiring where these applicants are. However, it does not have any information on cases in which applicants' movement was restricted and they did not bring any action. Therefore, we requested the Ministry of the Interior to explain how information is submitted when the president of the Administrative Court of the Republic of Slovenia decides to carry out supervision, since the president of the Court stated that the Court did not have the said information (yet). **We also commented that, for efficient supervision pursuant to paragraph five of Article 84 of the ZMZ-1, the Administrative Court of the Republic of Slovenia should be informed (also) of cases in which no action against a decision on restricted movement is brought to fully perform direct supervision.**

Regarding the submission of information on applicants for international protection with restricted movement to the Administrative Court of the Republic of Slovenia for it to perform direct supervision of the implementation of the measure referred to in paragraphs one and two of Article 84 of the ZMZ-1 the Ministry of the Interior explained that it had sent the Administrative Court of the Republic of Slovenia all requested information on individual applicants in all enquiries so far. However, it does not send any information on all applicants with restricted movement to the court *ex officio*, since there is no legal basis for it, i.e. Information on applicants for international protection are personal information. It also commented that applicants for international protection with restricted movement are informed of their rights in the procedure several times, particularly on the right to judicial protection. Since all applicants bring action against the decision on restricted movement through their counsels, the Ministry believes that in practice, the court has all information it needs to carry out its responsibilities.

In response to these explanations, the Administrative Court of the Republic of Slovenia pointed out that the Ministry of the Interior still does not inform it of cases in which no action against a decision on restriction of movement is instigated. The problem of direct supervision also remains open, as the Ministry of the Interior does not inform the court of all applicants, stating that there is no legal basis for that, as information on applicants is personal information.

2.9

PENSION AND DISABILITY INSURANCE

Field of work	Cases considered			Resolved and founded		
	2017	2018	Index 18/17	No. of resolved	No. of founded	Share of founded among resolved (in %)
9. Pension and disability insurance	120	90	75.0	72	5	6.9
9.1 Pension insurance	78	52	66.7	48	1	2.1
9.2 Disability insurance	42	38	90.5	24	4	16.7

2.9.1 General observations

Complaints relating to pension insurance were fewer in 2018 than in previous years. Most frequently, they referred to the general dissatisfaction of individuals with the latest pension reform and the amount of assessed pension. The complainants expected the Ombudsman to intervene and amend pension legislation and achieve an increase in minimum pensions.

The Ombudsman established general dissatisfaction with legal arrangements of pension and disability insurance. The complainants believe that arrangements change too frequently without general social consent about fundamental starting points of the pension system. After its entering into force in 2012, the Pension and Disability Insurance Act was amended eleven times. According to the complainants, the application of various regulations causes differences in the amount of pensions which under the same conditions also depend on the period when the rights are exercised. The amendments to systemic legislation, particularly transitional provisions for their enforcement, are frequently clear only to legal experts and that does not strengthen general trust in the state of law. Procedures conducted by the Pension and Disability Insurance Institute of Slovenia should also be implemented faster because it takes more than four months for a mere indicative calculation of a possible retirement date and approximate amount of pension (the final amount is determined by means of a decision) according to their services.

In addition to the issue of purchasing the insurance period described below, we also wish to highlight the open issue of restricting two statuses (employee and retired person), whereby it is not acknowledged to retired persons that pension is their acquired right and that limiting the possibility of a gainful employment after retirement actually means restricting free business initiative and also restricting the ownership right in a certain sense. Legal arrangements namely limit the possibility of exercising the right to old age pension if a retired person concludes an employment relationship, while under certain conditions sole traders are allowed to continue their activities after retirement and while receiving full pension.

The legislation distinguishes sole traders with regard to their rights arising from pension insurance, which is why the Constitutional Court of the Republic of Slovenia is already deciding on the constitutionality of such arrangements. Since this is a broader question of equality before the law, it would be appropriate if the Court expanded its assessment to all categories of insured persons to whom different rights are recognised by the legislation under the same conditions.

2.9.2 Realisation of recommendations

It is actually quite disgraceful for competent authorities of the executive branch of power that the Ombudsman must repeat its recommendation accepted by the National Assembly of the Republic of Slovenia after a broad discussion time and again. The Ombudsman barks, but the caravan of ministers goes on, we could paraphrase the well-known saying.

In the 2015 Annual Report, we recommended to the Ministry of Health to promptly determine the types and levels of physical impairments which serve as the basis for enforcing the rights to disability insurance in cooperation with the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ). We thus repeat the recommendation and add that the Government of the Republic of Slovenia determine responsibility for the situation which undermines the principles of the rule of law.

The recommendation that the MDDSZ draw expert bases according to the **principle of equity to enable the refund of means paid for the purchase of insurance periods whose intention failed due to legal amendments also remained unrealised**. The competent authorities refer to additional rights provided by purchased years. However, an individual should be able to decide on their own on what to use their saved funds. The attitude of the state towards the insured persons who wanted to realise a legitimate and legally founded purpose with the purchase of insurance periods, but were unable to do so due to amended regulations, does not strengthen the trust in the state which is supposed to ensure legality and justice.

2.9.3 Pension insurance

Pension adjustments: unconstitutional or just inappropriate?

Within the scope of expectations provided in the introduction, we also discussed a complaint by the political party, Solidarnost, za pravično družbo. The complaint discussed the reducing of pensions, which has been taking place for some time, and thus generating worsening material standing of many pensioners. Members of the party emphasised that pensions were being reduced in comparison with salaries. They stated that salaries increased by 29 per cent between 2007 and 2017, while pensions grew only by 14.5 per cent. They expected the Ombudsman to file a request for the review of constitutionality of the Pension and Disability Insurance Act, which fails to provide a social minimum to a multitude of retired persons. In their opinion, the state violates Article 50 of the Constitution of the Republic of Slovenia, several articles of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the EU Charter of Fundamental Rights and the European Social Charter.

The Ombudsman is reserved when making decisions on proposals to file requests for the review of constitutionality, particularly when of the opinion that it has minimum chances for success. With regard to the aforementioned, we decided to first seek explanation about the reasons for the disadvantaged situation of retired persons and some other groups of people in recent years from the Ministry of Labour, Family, Social Affairs and Equal Opportunities.

We informed the Ministry that pensions had not been suitably adjusted in the past due to austerity measures during the economic crisis. There were no adjustments in 2012 and 2014, while adjustments were minimal in 2013 and 2015. Extraordinary adjustments took place in 2016, and adjustments by 1.15 per cent were made only in January 2017. The ratio between an average pension and salary was disrupted, and social and economic security of pensioners were severely reduced. The actual adjustments of pensions since 2010 amount to 4.1 per cent, while they should be 12.8 per cent by law.

According to applicable regulations, pensions are adjusted by 60 per cent of average gross salary growth paid between January and December of the previous year, and by 40 per cent of average growth of consumer prices in a one-year period with the same preceding period. The adjustment may not fall below half of the determined growth of consumer prices.

According to the data of the Pension and Disability Insurance Institute of the Republic of Slovenia, the ratio between an old age pension and a salary was 67.1 per cent in 2007, and only 59.5 per cent at the end of 2016.

After receipt of the Ministry's reply and thoughtful consideration, we decided against filing the request for the review of constitutionality. We believed that the Ministry satisfactorily explained the reasons for legal measures by means of which the state intervened in almost all social groups (pensioners, young people, families, public sector) in order to fairly and evenly distribute the burden of severe economic conditions resulting from the financial crisis. It would be appropriate that systemic legislation determined in advance several safeguards which would prevent permanent changes to socially or legally agreed ratios between income from the current and past work.

Disputable decision making of expert bodies on legal issues

The Pension and Disability Insurance Institute of the Republic of Slovenia believes that when making decisions it must comply with the opinion of expert bodies. The result of the foregoing is the violation of several principles of the administrative procedure and a *de facto* transfer of decision-making competence from the Institute's officials to its expert bodies. The decisions of the Institute also fail to summarise key facts important for the issue of decisions, which denotes a violation of Article 25 of the Constitution of the Republic of Slovenia.

The Ombudsman will inform the Ministry of Labour, Family, Social Affairs and Equal Opportunities of the relevant violations, and we also plan to hold a meeting with the Institute's representatives.

Difficult and lengthy enforcing of a proportionate share of Slovenian pension

Several complainants living in the countries of former Yugoslavia asked the Ombudsman to intervene with regard to enforcing the appertaining share of pension in Slovenia considering the fact that they lived and worked in Slovenia for a certain period. To calculate the conditions to enforce this right, the Pension and Disability Insurance Institute of the Republic of Slovenia (ZPIZ) also requires data about the periods of employment in foreign countries. The acquisition of these data is frequently very lengthy and the right to pension cannot be exercised without them.

Since the holders of pension insurance often fail to respond to the requests of the ZPIZ, we decided to ask national ombudsmen for assistance. At the time of drafting this report, we had not yet received any response.

Purchase of years of service

Several complainants asked the Ombudsman to intervene with deputy groups and political parties relating to the purchased employment periods. We informed the complainants that their wishes and requests could not be met since the Ombudsman as per its role, tasks and legal competences is not a political agitator or a lobbyist to intervene with the deputies as expected from the complainants. Our opinion and proposals relating to the issue were submitted in 2015 to the highest independent state authority – the Constitutional Court of the Republic of Slovenia – in the request for a constitutional review of certain articles of the ZPIZ-2. This issue was also highlighted in the 2017 Annual Report and in the press release published on the website. In the 2017 Annual Report, we proposed (recommendation no. 57) that the ministry responsible for pension insurance prepare expert bases to enable the refund of means paid for the purchase of insurance periods whose intention failed due to legal amendments according to the principle of equity. The Government of the Republic of Slovenia responded to the Ombudsman's opinion and rejected it in full.

We received a complaint from several complainants (civil initiative) claiming that recent amendments of the Act in 2017 (ZPIZ-2E) eliminated only a section of the then unconstitutionality of the arrangements of pension insurance since insurance periods were recognised to everyone with voluntary pension insurance until 31 December 2012, while this was not acknowledged for insured persons who obtained these periods with a single purchase (based

on an administrative decision). The insured persons who purchased employment periods with a single purchase feel further disadvantaged since they paid much more (three to ten times) for the same number of years than the insured persons holding voluntary pension insurance.

In other words, for those who paid voluntary pension insurance by 31 December 2012 the period of voluntary pension insurance is understood as pensionable service without a purchase, while for those who made a single payment by the relevant date the purchased period is considered as pensionable service with a purchase, which is less beneficial since the calculated pension is reduced by 0.3 per cent for every missing month until the age of 65.

2.9.4 Disability insurance

Complaints relating to disability insurance were fewer in 2018 than in previous years. The largest share of complaints referred to the lack of harmonisation of disability benefits and the assistance and attendance allowance. In 2018, the complaints also included criticisms relating to the functioning and decision making of disability commissions and criticisms due to the still missing Rules on occupational diseases, including a revised list of occupational diseases. In April, the Ministry of Health drafted the text of new rules on occupational diseases which were submitted for public discussion, but it was not adopted after the formation of a new government of the Republic of Slovenia. We thus repeat two recommendations to the Government of the Republic of Slovenia from the 2015 Annual Report, i.e.:

The Ombudsman proposes to the National Assembly of the Republic of Slovenia that, when discussing each act proposal, to ask the proposer for insight into a draft of the anticipated implementing regulations, and the Ministry of Health should, in agreement with the Ministry of Labour, Family, Social Affairs and Equal Opportunities, promptly determine the types and levels of physical impairment which serve as the basis for enforcing the rights to disability insurance.

Harmonisation of disability benefits and the assistance and attendance allowance

The Ombudsman discussed several complaints in which individuals expressed their dissatisfaction because cash benefits for disability are not harmonised in the same manner as pensions; the assistance and attendance allowance has also not been harmonised for several years.

It is known that the state abolished the harmonisation of disability benefits and the assistance and attendance allowance first with the Fiscal Balance Act, and with the Implementation of the Republic of Slovenia's Budget for 2018 and 2019 Act for the last two years. The latter determines that transfers to individuals and households, which are harmonised on the basis of the Act Regulating Adjustments of Transfers to Individuals and Households in the Republic of Slovenia, are not harmonised until 31 December 2018.

In the Ombudsman's opinion, it is not acceptable that all other social transfers are harmonised (e.g. invalidity allowance and care and assistance allowance), only disability benefits and the assistance and attendance allowance are not. After enquiries at the Ministry of Labour, Family, Social Affairs and Equal Opportunities about when the same regime of adjustments may be expected in this field for all transfers, we received an explanation that harmonisation would denote a great increase in expenditure earmarked in the adopted framework for the pension fund since the adjustments are not anticipated in the financial plan of the insurance institute (ZPIZ). The deficit occurring due to the above adjustments would require a substantial increase in co-financing of the rights financed from the state budget since the state is obliged to cover the difference between income and expenses of the Pension and Disability Insurance Institute of the Republic of Slovenia. The decision to harmonise the disability benefit and the assistance and attendance allowance would require amending of the Ordinance on the Framework for the Preparation of the General Government Budget for the 2018–2020 Period in the section which determines the highest amount of expenditure for the pension and health fund. The relevant Ordinance observes the provisions about the fiscal rule, i.e. to pursue gradual fiscal consolidation when planning public finance.

The Ombudsman believes that the applicable regulations are very unfavourable for individuals and are not well socially oriented. Furthermore, the current situation that the disability benefits and the assistance and attendance allowance have not been adjusted for several years is not suitable or fair. On the other hand, it is ironic that the Pension and Disability Insurance Institute of the Republic of Slovenia had a surplus of EUR 1.9 million in the first six months of 2018. The Ombudsman proposes that the issue of not adjusting the disability benefit and the assistance and attendance allowance be resolved with priority in 2019.

The problem of non-observance of the Ombudsman's recommendations published in the annual report and discussed in detail by working bodies, the National Council and the Government, accepted by the National Assembly of the Republic of Slovenia and published in the Official Gazette of the Republic of Slovenia as recommendations to the legislator should be examined by the National Assembly of the Republic of Slovenia since such cases point to the disrespect or even ignorance of the Ombudsman's opinions. Contrary to the Ombudsman, the National Assembly of the Republic of Slovenia has more possibilities to force the executive branch to take suitable action.

Rights of a disabled person with no period of employment

We discussed a complaint by a young woman who became a disabled person of category I six years ago at the age of 28 as a result of an illness. At the time, she was not employed and she did not have a student status. At the end of 2012, she initiated a procedure to exercise rights arising from the disability insurance and the right to assistance and attendance allowance a year later. The Pension and Disability Insurance Institute of the Republic of Slovenia rejected both applications citing the ZPIZ-2 which entered into force at the beginning of 2013. The complainant had no income.

The Ombudsman discovered that persons who became ill or were injured outside their workplace at the time when they had no status (were not employed, job seekers or students) and thus had no pension and disability insurance found themselves in particular distress. This is a group of persons who are not entitled to the right arising from disability insurance. **The Ombudsman believes that anyone irrespective of the employment (insurance) period and status should be entitled to regular social benefit that would ensure their subsistence if they are ill or suffer an injury outside their workplace.**

The Ombudsman is of the opinion that the situation of disabled persons, particularly those who became disabled due to a disease or an accident outside their workplace and were at the time older than 26, is not regulated appropriately. In several instances, the system fails to enable the enforcement of rights as per the Act on Social Care of Persons with Mental and Physical Impairments (ZDVDT) or the rights arising from the pension and disability insurance as per the ZPIZ-2.

The ZPIZ-2 transferred the enforcement of certain rights to the regulations in the field of disability insurance which should be comprehensively managed by the Ministry of Labour, Family, Social Affairs and Equal Opportunities. Until the entry into force of the regulations relating to protection of the disabled, which will govern procedures for establishing types and levels of physical impairments, the Self-Governing Agreement on the List of Physical Impairments (*Samoupravni sporazum o seznamu telesnih okvar*) from 1983 is used when drafting expert opinions. Certain rights are thus enforced on the basis of this Agreement, including the right to an invalidity allowance, but only for injury at work or an occupational disease. We are also critical of the fact that the protection of persons with disabilities has not been regulated comprehensively since the problems that occurred are the result of partial solutions of the situation and distress of individuals, one of whom is the aforementioned disabled person. We have been highlighting this problem in annual reports (for 2015, 2016 and 2017) and at annual personal meetings and discussions with ministers. We have also highlighted this issue at a press conference, but unfortunately there have been no results. The Ombudsman proposes that the field of protection of persons with disabilities is regulated comprehensively and with priority in 2019 for all types of disabled persons. The enforcement of two new acts which entered into force on 1 January 2019 (on social inclusion and personal assistance) is a promising start.

2.10

HEALTH CARE

Field of work	Cases considered			Resolved and founded		
	2017	2018	Index 18/17	No. of resolved	No. of founded	Share of founded among resolved (in %)
10. Health care and health insurance	133	231	173.7	219	11	5.0
10.1 Health insurance	44	47	106.8	43	4	9.3
10.2 Health care	89	184	206.7	176	7	4.0

2.10.1 General observations

The number of complaints relating to health care increased significantly in 2018 in comparison to 2017, which is the result of a mass response to proposed amendments to the Contagious Diseases Act. We still notice that patients are insufficiently informed about the rights they may enforce and possible procedures available to them. The share of founded complaints in this field is low, which points to the fact that individuals do not exploit all possible channels to exercise their rights and complain only to the Ombudsman. We thus advise the majority of the complainants complaining about the work of health professionals or their attitude to seek the assistance of the patients' rights advocate. We also notice that most complainants do not wish to be exposed personally; however, their problems cannot be resolved without disclosing their identities. At the time of writing this report, we had not yet obtained the reports from the patients' rights advocates who must report to the Ombudsman about their work in the previous year by 15 March of the following year.

We note that the patients' rights advocates are more and more burdened with the informing of patients about the rights on health insurance and this part of their activities should be regulated by law.

In the 2017 Annual Report, we pointed to poor responsiveness of the Ministry of Health which regularly submitted its replies to our inquiries with delay. This practice improved in 2018, but the Ministry still experiences problems when communicating with clients which is also shown in the example below.

Example:

Delayed response by the Ministry of Health

The complainant wrote to the Ombudsman and asked for help obtaining a reply from the Ministry of Health. The latter had failed to reply to her for over four months at the time of submitting the complaint.

We sent an enquiry to the Ministry. We asked them to inform us in 15 days about the consideration of the complainant's complaint. The Ministry submitted to us a courtesy copy of the reply sent to the complainant's complaint after almost five months.

The content of the reply was assessed as appropriate and the Ministry also apologised to the complainant for the delay. Since the complainant waited more than ten months for the Ministry's reply and it failed to reply to the Ombudsman in almost five months, we considered the complaint founded. We established undue delay in the proceedings of the Ministry of Health. **9.4-5/2018**

We repeat our criticism from previous years stating that the Ministry delayed the drafting of a new Health Care and Health Insurance Act, which would regulate all rights arising from compulsory health insurance since their arrangements are not compliant with the Constitution of the Republic of Slovenia as was established by the Constitutional Court of the Republic of Slovenia.

Waiting periods for individual health services at secondary and tertiary levels were the main topic of public discussions and in the media, although this did not reflect in the number of such complaints submitted to the Ombudsman. **We believe that waiting periods are not only the result of unsuitable financing (which the Government of the Republic of Slovenia is resolving by providing occasional additional funds to the providers), but particularly of poor work organisation**, which foreign experts, who are in one way or another involved in our health system, have also pointed out.

In personal discussion about health issues, we also reminded the Minister of Health about the unregulated field of complementary, traditional and alternative forms of diagnostics, treatment and rehabilitation. The representatives of the Ministry ensured us that the act proposal was being prepared and would be submitted for public discussion in 2019.

2.10.2 Realisation of the Ombudsman's recommendations

We recommended to the Ministry of Health (60/2017) to execute a broader awareness-raising campaign for all citizens on new legal solutions, particularly their rights and procedures for enforcing these rights after all planned acts implementing the health reform and governing patients' rights come into force. Since the health reform was not implemented in 2018, this recommendation remained unrealised, but it is still topical in 2019.

Our recommendation (61/2017) that the Ministry of Health draft criteria for determining a network of health-care providers without undue delay has not been realised, and it raises the question on the basis of what criteria the Ministry and municipalities decide on the awarding of concessions and the expansion of programmes. Decision making with no concrete criteria denotes arbitrariness and is contrary to the requirements of the rule of law. Random decision making without the observance of all circumstances was also deemed unsuitable in a case which the public was able to follow in the media for an extensive period of time and which pointed to an inappropriate approach to solving an acute problem in the field of health care of children.

According to the Government of the Republic of Slovenia in its response report to the 2017 Annual Report of the Ombudsman, all other recommendations were partly realised, and the Ombudsman thus expects the report about their full realisation in the response to the 2018 Annual Report.

Health Services Act

In 2018, we also received several complaints asking the Ombudsman to instigate a procedure for a review of the constitutionality of certain provisions of the Health Services Act.

The Ombudsman seldom decides to instigate a procedure at the Constitutional Court of the Republic of Slovenia because we always try to find a way for the affected person to exploit the possibility available to them by the legislation on their own. Since the Ombudsman is not obliged to demonstrate legal interest in the procedure but only a connection of the request with the violation of human rights and fundamental freedoms, we often find ourselves under pressure, which in practice means: we will draft the material, you just file the request. **The Ombudsman does not want to exploit its special status granted by the law, which is why we always decide**

to instigate a procedure after thoughtful consideration about what a decision of the Constitutional Court of the Republic of Slovenia would mean for the protection of human rights and not only an individual.

In the case of the Health Services Act, we thus decided against filing the request for a review of constitutionality, since three complaints and one request for a review of the constitutionality of the relevant act had already been filed by that time (source: website of the Constitutional Court of the Republic of Slovenia).

When writing this report, we were informed of the decision of the Constitutional Court of the Republic of Slovenia, no. U-I-194/17-21, which repealed part of Article 3 of the Health Services Act. In January 2019, we met with the complainants and assessed the possibilities for the Ombudsman to instigate a procedure regarding certain other provisions of the Act, in connection with which the complainants were unsuccessful due to the lack of legal interest.

The National Institute of Children's Heart Diseases

Due to complications regarding the establishment and operating of the National Institute of Children's Heart Diseases, the Ombudsman wanted to determine whether children's rights were hence violated. We also wanted to find whether the decision on the establishment of the Institute was adopted while observing the principle of good administration and Article 24 of the Convention on the Rights of the Child. The latter acknowledges the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health, and demands that States Parties strive to ensure that no child is deprived of his or her right of access to such health care services.

To examine the observance of children's rights when establishing the Institute and during its operations, we contacted the Government of the Republic of Slovenia for clarifications and reviewed extensive documentation⁶ kept by the Ministry of Health relating to the Institute's establishment and operations.⁷

It was not evident from the reviewed documentation whether before establishing the Institute the Government of the Republic of Slovenia met all conditions⁸ stipulated by the Health Services Act (ZZDej) when establishing a public health institution. In particular, the question arises whether the Government of the Republic of Slovenia observed paragraph two of Article 25 of the ZZDej when establishing the Institute, which stipulates that the opinion of the Health Insurance Institute of Slovenia (ZZS) is required when establishing, amending or expanding activities and for the termination of public health institutions providing health services at the secondary and tertiary levels. From certain letters of the ZZS⁹ addressed to the Ministry of Health, it was evident that the ZZS had not issued such opinion.¹⁰

We believe that the establishment of a public health institution without the opinion of key stakeholders was arbitrary and contrary to the principle of good administration, which may lead to violations of children's rights to health care since children's access to health services may be prevented due to formal irregularities.

The fact that the ZZS rejected the offer of the National Institute of Children's Heart Diseases to transfer the programme for the treatment of children with congenital heart disease in 2018 from Ljubljana University Medical Centre was assessed as a cause of concern from the aspect of protection of children's rights to health and children's access to health services. We learned from the media that this decision of the ZZS was based

⁶ File documentation of the Ministry of Health, no. 007-139/2017, no. 0130-73/2015 (partly), no. 0140-109/2018 and no. 0600-78/2018.

⁷ It must be mentioned that we received the reply from the Government of the Republic of Slovenia only after an urgent intervention. Before that, the Government of the Republic of Slovenia forwarded our enquiry to the Ministry of Health and the National Institute of Children's Heart Diseases. The Ombudsman notes that as the founder of the Institute the Government of the Republic of Slovenia should have replied to the enquiry, and that the practice of forwarding the Ombudsman's enquiry to the Ministry and the Institute was inappropriate in the relevant case and non-compliant with Articles 6 and 33 of the ZVarCP, which require the authorities to submit data and respect the Ombudsman's work.

⁸ The Government of the Republic of Slovenia established the National Institute of Children's Heart Diseases with decision no. 01403-44/2017/3 of 21 December 2018.

⁹ Letters of the ZZS no. 014-1/2018-DI/22 of 22 February 2018 and no. 014-1/2018-DI/33 of 29 March 2018.

¹⁰ In the capacity of its membership on the Project Council for the Implementation of the Strategy for Discussing Children and Adults with Congenital Heart Disease in Ljubljana University Medical Centre, the ZZS had already expressed its disagreement with the establishment of a new public institution from the viewpoint of efficient use of funds in November 2017, and pointed out possible problems between Ljubljana University Medical Centre and the new Institute regarding the use of premises, equipment and other issues. See letter of the ZZS no. 0072-11/2017-DI/2 of 30 November 2017.

on insufficient documentation from which it was not evident how the Institute would ensure suitable premises, equipment and staff.

As per the reviewed documentation, the Ombudsman agrees with the position of the ZZS that the question of suitable premises, equipment and staff which are crucial for ensuring the children's right to health was not resolved accordingly upon the establishment of the new Institute. The question arises whether the National Institute of Children's Heart Diseases met legally determined conditions for the issue of a permit for the implementation of medical activities, which was issued by the Ministry of Health **in only one working day from filing the application**.¹¹ As per Article 3a of the ZZDej, the Institute should already have disposed of suitable premises and equipment upon the issue of the permit, and suitable staff no later than at the start of performing medical activities.

After reviewing the documentation of the Ministry of Health¹² referring to the issue of the above permit, the Ombudsman doubts that legal conditions for the issue of the permit were met. Regarding the conditions for implementing specialist hospital activities stipulated in Article 15 of the ZZDej (bed capacities, emergency units, units for diagnostics and reanimation, ambulance service, etc.) and carried out in compliance with the issued permit by the National Institute of Children's Heart Diseases, the permit refers to "the concluded contracts on mutual cooperation" between the Institute and Ljubljana University Medical Centre. It is evident from the documentation that there was only one contract, i.e. the contract concluded between Ljubljana University Medical Centre and the National Institute of Children's Heart Diseases on 6 July 2018. According to its legal nature, this contract is an umbrella agreement to be used as per the contractual provisions only after amending of the Articles of Association and the statute of Ljubljana University Medical Centre, which had not happened at the time the permit was issued and up to the moment this report was drafted. Regarding the aforementioned and the loosely composed contract, which does not actualise the relations between Ljubljana University Medical Centre and the National Institute of Children's Heart Diseases, it may be concluded that **the Institute did not meet the conditions for implementing hospital medical activities at the time the permit was issued**.

The issued permit also does not specify the requirement under Article 3a of the ZZDej about necessary premises and equipment. It is only stated that the activity would be conducted at the premises of Ljubljana University Medical Centre. The Ombudsman believes that this is insufficient basis for assessing whether the National Institute of Children's Heart Diseases has the premises and equipment to perform outpatient and hospital medical activities.

In regard to the issue of the permit, the question of meeting the legal requirement that medical services must be conducted by medical workers or professionals who meet the conditions stated in the ZZDej, while physicians must also meet the conditions from the act regulating health services. It is evident from the documentation and the permit that the Institute employed four physicians for a fixed period at the time the permit was issued, of whom three were employed four hours a week, and one for eight hours a week. All four physicians were employed full time in other health institutions and would perform supplementary work at the Institute through full-time employment. At this point, it must also be mentioned that the Medical Chamber of Slovenia informed the Ministry of Health that the licences of the relevant physicians do not cover all activities for which the permit was issued,¹³ which again raises the question about the Institute's meeting the conditions for conducting medical activities.

Based on the reviewed documentation, the Ombudsman determined that when the permit was issued the Institute had no employees who could ensure suitable medical treatment of children and thus also their right to health. Only four physicians cannot provide sufficient health care of children within limited working hours which exceed their full-time employment with no support from other medical staff, who were not mentioned in the permit.

Considering the non-fulfilment of this and other legally determined conditions, the Ombudsman believes that the Ministry of Health acted contrary to the principle of good administration and the principle of children's best

¹¹ Permit issued to the National Institute of Children's Heart Diseases to perform specialist outpatient medical activities and hospital medical activities in paediatrics, anaesthesiology, reanimatology and preoperative intensive medicine and cardiovascular surgery no. 0104-109/2018/5 of 17 July 2018.

¹² File of the Ministry of Health, Permit to implement medical activities, no. 0104-109/2018.

¹³ Letter of the Medical Chamber of Slovenia, no. 014-39/2018-4 of 14 August 2018.

interests arising from paragraph one of Article 3 of the Convention on the Rights of the Child when issuing the permit. The Article stipulates that **in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.**

In the letter submitted at the beginning of 2019, the Ombudsman reminded the Government of the Republic of Slovenia and the Ministry of Health that the highest attainable level of health depended on numerous biological, social, cultural and economic circumstances of every child and the society in which a child lives, while the access to institutions providing treatment and rehabilitation particularly depended on the state which was obliged to ensure medical services. Children are entitled to high-quality medical services at primary, secondary and tertiary levels. The duty of the state to provide and train a sufficient number of workers who can provide medical services for all children and ensure supervision mechanisms to examine the quality of services implemented by the workforce is of the utmost importance.¹⁴

The Ombudsman is of the opinion that the Government of the Republic of Slovenia and the Ministry of Health failed to observe the principle of good administration in the procedures conducted so far and they thus jeopardised the children's right to health care. Therefore, we **recommended to the Government of the Republic of Slovenia to take responsibility in its further decisions on the health care of children with congenital heart disease and ensure medical services in a manner and according to the procedures which provide for the highest attainable standard of health while observing the principle of the children's best interest.** When writing this report, the positions of the Government of the Republic of Slovenia and the Ministry of Health have not been received yet.

Communicable diseases and mandatory childhood immunisation

In 2018, we focused the most on the issue of health care instigated by the proposed amendments to the Contagious Diseases Act. After the proposed Act Amending the Contagious Diseases Act was submitted for a legislative procedure (31 January 2018, EPA 2581-VII), we received many letters from children's parents who opposed their mandatory immunisation and proposed restrictions relating to the enrolment of unvaccinated children in public kindergartens.

The Ombudsman published its opinion about the amendments to the Contagious Diseases Act on its website on 21 February 2018 and again on 2 March 2018. We emphasised that we do not take a position with regard to the question of mandatory immunisation and thus related consequences; nevertheless, the majority of claims addressed to the Ombudsman referred to the relevant question. We examined all the letters received (over 120) and also replied to them. In particular, we explained that the Ombudsman did not partake in the legislative procedure and that all warnings about the harmful effects of immunisation should be submitted to competent authorities, especially the proposers of legislative amendments.

The constitutionality of mandatory immunisation was previously assessed by the Constitutional Court of the Republic of Slovenia in 2004, and the Act was also amended following its ruling. Certain parents still reject mandatory childhood immunisation whereby they point to harmful vaccine ingredients and the lack of access to all information about vaccines, particularly their adverse effects. Various studies and information are available on the Internet that link mandatory immunisation with certain neurological diseases.

The Ombudsman's opinion derives from the fact that mandatory immunisation denotes an encroachment upon the child's physical integrity which is not unconstitutional if the conditions are met which were highlighted in the ruling of the Constitutional Court of the Republic of Slovenia. If mandatory immunisation is thus not contrary to the Constitution of the Republic of Slovenia, the measures to ensure objectives pursued by the Contagious Diseases Act, i.e. prevention and management of communicable diseases, are then also legitimate. The question that remains is: how proportionate are individual measures with the objective they pursue? In particular, experts (immunologists, paediatricians) should answer this question.

¹⁴ Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), 66th session of the Committee (14 January – 1 February 2013), no. 27, page 8.

Since we believed that the relevant questions received insufficient attention in the discussions about the proposed amendments, we called on the Ministry of Health and the National Institute of Public Health to play a more active role and provide all relevant information, which would help deputies make a suitable decision.

In March, we met with the representatives of the Ministry of Health and the National Institute of Public Health and discussed some of the open questions relating to the management of communicable diseases. We also met representatives of the parents of children who suffered harmful health effects due to mandatory immunisation in April. The meeting was attended by more than 70 parents and children. The parents informed us of their negative experience relating to the work of paediatricians, decision making about the reservations for mandatory immunisation and problems when determining the damage caused and its elimination. The joint finding of all parents was that no one listened to them. They only received general replies to their reservations and fears, and that no causal link existed in their cases between immunisation and their children's health problems.

Contrary to certain public announcements, the course of the discussion with the parents was very tolerant and organised, with no personal attacks and disqualifications. The Committee on Health of the National Assembly of the Republic of Slovenia as the parent body for the discussion of proposed legislative amendments was informed of the meeting's conclusions. We emphasised that the Ombudsman lacked the expertise and competence which would enable the assessment of eligibility regarding mandatory immunisation and its possible omission. However, on the basis of complaints received in connection with the proposed amendments to the Act, the Ombudsman may determine that the applicable system of mandatory immunisation fails to ensure each child that their best interest is the primary consideration in all procedures, which is required as per Article 3 of the Convention on the Rights of the Child of every States Party. In spite of the possibilities provided to the patients by the Patient Rights Act, their realisation in practice is too dependent on the mandatory immunisation providers, who would have to enter every reported side effect of a vaccine and other reservations into the child's medical record. With their decision to not enter a fact in medical documentation, they prevent additional objective assessment of eligibility of the omission of immunisation in a later procedure, which is based on medical documentation, and possible proving of damage to children's health for the needs of a compensation procedure.

The Ombudsman believes that all questions and dilemmas regarding mandatory immunisation should be resolved in an open dialogue where positive and negative consequences of immunisation would be stated. Informing about all positive and negative findings is the right of all, and competent authorities are obliged to provide all conditions to realise this right.

The Ombudsman believes that the experts should be more actively involved in the raising of awareness of citizens: how it is possible to reduce the risk of communicable diseases and which measures could be the most effective in doing so, and above all, which are harmless for an individual. Because 23 years have already passed since the Contagious Diseases Act came into force, we again propose that the Ministry of Health in cooperation with the National Institute of Public Health and competent providers of medical activities prepare an analysis of realising the Act, which should especially examine all open questions relating to the mandatory childhood immunisation, and organise a public presentation of the analysis and its findings. If the new Act is drafted on such bases, the Ombudsman could also support a possible intensification of sanctions affecting unvaccinated children and their parents.

2.10.3 Health insurance

The cooperation with the Health Insurance Institute of Slovenia (ZZS) was exemplary in 2018 since we received all required replies and information within the expected deadlines. Unfortunately, we are frequently informed of delays occurring when issuing decisions to individuals who are not able to work and must submit to their employers a decision by the ZZS. If the decision is not issued on time, an individual may have no means of subsistence for the entire month which is unacceptable.

The rights arising from compulsory health insurance are still regulated only with an executive act, and not by a regular act. The unconstitutionality of this arrangement was determined by the Constitutional Court of the Republic of Slovenia several years ago (1999), but the competent ministry showed no will to draft a suitable act.

In December 2018, we were informed of the problem of using amalgam fillings in dental care. We find the questions of using these fillings for various groups of persons and the consequences which certain researchers link with the occurrence of various diseases important and interesting. We think that the expert public must state its opinion on the matter, which has different opinions about the harmfulness and suitability of the use of these fillings. The Ombudsman cannot state its opinion regarding these questions, but we will inform the ZZZS thereof in particular.

Example:

A secondary school student is unable to conclude compulsory insurance in the case of injury at work and occupational disease when performing compulsory work experience

A complainant wrote to us about a problem when concluding compulsory health insurance for her minor daughter for injury at work and occupational disease when performing compulsory work experience. The complainant's daughter was insured through her mother who holds insurance in Austria, and the daughter was schooled in Slovenia, where she also wanted to do her work experience.

Following our enquiry, the Ministry of Health explained that only persons who hold compulsory insurance as per Article 15 of the Health Care and Health Insurance Act (ZZVZZ) may be insured in the case of injury at work and occupational disease according to Article 17 of the ZZVZZ. As a legal basis for such reasoning, the Ministry referred to paragraph two of Article 5 of the Rules on Compulsory Health Insurance, which stipulates that insured persons as per Article 15 of the ZZVZZ and their family members determined in Article 20 of the ZZVZZ and Article 9 of the Rules, who are undergoing training, work or implement activities under Articles 17 and 18 of the Act, also hold compulsory insurance in the case of injury at work and occupational disease.

We submitted our opinion to the Ministry of Health stating that Article 17 and other provisions of the ZZVZZ do not stipulate additional conditions for concluding compulsory health insurance. The relevant article determines that pupils and students are insured against injury at work and occupational disease during practical lessons or work experience, when working in production and during expert excursions. The relevant right is limited by regulations which like the executive act should not determine the rights and obligations anew as was found also by the Constitutional Court of the Republic of Slovenia in its decision no. U-I-50/97 of 16 December 1999. As a general act issued for the execution of public authorisations, the Rules determined an additional condition for concluding compulsory insurance as per Article 17 of the ZZVZZ, by means of which they narrowed the legal arrangement and exceeded the framework permitted for the executive act which may not amend, limit or independently govern rights and obligations, which may be regulated only by an act as per the principles of separation of powers. Relating to the foregoing, we believe that paragraph two of Article 5 of the Rules has no basis in the ZZVZZ, and it violates the principle of legality as per paragraph two of Article 120 and paragraph three of Article 153 of the Constitution of the Republic of Slovenia.

The Ministry of Health informed us that it was aware of the issue and it would try to resolve it in cooperation with the ZZZS. **9.3-29/2018**

2.11

SOCIAL SECURITY

Field of work	Cases considered			Resolved and founded		
	2017	2018	Index 18/17	No. of resolved	No. of founded	Share of founded among resolved (in %)
11. Social security	221	269	121.7	229	41	17.9
11.1 Social benefits, assistance and scholarships	77	73	94.8	65	10	15.4
11.2 Social services	16	26	162.5	21	7	33.3
11.3 Institutional care	37	77	208.1	67	14	20.9
11.4 Poverty – general	19	9	47.4	6	0	0.0
11.5 Violence – anywhere	7	13	185.7	9	0	0.0
11.6 Other	65	71	109.2	61	10	16.4

2.11.1 General observations

The number of complaints in the field of social security (excluding social insurances, which are described under a separate section) increased by 20 per cent, particularly in institutional care (index 208). A great share of founded complaints, as much as 17.9 per cent and 20.9 per cent in institutional care, is of particular concern. A large share of founded complaints in the field of institutional care has been detected in recent years, which points to the fact that problems in this field are becoming severe and the state apparently cannot keep up with its measures.

The Ombudsman regularly meets various societies and associations of disabled persons who inform us of specific problems in their fields of operations. The problems are discussed in the field of equal opportunities.

In 2018, we wanted to become acquainted in detail with problems of the elderly, and we thus organised a high-profile consultation in cooperation with the National Council of the Republic of Slovenia at the end of September. All contributions were published on the website, and we will not repeat them in the Annual Report. The National Council of the Republic of Slovenia is drafting extensive material on the conclusions of the consultation, which will also be published on our website.

Realisation of the Ombudsman's recommendations

In the 2017 Annual Report, we proposed to the Government of the Republic of Slovenia (recommendation no. 67) to draft an analysis of the Resolution on Legislative Regulation and prepare effective measures for all policy makers to observe its requirements. The analysis was not drafted.

Recommendation no. 68/2017 was realised, i.e. that the Ministry of Labour, Family, Social Affairs and Equal Opportunities refresh the counter of complaints on its website, which informs the public about indicative deadlines of their resolving. The minister responsible for social care fulfilled her promise given at the joint meeting and has committed that the number of unresolved complaints would be reduced to 1,000 (from the current 7,000) by June, which was a manageable backlog of their resolving. The foregoing would gradually lead to the realisation of recommendation no. 69, which requires the observance of statutory time limits for decision making at second instance.

The Ombudsman also proposed (70/2017) that the information system of social work centres be unified simultaneously with their reorganisation. The recommendation was not realised; **it was revealed that the reorganisation of social work centres was not suitably planned with regard to time, particularly concerning the volume of workload in the relevant period since the system collapsed in December.**

Example:

Lengthy decision making on complaints against the decision on scholarship

The Ombudsman discussed several complaints by students who complained about lengthy decision making about complaints against decisions of competent social work centres relating to scholarships. We made enquiries at the Ministry of Labour, Family, Social Affairs and Equal Opportunities as to whether backlogs in deciding on complaints were still the same as were reported by the competent bodies in June 2017. We enquired about backlogs in decision making about complaints relating to rights to public funds (scholarships, subsidised rents, exemptions from paying social security services, home care assistants).

The Ministry's reply was not encouraging since the deadlines for decision making about complaints filed against decisions of first-instance authorities were even extended in certain fields. The complainants against decisions on scholarships filed in 2016 will have to wait at least two and a half years for the decision. Backlogs of two years also involve decision making about complaints against decisions on child benefits and subsidies for reduced payment of kindergarten fees. The complaints against decisions on the exemptions from paying for social security services are resolved in six months after receipt. Two and a half years are needed to resolve a complaint against the decision on the right to a home care assistant, and about four years are required to decide on the complaint against the decision on subsidised rent. The Ministry explained that the reason for such extensive backlogs remained the same – significant lack of staff. Only six public employees, who resolve about 160 complaints a month, decide on the complaints against the decisions regarding rights to public funds. The competent authority also emphasised that resolving complaints was not the only obligation of these six expert workers.

It is inadmissible that backlogs at the Ministry of Labour, Family, Social Affairs and Equal Opportunities when resolving complaints are so great. We have been pointing this out to the competent authorities for several consecutive years in annual reports and at meetings with the Ministry's representatives. Unfortunately, not even the Ombudsman can force state authorities to perform their work within time limits stipulated in regulations.

We explained to the complainants that the Ombudsman cannot intervene in the appeal proceedings on the basis of its competence in order to demand from the Ministry of Labour, Family, Social Affairs and Equal Opportunities to resolve individual complaints with priority (and not observe the order of received complaints). Intervening and discussing a complaint while not observing the order of the received complaints is not compliant with the principle of equity to which the Ombudsman is committed. All complaints relating to lengthy resolving of complaints at the Ministry of Labour, Family, Social Affairs and Equal Opportunities were concluded as founded. **9.5-33/2018**

2.11.2 Social benefits and assistance

Including compensation in income is not fair

The complainant informed the Ombudsman that a court awarded him compensation due to unfounded remand which was then considered an occasional, non-periodical income when determining eligibility to cash social assistance, which is why he lost cash social assistance. The complainant assessed such arrangements as unfair since the state punished him twice.

The Exercise of Rights from Public Funds Act does not exclude compensation from the observed income when establishing eligibility to cash social assistance (and income support), and the Social Assistance Benefits Act even explicitly considers them as occasional, non-periodical income in paragraph four of Article 23.

We asked the Ministry of Labour, Family, Social Affairs and Equal Opportunities for its opinion regarding the classification of monetary compensations awarded as just satisfaction (by Slovenian or foreign courts or received on the basis of a judgement by the European Court of Human Rights) among income, i.e. assets affecting the granting of cash social assistance or its amount. With regard to the nature of these compensations, we wondered why these were not exempt, similarly as monetary compensation paid as per the Act Regulating the Compensation for Damage Sustained as a Result of Erasure from the Register of Permanent Residents, which is not calculated under income observed when exercising rights to public funds.

The Ministry's reply was partial: The Act Regulating the Compensation for Damage Sustained as a Result of Erasure from the Register of Permanent Residents is a special act, which stipulates the non-observance of the relevant form of compensation as an exemption when determining income in Article 18, whereby the exemption refers only to persons erased from the register of permanent residents.

The Ombudsman believes that including compensation in an income of a family or an individual is not fair since compensation is not earnings but only a replacement for damage which an individual suffered in a certain situation. Since injustices affecting people cannot always be rectified in the simplest way, i.e. by returning to the previous state, a fair monetary substitution (remuneration) in the form of compensation is paid to them in such cases. If the state caused injustice and violated an individual's rights (e.g. with an unfounded remand), it is only right and fair that it rectifies this accordingly and covers the damage. The compensation does not thus denote the individual's additional income, but only a compensation for something that was lost in the past (e.g. temporary freedom of movement due to remand). The arrangement of including compensation in the income of an individual should also observe the fact of which damage is being supplemented with the compensation. If this damage was caused by the state with its conduct, the compensation should not be included in the income. Such arrangements were also established in the Act Regulating the Compensation for Damage Sustained as a Result of Erasure from the Register of Permanent Residents since the state was responsible for the erasure.

2.11.3 Social services

Social work centres supervise themselves

When discussing a complaint relating to guardianship, the Ombudsman submitted its opinion to the Ministry of Labour, Family, Social Affairs and Equal Opportunities that it would be more suitable if guardianship reports drafted by social work centres were discussed by the Ministry (or that the supervision of the guardian's work would in some other way be separated from the guardianship provider) although this is currently not stipulated in any regulation.

In the concrete case, the social work centre conducting the tasks of a guardian explained to us that it discussed guardianship reports which it drafted according to the same procedure as those drafted by other guardians, the only difference being that the expert worker who drafted the report is excluded when the report is being

discussed by the social work centre. The Ombudsman believes that the centre in such procedure supervises itself irrespective of the fact that the person who drafted the report is excluded from the discussion.

The Ministry disagreed with the Ombudsman's opinion. It stated that it was most suitable that guardianship reports are discussed by the centre which discusses the case, especially in cases where the social work centre is the guardian because the centre knows the ward and is familiarised with their problems since it may also discuss them in other procedures.

We were not convinced by the Ministry's clarifications. In Article 200, the Marriage and Family Relations Act stipulates that complaints against the work of a guardian are resolved by the competent social work centre and complaints against the work of the centre are resolved by the ministry responsible for family. Due to the aforementioned, it would be sensible and more suitable (by analogy) that guardianship reports drafted by the centre are discussed by the Ministry. The appearance of greater objectivity of the supervision would thus be generated, which is particularly important when building trust in applicable arrangements.

Right to complain against the decision on appointing a guardian

A complainant wrote to the Ombudsman who was partially deprived of his legal capacity for all activities related to judicial, administrative and other formal procedures. He complained against the decision by means of which a new permanent guardian was appointed to him. He contacted the Ombudsman since the social work centre failed to submit his complaint to an authority of second instance, but it appointed a conflict guardian to resolve the complaint.

The Ombudsman believed that the social work centre acted inappropriately and contrary to the position previously already assumed by the Ministry that irrespective of the partial or complete deprivation of legal capacity the ward (if they are able to express their will) is enabled independent participation in the procedure of appointing guardianship, whereby the approval or consent of the ward's guardian is not required.

We thus informed the Ministry of Labour, Family, Social Affairs and Equal Opportunities about the case which asked the social work centre to forward the ward's complaint for discussion on which it then also decided.

Informing of the ward about the guardian's reports

A complainant contacted the Ombudsman who was under the guardianship of the social work centre due to partial deprivation of legal capacity. Since he was not pleased with the guardian's work, he wanted to read the guardianship reports, but was unsuccessful.

When we asked the social work centre about the reasons for refusal, the centre explained that it believed that a review of the guardianship report would be contrary to the interest of protecting the ward's benefit while observing the reasons for partial deprivation of legal capacity and the scope of the deprivation. Namely, the ward was unable to assess what was in his benefit and what not. Furthermore, the content of the guardianship report would upset him which is not compliant with Article 218 of the Marriage and Family Relations Act (ZZZDR).

The Ombudsman could not agree with the received clarifications. We believed that Article 218 of the ZZDDR provides no basis for rejecting the right to learn the content of guardianship reports, and the fact that the ward cannot assess what is in his benefit and what not cannot be a criterion for making a decision on this right. Irrespective of the above, it should be specified and founded which data from the guardianship report that would become known to the ward would be harmful for them and why in the case of restricting the right. When communicating with the complainant (ward), the Ombudsman detected that he was seriously upset because of the guardianship and the manner of its implementation since he was not pleased with many past decisions of the guardian, and was not informed at all about their latest activities (as was claimed by the complainant).

We informed the social work centre of the opinion, which also contacted the Ministry of Labour, Family, Social Affairs and Equal Opportunities to obtain its opinion whether the review of the guardianship report was the

ward's inalienable right. We later learned that the Ministry agreed with the Ombudsman's opinion and the social work centre informed the ward of the guardianship reports.

2.11.4 Institutional care

Accommodation of the elderly in retirement homes abroad

In 2018, we detected a new open issue regarding care for citizens who are unable to live independently. The lack of accommodation capacities in retirement homes is chronic and relatives of the elderly who are unable to take care of their relatives started accommodating them in so-called family homes in Croatia. It must be emphasised that these are not retirement homes but premises provided to the elderly by individuals, where no health care is provided. The residents of such homes must use all health services in Slovenia.

We cannot blame the relatives of the elderly who need special attention and care for their accommodation in more cost-efficient homes abroad, but we are worried about the supervision of implementing such activities since our state authorities have no jurisdiction abroad.

We learned about a case where an owner of such home physically prevented a resident from leaving and kept their personal documents. The police who were informed of the matter stated that it was not competent in the case since it involved a civil relationship in which it could not intervene. Because our authorities, i.e. social work centres and the police, have no jurisdiction to take action in the territory of another country, we tried to obtain information about the relevant activity and its providers from the Croatian Ombudsman. We wanted to know whether such homes fall under the jurisdiction of a human rights ombudsman or under the national preventive mechanism, and which are possible findings regarding these homes. We sought information about their legal status and which state authority was competent for supervising their operations and particularly the quality of their accommodation and services of care. We requested this information to be able to advise complainants who contacted the Ombudsman with these problems. For now, we could only explain to them that we have no jurisdiction for taking action and no useful information for them.

We have not yet received a reply from the Croatian Ombudsman, but we are planning to visit their institution in the beginning of 2019 and we will then publish the information obtained on our website.

Food in retirement homes

From time to time, claims occur in the public that food in retirement homes is poor, monotonous and only follows the rule of the lowest costs possible. We thus decided to discuss the question of food in institutional care as a broader issue of realising rights of a particularly vulnerable group.

In February 2018, we submitted questionnaires to all retirement homes in order to determine the structure of their residents and what care and how demanding health care they require, how many of them need partial or full assistance when eating, who provides this help and also if the staff have sufficient time to provide such assistance.

With regard to undernourishment of residents, we asked the homes whether they detected nutritional risk and how, how many residents are at nutritional risk and how many undernourished, what are the reasons for their nutritional risk or undernourishment, and what measures are taken in such cases.

The replies received included information for more than 14,000 residents. **Between March and July 2018, we visited ten retirement homes and spoke with random residents and those who wanted to speak with us explicitly. Three visits were made announced and others were unannounced.** We spoke with several tens of residents and few relatives, and during every visit, we spoke with the management of the home and the staff. We made the visits in the morning and in the afternoon, one took place at a weekend. The findings from our

visits and the questionnaires were explained at the panel discussion, The Elderly as the Present and the Future of Society, at the National Council of the Republic of Slovenia in September 2018.

We summarise the main findings:

- the food manager or the head of the kitchen most frequently manages the planning and organisation of food supply in cooperation with the health care service. In about one quarter of homes, a dietitian or a nutritionist is involved. The homes recognise the importance of the latter and wish that their workplace would be systematised,
- the residents have the possibility to participate in the preparation of menus in all homes,
- the majority of residents are of the opinion that the food is generally good and of sufficient quantity, sometimes even too much,
- less than one third of homes stated that the staff have sufficient time to offer necessary assistance when eating. Those who believed that they have enough time most often emphasised efficient organisation of work. Others believed that time was not sufficient and they would need more staff to be able to dedicate more time to residents who require more time to be fed appropriately,
- the majority of homes (three quarters) assess nutritional risk; many of these already at the admission of a resident and then during health care. There is no record of such residents in certain homes, while others report about large shares of residents with nutritional risk (e.g. also up to 50 per cent). If nutritional risk is established, a nutritional plan is made and special menus are prepared. The homes offer food which residents wish to eat, add thickeners for fluids, and introduce adjusted consistency of food and nutritional supplements.

On the basis of the foregoing, the Ombudsman cannot confirm claims about poor diets in retirement homes. There is no cause for concern with residents who are independent when eating and can express their needs and wishes. More attention needs to be paid to the diet of residents who require partial or full assistance when eating, particularly those who are unable to convey whether they are thirsty or hungry, if the food is too hot or cold, or if it does not suit them in any other way.

We nevertheless find that staffing standards are inappropriate since they are not adjusted to the increasing number of residents requiring more direct assistance and more demanding health care. **A sufficient number of staff members must be provided so that every resident receives as much assistance when eating as required in order to eat as much as they can or want and they are not hungry.** Feeding must not be done in a hurry, but with a feeling for the resident while respecting their personal integrity and dignity.

Preventing and managing hospital-acquired infections in retirement homes

At the panel discussion in September 2018, we focused also on the issue of preventing and managing hospital-acquired infections in retirement homes. Relating to the problem highlighted in complaints and the fact that such infections are one of the major public health issues in Slovenia, the Ombudsman decided to thoroughly examine the field of management and prevention of hospital-acquired infections. For illustration, let us only mention one case that we discussed: due to colonisation with multidrug-resistant bacteria, a complainant is still in hospital a year and a half after a completed treatment because there is no place for him in any of the retirement homes.

Since a publication of all presentations and discussions presented at the panel discussion was later issued, we will not summarise all activities and findings of the Ombudsman with regard to the relevant topic. More on this subject can be found at http://www.varuh-rs.si/fileadmin/user_upload/pdf/DOGODKI_-_razni/2018_-_Starejsi/STAREJSI_kot_sedanjost_in_prihodnost_druzbe.pdf in the contribution, Prevention and management of hospital-acquired infections in retirement homes (*Preprečevanje in obvladovanje bolnišničnih okužb v domovih za starejše*), page 87. Our findings were supplemented by the opinions of experts from the relevant field with certain concrete proposals for successful preventing of infections in retirement homes.

Based on the conducted research in, and visits to, retirement homes, and interviews held with residents, relatives and the staff when visiting retirement homes, the Ombudsman believes that more attention must be paid to preventing and managing hospital-acquired infections in retirement homes and at the systemic level.

The competent ministries and institutions must adopt systemic measures to monitor and supervise programmes for preventing and managing hospital-acquired infections. If the current guidelines do not meet the needs in the field and do not contribute to the unification of practices between retirement homes, the guidelines should then be revised and amended or new ones should be drafted. Effective supervision of the implementation of adopted programmes is also required. Guidelines and supervisory mechanisms must resolve accordingly the issue of isolating colonised residents which may be lengthy and has a significant impact on the quality of life of residents in retirement homes.

We believe that it must be ensured that every colonised resident in a retirement home receives the support, assistance and care they require, including the provision of a greater number of specialised medical staff and more financial means. **Special attention must be dedicated to particularly vulnerable groups of residents, especially dementia patients, and enable their active participation in the life of the retirement home without jeopardising health of other residents and staff.** In this regard, suitable training must be organised and implemented in retirement homes, which will discuss the aspect of health care and care for residents, including communication with them and their relatives.

We recommended to the Ministry of Labour, Family, Social Affairs and Equal Opportunities and the Ministry of Health to examine provided opinions and proposals and promptly adopt appropriate solutions for improved prevention and management of hospital-acquired infections in retirement homes. Both ministries replied that they were aware of the important public health topic in relation to which partial resolving of individual cases and issues must be surpassed. The activities for resolving this problem are already underway. We wait for the findings of the operational working meeting between the Ministry of Labour, Family, Social Affairs and Equal Opportunities and the Ministry of Health, which is to take place at the beginning of 2019.

Home care assistant to help dementia patients

Despite good intentions of proposers and the legislator, the field of home care assistants is not regulated comprehensively and causes many problems in practice. In the 2017 Annual Report, we exposed the open issue of unequal situation of home care assistants since those who perform the activity on the basis of an employment contract are in a different situation to sole traders (more on this can be found in the relevant annual report, page 367). At this point, we highlight an additional problem that home care assistants cannot help dementia patients since the applicable regulation does not consider them as in need of such assistance.

We received a letter from a complainant whose husband has dementia and is a disabled person of category I. He requires assistance with basic hygiene and constant supervision. The complainant wanted to care for him as a home care assistant, but her application was rejected due to non-fulfilment of legal requirements. Her husband is not a disabled person in the sense of Article 18a of the Social Assistance Act, which stipulates that an adult with severe mental disorder or an adult with severe physical impairment who needs assistance with basic hygiene has the right to select a home care assistant. It is also stated that such person:

- was cared for by one of the parents who received a partial payment for lost income according to the regulations on parental protection before exercising rights to have a home care attendant,
- is disabled as per the Act on Social Care of Persons with Mental and Physical Impairments who requires assistance to perform all basic functions,
- was determined a person with severe mental disorder or a person with severe physical impairment by the competent committee as per the relevant Act, who needs assistance with all basic functions, which may be provided by a home care assistant.

In its negative decision, the social work centre referred to the opinion of the disability committee of first instance that the complainant's husband did not meet legal requirements although unspecified dementia requires constant supervision. She complained against the decision of the social work centre, but was unsuccessful.

The Ministry of Labour, Family, Social Affairs and Equal Opportunities explained to the complainant that in the current practice of disability committees **dementia patients are not considered disabled persons with severe physical impairments.**

When observing the purpose of a home care assistant, we proposed to the Ministry that it should consider expanding the circle of persons entitled to this right also to the group of dementia patients who need assistance when performing all basic functions or who require constant supervision by another person for their own safety when implementing these tasks.

The Ministry replied that expanding the circle of persons entitled to this right would require amending the Social Assistance Act. It believed that the number of home care assistants would grow disproportionately in such case, including financial consequences for the Ministry's budget and the budgets of municipalities. It stated that it would not examine or realise the Ombudsman's proposal because the Ministry of Health became responsible for implementation of the Act of Long Duration Treatment in 2017. The Ministry of Labour, Family, Social Affairs and Equal Opportunities believed that the problem of dementia patients and provision of their care should be discussed within the Act of Long Duration Treatment.

The Ombudsman agreed with the Ministry that **the problem of dementia patients and provision of care for such persons could be regulated in the Act of Long Duration Treatment**. We cannot ignore the fact that the field of home care assistants is governed by the Social Assistance Act and the Ministry of Labour, Family, Social Affairs and Equal Opportunities is thus still competent for regulating this issue. The assessment of the Ministry of by how much the number of home care assistants would grow shows in our opinion that the Ministry is aware of the situation in the country and its severity, which is why **we again proposed to the Ministry to initiate activities for temporary solutions until the Act of Long Duration Treatment comes into force**. According to the Ombudsman, these solutions should enable dementia patients who live at home and need assistance with all basic functions and who are a particularly vulnerable group, a decent life, and the security and assistance they urgently need.

We would also expect more engagement from the Ministry because it cannot be expected that all these persons would be admitted to retirement homes within reasonable time due to long waiting lists for admission to institutional care, and this would also not be compliant with the process of deinstitutionalisation. Regarding additional costs for the Ministry and municipalities, we emphasise that municipalities would also have expenses in the case of admission of these persons to institutional care. **In the Ombudsman's opinion, financial consequences for the Ministry cannot justify the decision to not provide a suitable legal basis** in the Social Assistance Act on the basis of which dementia patients who require assistance in all basic daily activities would be entitled to choose a home care assistant.

The Ministry failed to accept the Ombudsman's proposal. It replied that it did not anticipate a legislative procedure to amend the Social Assistance Act at the time and expand the right to a home care assistant to dementia patients.

We also mentioned this topic at the meeting with the Minister of Labour, Family, Social Affairs and Equal Opportunities in December 2018. The opinion of the Ministry remained unchanged since it is expected that the field of home care assistants would be regulated comprehensively by the Act of Long Duration Treatment. **The Ombudsman highlights that this Act has been in preparation for over a decade, while dementia patients who live in the home environment today need prompt solutions.**

2.12

LABOUR LAW MATTERS

Field of work	Cases considered			Resolved and founded		
	2017	2018	Index 18/17	No. of resolved	No. of founded	Share of founded among resolved (in %)
12. Labour law matters	191	161	84.3	147	24	16.3
12.1 Employment relations	95	72	75.8	69	9	13.0
12.2 Public-sector workers	77	66	85.7	58	10	17.2
12.3 Other	19	23	121.1	20	5	25.0

2.12.1 General findings

In this chapter, we only discuss complaints closely linked with the general issue of employment relations and divided as per the problem of employment relations in state authorities or broader in the public sector. In 2018, we discussed fewer complaints in the relevant field than in 2017, due in particular to the changed method of recording. As part of labour law matters, we also discussed issues regarding scholarships in recent years. The comparison of substantive complaints regarding labour law matters shows that fewer complaints were discussed in 2018 than in 2017; however, a low index change and a number are concerned which do not require any particular explanation. It is not insignificant that many issues are resolved particularly at meetings taking place outside the Ombudsman's head office in direct discourse with complainants to whom we give advice where to seek help and what procedures are available for the elimination of alleged violations and irregularities.

Topical content, on which we focused in 2018 on the basis of the complaints, notifications and information received from complainants and our own observations, included covert employment relationships, work of supervisory mechanisms, non-payment of salaries and contributions, violence at work, working hours and payment of overtime, working conditions, disabled workers, and others. For several years, we have highlighted systemic violations of rights of the employees in the Slovenian prison system and the Slovenian Armed Forces, the return of overpaid salaries and enforced retirement of public employees. As part of labour law matters, we particularly established violations of the rights to legal remedies, social security, dignity, and the principles of equity and good administration.

Cooperation with competent authorities was good; for the most part, it was conducted in writing. We met the key players, the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ), the Labour Inspectorate of the Republic of Slovenia (IRSD) and the Financial Administration of the Republic of Slovenia (FURS), at the end of 2017 at the Ombudsman's head office, and the current Minister of Labour, Family, Social Affairs and Equal Opportunities, mag. Ksenija Klampfer, and her team at the end of 2018.

We discussed open issues and obstacles and urgent solutions with other competent authorities at meetings organised at the Ombudsman's head office, head offices of individual authorities and at various events, which is evident from the review of activities at the end of this chapter.

Adopted legislation

The amendment to the Public Procurement Act (ZJN-3A) which entered into force on 1 November 2018 is assessed as positive, since it will protect employees from violations of labour and social legislation implemented by contractors or subcontractors of public calls, and will enable the contracting authority to terminate a public procurement contract in the case of said violations. We are also in favour of the adoption of the amended Minimum Wage Act increasing the net minimum wage from EUR 638 to EUR 667 on 1 January 2019.

2.12.2 Realisation of the Ombudsman's recommendations

In recommendation no. 52 (2017), we repeated the proposal that the Government of the Republic of Slovenia ensure that procedures in all supervisory institutions are carried out within reasonable time limits and that the IRSD obtain additional staff, including by reassignments. The Government of the Republic of Slovenia responded that it had ensured five additional employees at the IRSD in the staffing plan, which was written in the Government's response report to the 2017 Ombudsman's Annual Report. This is certainly an insufficient number regarding the number of companies and leads to inappropriate implementation of inspection procedures and the violation of human rights. We thus repeat the recommendation in full.

Recommendation no. 53 (2017) referred to the urgent adoption of exemptions relating to the limitation of the maximum days of annual leave for parents of special needs children, which the Ombudsman has been requesting since 2013. Due to the positive economic growth, the limitations ceased to apply on 1 January 2018, and the recommendation was thus realised as stated by the Ministry of Public Administration in the Government's response report for 2017 on page 49.

Recommendation no. 54 (2017) referred to the payment of salaries and all social security contributions. The Ombudsman supports the amendments to the Labour Inspection Act (ZID-1A) and the Pension and Disability Insurance Act (ZPIZ-2E) in order to adopt arrangements most favourable and simplest for employees. Since the situation in the relevant field is not yet satisfactory, the Ombudsman repeats its recommendation.

Recommendation no. 55 (2017) remained unrealised with the intention to be observed when drafting the Vocational Rehabilitation and Employment of Persons with Disabilities Act. The recommendation is being repeated.

2.12.3 Lack of staff at the Labour Inspectorate of the Republic of Slovenia (IRSD)

The Ombudsman believes that almost 80 inspectors is certainly an insufficient number for all fields covered by the IRSD and for about 200,000 companies employing over 800,000 people. Due to their limited number, inspectors are unable to respond efficiently to reports or to take action based on their own observations and findings, so violations are not eliminated, while the preventive effect of inspection procedures is also questionable. The current number of employees at the IRSD directly affects the reduced observance of human rights connected to employment and labour.

In the press release, the Ombudsman pointed out that the country must **maintain a system of labour inspection appropriate to national conditions as per point four of Article A of the European Social Charter. Slovenia is also bound by International Labour Organisation (ILO) Labour Inspection Convention No. 81 and Labour Inspection (Agriculture) Convention No. 129**. Similarly to the European Social Charter, both relevant international legal instruments demand that its member states also maintain a system of labour inspection with a sufficient number of inspectors. Furthermore, the number of inspectors must *inter alia* reflect the importance of inspectors' tasks and the numbers of employers and employees.

The Ombudsman criticises the current situation and calls on the competent state authorities to employ additional staff at the IRSD in order to enable effective implementation of inspection supervisions and thus the observance of human rights.

2.12.4 Cross-border provision of services

On pages 275–276 of the 2015 Ombudsman's Annual Report, we discussed the problems of Slovenian workers posted abroad. Although the Health Insurance Institute of Slovenia (ZZS) confirmed form A1 by means of which workers demonstrated their ongoing insurance in the Slovenian social security system when working abroad, this was later frequently proved wrong. We requested amendments and protection of workers posted abroad. Our findings in the 2016 Ombudsman's Annual Report were substantively similar. On page 330 of the 2017 Annual Report, we found that the Transnational Provision of Services Act (ZČmlS) was passed, which entered into force on 1 January 2018, and it defined in detail the conditions under which legal entities and natural persons registered to perform activities and with head office in Slovenia were able to temporarily implement services in another EU Member State and vice versa. We were certain that with the new act the position of posted workers would improve and violations of their rights would be eliminated. Unfortunately, mere adoption of the ZČmlS did not resolve the problem. The ZZS is now competent for the issue of form A1, which after receipt of the application verifies whether the company (employer) meets the legal conditions to perform services abroad, i.e. in the EU. It issues form A1 in five days or rejects the issue with a decision if a company fails to meet statutory requirements. The ZZS must verify whether the employers settled social security contributions or whether fines were issued due to the non-payment of salaries and contributions, violation of working hours, undeclared employment and others. **In short, the ZČmlS improves legal certainty of posted workers and increases the scope of work of the ZZS.** With regard to the latter, an issue arose because the Government of the Republic of Slovenia only adopted the collective staffing plan on 10 April 2018, which prevented the timely hiring of additional staff at the ZZS. The Government could thus have endangered the implementation of all tasks as per the ZČmlS if the ZZS had not responded promptly to the increased workload with reorganisation and optimisation of the work process.

2.12.5 Minimum wage

The Ombudsman discussed several complaints regarding the amount of minimum wage. We reminded the competent authorities of the international commitments Slovenia has to abide by, i.e. particularly the European Social Charter, ILO Minimum Wage Fixing Convention No. 131 and the Commission recommendations on the European Pillar of Social Rights. These specifically determine that workers have the right to fair payment in an amount enabling them and their families a decent standard of living, and minimum wages that prevent poverty.

We already adopted a position on the aforementioned in 2015, stating that the Ombudsman supported the proposal of trade unions to exclude benefits for night shifts, Sunday work and holiday work from the minimum wage.

2.12.6 Workers in the public sector

In 2018, similarly as in the year before, we focused on the problems in the Slovenian Armed Forces, situation in the Slovenian prison system and the return of overpaid salaries. We also examined the issue of enforced retirement of public employees, the payment of solidarity allowance in school and a jubilee award, fixed-term employment in schools, occurrence of violence and others.

2.12.7 Disabled workers

We discussed complaints referring to disabled persons finding employment. The employment of the disabled is a topical issue displaying a systemic problem, although this field seems suitably regulated at first glance. The employers' obligation arises from the Vocational Rehabilitation and Employment of Persons with Disabilities Act (ZZRZI), which stipulates that when planning jobs and employing the disabled employers observe the ILO code of practice on managing disability in the workplace and provide equal opportunities for the disabled, their employment and the preservation of their jobs. Lengthy procedures for determining disability are particularly critical and a severe problem for employees who cannot exercise rights which they would be entitled to sooner if procedures were conducted within reasonable time.

Example:

**The right to solidarity allowance does not depend on the instructions of ministries
The instructions for financing public service are a framework enabling employers to interpret rights of employees. It is thus crucial that such instructions are written unambiguously and contain clear clarifications about what rights employees have and under which conditions they can exercise them.**

A complainant who works as a cleaner in a primary school wrote to the Ombudsman. Due to a long-term illness, she was absent from work for more than three months. After she returned to work, she wanted to file a request for solidarity allowance. The primary school management explained that it had consulted the Ministry of Education, Science and Sport (MIZŠ) regarding her request, which stated that the complainant had missed the deadline for filing the request. Thus, the primary school did not pay the allowance. To clarify the circumstances of the relevant case, the Ombudsman contacted the MIZŠ and pointed out that the Annex to the Collective Agreement for the Education Sector in the Republic of Slovenia stipulates in paragraph three of Article 13 that a public employee may file a request for the payment of solidarity allowance within 60 days from the occurrence of the event or from the moment they are able to file the request. It is stated in the Instructions for financing public service in academic year 2016/17 issued by the MIZŠ in October 2016 that "the 60-day deadline for filing a request commences on the first day after three months of continuous absence if a doctor's explanation does not determine otherwise". We informed the MIZŠ that such instructions are contrary to the aforementioned Annex, which clearly states that a public employee may file a request within 60 days from the time they are able to file the request. The instructions stipulate that an institution (school) must submit the justified request of the employee or the trade union if the employee is its member equipped with suitable attachments and the headteacher's request to the MIZŠ in eight days. We asked the MIZŠ to explain on what legal basis the instructions were issued and which were the legal and actual consequences of the delay in the 8-day deadline for the submission of the request for the payment of solidarity allowance. **In its reply, which we received more than two months after submitting the enquiry, the MIZŠ** replied that the instructions govern the relations between the Ministry as the fund provider and the school as the public service provider, and they in no section encroach upon labour relationships between the school and public employees employed at the school nor arrange these relationships. The instructions were said to observe the interests of the employees since they instructed the employers to pay attention to the deadline for the submission of the request.

The Ombudsman commended the MIZŠ focus on protecting the rights of employees; nevertheless, we considered the explanation of the MIZŠ unsuitable. It is impossible to expect that employers would interpret the instruction about the deadline differently than was written and would also treat their employees accordingly. The Ombudsman accepted the MIZŠ's explanation stating that the instructions did not govern employer-employee relationships, but we nevertheless think that the instructions serve as a framework within which employers interpret employees' rights. It is thus crucial that such instructions are written unambiguously and contain clear clarifications about what rights employees have and under which conditions they can exercise them.

We recommended to the MIZŠ to reword the instructions so that they clearly and unambiguously state that they do not encroach upon employees' rights guaranteed by employers, do not intervene with the Annex to the Collective Agreement, that the delay in deadlines stated in the instructions does not denote the loss of the employee's right and that the employer is obliged to pay solidarity allowance as per the conditions stipulated in the Annex to the Collective Agreement in the case of a delay in deadlines stated in the employers' instructions. Due to the violation of the constitutional principle on the rule of law and a social state, we completed this complaint as founded. **10.1-5/2018**

2.13

UNEMPLOYMENT

Field of work	Cases considered			Resolved and founded		
	2017	2018	Index 18/17	No. of resolved	No. of founded	Share of founded among resolved (in %)
13. Unemployment	24	21	87.5	18	9	50.0
13.1 Unemployment	24	11	45.8	10	4	40.0
13.2 Other	0	10		8	5	62.5

2.13.1 General findings

Fewer complaints concerning unemployment were discussed in 2018 than in previous years. However, this does not lead to the conclusion that the situation in the labour market has improved. In direct discourse with desperate and hurt people, the staff of the Human Rights Ombudsman of the Republic of Slovenia are regularly informed about the actual conditions, problems when finding and keeping a job, and distress and difficulties encountered by individuals in this regard. When losing a job and in circumstances when one cannot ensure existence with their own work, the unemployed are humiliated and they rightfully expect help from all those public employees who have jobs and are paid for their work. **When working with the unemployed, the utmost professional and sensitive conduct of all persons responsible for ensuring that the distress of unemployed persons does not increase when handling bureaucracy is essential due to the specific situation in which the individuals have found themselves and does not depend only on their knowledge, competence and resourcefulness, as we are unfortunately frequently told by many unemployed persons.** The despair and helplessness are thus even greater, while the ability to actively resolve their own situation significantly reduces.

Although economic growth has been noted in Slovenia and elsewhere for some time, the Ombudsman cannot confirm that the situation in the field of unemployment has proportionately improved. The conditions in the labour market and thus related unemployment remain extremely critical (more than shown by the Ombudsman's statistical data), as we are informed at meetings outside our head office and told by individuals who do not turn to us with their complaints for advice and clarifications.

On its own initiative, the Ombudsman examined how the Employment Service of Slovenia (ZRSZ) sends vacancy notices to unemployed persons, and it also dealt with lengthy decision making in complaint procedures against the ZRSZ's decisions.

The topics recognised as critical on the basis of complaints received or notifications regarding unemployment include long-term unemployment and thus related issues: how to find work, where to seek help and advice, what are the rights and obligations of unemployed persons, the attitude of the ZRSZ's staff towards unemployed persons, unemployment benefit, on-the-job training as an active employment policy (AEP) measure, the ZRSZ and its employment brokerage, de-registration from the ZRSZ register of unemployed persons, employment possibilities of disabled persons, issue of a work permit for an foreigner, etc.

The Ombudsman most frequently demanded the elimination of violations of the principles of the rule of law and the social state, the right to personal dignity, the principles of equity and good administration and undue delays in proceedings.

Cooperation with the competent authorities is assessed as good. We had a meeting with Dr Anja Kopač Mrak, Minister of Labour, Family, Social Affairs and Equal Opportunities, at the Ombudsman's head office at the end of 2017 where we discussed open issues. Improved responsiveness of the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ) and more consistent and complete clarifications would contribute to the Ombudsman's faster work and a reduced number of violations and irregularities. On 11 December 2018, we discussed the aforementioned with the current Minister Ksenija Klampfer and her colleagues at the Ombudsman's head office. **The Minister mentioned changes regarding precarious work, which the Ombudsman will closely monitor.**

At the head office of the ZRSZ, we met with its management and all heads of regional offices where we discussed problems and possibilities for eliminating present violations.

Legislative novelties: Certain amendments to the Labour Market Regulation Act (ZUTD-1), which were passed at the end of 2017, entered into force on 21 January 2018. We are pleased with this information since certain amendments were also adopted on the basis of the Ombudsman's opinions. As particularly positive, we assess the measures for quicker activation of unemployed recipients of unemployment benefits. The Act Amending the Employment, Self-employment and Work of Foreigners Act (ZZSDT-B) was passed in April 2018 and it entered into force on 1 July 2018. The Act was to facilitate the employment of foreign citizens in companies with high added value and in start-up companies.

2.13.2 Realisation of the Ombudsman's recommendations

In recommendation no. 72 (2017), we asked the MDDSZ to amend Article 63 of the Labour Market Regulation Act so that an individual does not lose the right to unemployment benefit because they fail to file a lawsuit on the illegality of termination of their employment within 30 days after being served notice on the termination of their employment agreement if they discover illegality regarding the termination of employment at a later time. Although the recommendation from 2016 was repeated and we have highlighted the issue in previous annual reports, the MDDSZ persistently refuses the proposed amendment of the legislation, and explains on page 21 of the Government's response report to the 2017 Ombudsman's Annual Report "that, similarly as from other citizens, a certain degree of diligence and efforts to preserve their own social security is expected from disabled workers". On this note, the Ombudsman adds that the proposed amendment referred to the position of disabled workers whose employers terminated employment contracts without a prior positive opinion of a special board. Due to the lack of knowledge, the employees failed to file a lawsuit against the illegality of the termination of employment and they thus lost the right to employment benefits. We point out that disabled workers enjoy special protection due to their circumstances not only based on the Employment Relationships Act (ZDR-1), but particularly on the grounds of the Constitution of the Republic of Slovenia (paragraph one of Article 52), the European Social Charter (Article 15) and the ILO Convention No. 159 on Vocational Rehabilitation and Employment (Disabled Persons). The Convention defines a disabled person as an individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognised physical or mental impairment. This is why they must be enabled security and retention of employment and thus (re)integration into society. The MDDSZ interpretation that the legislation contributes to a higher employment rate and thus to social security of disabled workers is not acceptable according to the Ombudsman since it has the opposite effect. It may denote a violation of the right to social security of the disabled people as a specially protected category. **We thus repeat the recommendation in full.**

Recommendation no. 73 (2017) stating that the MDDSZ draft amendments to the Labour Market Regulation Act (ZUTD) so that parental leave is not considered an interruption of the period required for inclusion in active employment policy programmes was accepted by the MDDSZ as suitable and it added that it had also committed to this amendment in the Resolution on the Family Policy 2018–2028: "A Society Friendly to All Families" and that it would observe the aforementioned in the newly amended ZUTD. We do not repeat the recommendation, but we expect prompt adoption of amendments.

2.13.3 Active employment policy

The decision of the Government of the Republic of Slovenia by means of which it adopted the plan for active employment policy (AEP) and earmarked EUR 91.4 million for its implementation in 2019, which is set to involve 34,570 people, is assessed as positive. We expect the measures to include all anticipated target groups and to be distributed fairly between individual unemployed persons, and not as we have heard from complainants that the AEP measures offered depend on the adviser, acquaintance with them and their good will. **Public funds are involved here and a particularly sensitive area of life, which is why the use of funds must be transparent to rule out any doubts, as stated in our annual report last year.**

Example:

Sending inconsiderate vacancy notices may encroach upon the right to dignity

Only by observing the readiness and skills of job seekers to perform certain work is it possible to ensure their right to personal dignity, which could not have been said in the given case. The ZRSZ namely sent a vacancy notice for the post of a driver to a blind unemployed person.

The Ombudsman learned from the media about several cases of the sending of notices for unsuitable vacancies. The media highlighted a blind person to whom the ZRSZ sent a vacancy notice for the post of a driver by means of a text message. According to the media, a few blind persons allegedly received notices about vacancies at a sawmill, a butcher's shop and the Slovenian Armed Forces. The ZRSZ apologised publicly for the mistake. The director of the ZRSZ's office in Celje stated that this happened because she "failed to exclude the group of persons with disabilities in the application". In addition to the case described above, the experience of several individuals was published in the media who were fully fit to work, but were referred to jobs which did not suit their knowledge and skills. For example, an economist was referred to the post of a school teacher of physics and chemistry.

Since the Ombudsman believed that sending vacancy notices to heterogeneous groups of people while disregarding their personal characteristics and competences may denote an encroachment into the right to personal dignity and a violation of the right to work as ensured by the European Social Charter, an enquiry was submitted to the ZRSZ.

In its reply, the ZRSZ cited Article 6 of the Rules on the Reporting of the Vacancy or the Type of Work to the Employment Service of the Republic of Slovenia, Public Announcement and the Process of Job Placements, which stipulates that the ZRSZ offers a vacancy to job seekers who comply with the conditions of the vacancy and examines the qualifications and readiness of persons to work at the relevant workplace. The ZRSZ stated that when an employer's needs cannot be met with available and suitable candidates, the ZRSZ's advisers occasionally execute broader informing to find a solution, where they send non-binding information also to a group of unemployed persons who partially meet the employer's conditions or who could be trained additionally for the workplace. The ZRSZ emphasised that this was merely a case of informing and enquiring after interest for participation upon the presentation of vacancies.

The Ombudsman pointed out that the fact that information sent was non-binding could not serve as the basis for its sending to persons who did not meet the conditions under Article 6 of the Rules and the key criterion of readiness to work at the available workplace. Furthermore, it is possible to ensure the right of workers to personal dignity only by observing this criterion. We thus recommended that the current practice be examined and suitable measures taken. The ZRSZ complied with the Ombudsman's opinion and was to incorporate our proposals in the document laying down the standards for offices working with employers. The complaint, which we processed at our own initiative, was determined as justified due to the established violation of the right to personal dignity. **11.0-4/2018**

Example:

The Ombudsman requests permanent storage of employment plans

At the Ombudsman's request, the ZRSZ provided a technical solution for permanent storage of employment plans in the case of temporary unemployability. Employment plans are now being stored permanently.

In 2017, the Ombudsman discussed a case of a complainant who was de-registered from the register of unemployed persons and transferred to a social work centre as a temporarily unemployable person on the basis of findings from the employment plan. After a 2-year period for storing the employment plan, the ZRSZ no longer stored the plan and destroyed it since employment plans were not classified as documents to be stored permanently.

The Ombudsman assumed the position that by destroying the relevant documents the principle of legal certainty was violated which arises from Article 2 of the Constitution of the Republic of Slovenia because employment plans (not being stored permanently) changed the legal position of the person to whom they referred. We informed the ZRSZ and the MDDSZ thereof and proposed that employment plans be kept at least while the person is registered in the register of temporarily unemployable persons. The MDDSZ found the Ombudsman's proposal justified. The Ministry also informed the ZRSZ about this, which replied that extended storage of employment plans required technical changes. The case was published on the Ombudsman's website under the title *Rok hrambe zaposlitvenih načrtov začasno nezaposljivih oseb (Storage period of employment plans of temporarily unemployable persons)*. Following the Ombudsman's intervention, the MDDSZ and the ZRSZ informed us in mid-2018 that a technical solution for permanent storage of employment plans in the case of established temporary unemployability was found and the employment plans were now being stored permanently. **4.2-7/2017**

2.14

OTHER ADMINISTRATIVE MATTERS

Field of work	Cases considered			Resolved and founded		
	2017	2018	Index 18/17	No. of resolved	No. of founded	Share of founded among resolved (in %)
14 Other administrative matters	202	237	117.3	188	42	22.3
14.1 Denationalisation	7	4	57.1	2	0	0.0
14.2 Property law matters	31	41	132.3	24	4	16.7
14.3 Taxes	60	50	83.3	45	9	20.0
14.4 Customs duties	0	1		0	0	0.0
14.5 Administrative procedures	88	105	119.3	89	23	25.8
14.6 Other	16	36	225.0	28	6	21.4

2.14.1 General findings

In 2018, the Human Rights Ombudsman discussed more complaints referring to other administrative matters than in 2017. These included various substantive topics as evident below.

It must be highlighted that all cases cannot be included in this report due to the limitations of its scope. We thus also emphasise that statistical data alone is not as important as it is to point out key aspects of the issues discussed, particularly those concerning several individuals, which require changes.

2.14.2 Denationalisation

Findings and realisation of the Ombudsman's recommendations The Ombudsman's recommendation no. 35 (2017) stating that the Government of the Republic of Slovenia adopt measures to complete the denationalisation received a reply by the Ministry of Public Administration (MJu) and the Ministry of Justice (MP) in the Government's response report to the 2017 Ombudsman's Annual Report. The relevant ministries presented the measures adopted to accelerate procedures and complete denationalisation, which will be closely monitored by the Ombudsman.

Although not many cases were discussed in the relevant field, the Ombudsman repeats a similar recommendation.

2.14.3 Property law matters

General findings and realisation of the Ombudsman's recommendations The Ombudsman's recommendation no. 36 (2017) referred to the implementation of measures to arrange ownership of all categorised roads sited on private land. In the Government's response report to the 2017 Ombudsman's Annual Report, the Ministry of Infrastructure (Mzl) stated that the relevant recommendation was partly realised. **The Ombudsman agrees that two regulations were adopted relating to this issue, as well as on the basis of the Ombudsman's efforts and caution**, i.e. Act Regulating the Records of the Existing Land Use of the Public Road and Railway Infrastructure and the Spatial Planning Act (ZUrep-2). The regulations were to facilitate the regulation of the issue since the first one governs the obligation to record the actual use of land, and the other one enables a private owner undergoing an expropriation procedure to request the operator to regulate the relationship, i.e. to instigate an expropriation procedure. As per the aforementioned, the Ombudsman will closely monitor the arrangements in this field based on the newly adopted legislation.

Findings of cases considered

Example:

Right to compensation after instituting easement in the public interest

If a free-of-charge transfer is not evident from the contractual intent of the parties, the person subject to expropriation is entitled to compensation. When the Municipality of Domžale claimed that all mutual obligations were agreed on between the parties (although the compensation for instituting easement in the public interest was not agreed on at all), the municipality violated the principle of free regulation of obligational relationships (Article 3 of the Obligations Code).

A complainant contacted the Ombudsman regarding the non-payment of compensation by the Municipality of Domžale for instituting easement in the public interest on his land. The easement agreement concluded between the complainant and the Municipality of Domžale revealed that compensation was not determined. Irrespective of the aforementioned, the Municipality of Domžale insisted that all mutual obligations were determined between the contracting parties.

We reminded the Municipality of Domžale of the principle of free regulation of obligational relationships (Article 3 of the Obligations Code). We explained that determining compensation to institute easement in the public interest was not an essential component in the agreement on instituting easement and it may thus be governed by the agreement or not. If it is not arranged that does not mean that the person subject to expropriation refused or demanded compensation, merely that this issue was not discussed. An agreement on suitable compensation to institute easement in the public interest may be concluded subsequently. We thus asked the Municipality to resolve the current case, whose discussion was justified.

The Ombudsman particularly emphasises that every person subject to expropriation in the case of instituting easement in the public interest is entitled to compensation unless determined otherwise in the contractual intent of parties. **Therefore, the will of contractual parties regarding a gratuitous transfer in the case of free-of-charge institution of easement in the public interest must be clearly evident.** Otherwise, this could denote a violation of the right to private property as determined in Articles 67 and 69 of the Constitution of the Republic of Slovenia and Article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms. The complaint was justified. **5.4-21/2017**

Example:

Unresponsiveness of the Municipality of Idrija to a letter

In Article 18, the Decree on Administrative Operations stipulates that an authority is obliged to respond to all letters received by post or electronically, unless they are insulting, no later than 15 days after the receipt. If not, this conduct is contrary to the principles of good administration.

A complainant wrote to the Ombudsman regarding the sale of her co-owned real estate to the Municipality of Idrija. It was understood from the complaint and attached documentation that the Municipality accepted the complainant's proposal to sell her co-owned real estate to the Municipality in October 2015. At its regular session in December 2015, the municipal council adopted a decision to purchase the relevant real estate in its entirety. In this time, the complainant contacted the Municipality by email and phone several times regarding the execution of the contract and was told that the procedure was underway. In an email of November 2016, the complainant then requested the Municipality to explain if and when it would purchase relevant real estate, but she did not receive a reply. After its several urgent enquiries, the Ombudsman received an explanation from the Municipality on 13 July 2017 about the reasons why a purchase agreement with the complainant had not been concluded in over a year. Since the Municipality submitted its notification only to the Ombudsman and not the complainant, the Ombudsman made an exception and forwarded the Municipality's reply to the complainant.

The complaint was assessed as founded. We informed the Municipality of its obligation to act according to Article 18 of the Decree on Administrative Operations, which explicitly stipulates that an authority is obliged to reply to all letters received in physical and electronic form, if they are not insulting, no later than 15 days from the receipt of the letter if the address of the sender is evident from the letter or it must at least issue a notification about further action. **5.4-3/2017**

2.14.4 Taxes

General findings and realisation of the Ombudsman's recommendations

The complainants who wrote to us in 2018 had similarly as in previous years **disagreed with the tax obligations imposed**. Whereby no differences between concrete complaints or systemic irregularities were detected. We still record **lengthy resolving of complaints by the Ministry of Finance (MF)**, i.e. with regard to income tax assessments and inheritance and gift tax.

In the justified complaints from the field of taxation, the Ombudsman particularly discerned **violations of the principles of equity and good administration**.

As evident from complaints, **the right of taxpayers to be notified must undoubtedly be highlighted again** – general notifications (in the form of clarifications published on the website of the Financial Administration of the Republic of Slovenia (FURS)) do not suffice. Although they are considered examples of good practice, taxpayers must also receive suitable information when they contact the tax authority with questions referring to a concrete case. Cooperation with competent authorities was for the most part conducted in writing.

Regarding the Ombudsman's recommendation no. 37 (2017) on the necessary recognition of the right to a special tax relief for taxpayers who maintain their family members on the condition of actual maintenance and not only living with them in a common household or in institutional care, the MF wrote in the Government's response report to the 2017 Ombudsman's Annual Report **that it rejected the realisation of the recommendation because it did not agree with it**. It stated that it would be exceptionally difficult, lengthy and economically inefficient to establish a system which would be based on the actual duty for a concrete person to support parents, and that the starting point for determining a relief system for maintained family members was a lump-sum assessment of costs, which arise from maintenance obligations. **The ministry thus found the current arrangements as per the Zdoh-2 neither discriminatory nor disproportionate**. The Ombudsman insists on its recommendation as it is certain that the core of the obligation to maintain parents if these have insufficient means of subsistence and are unable to acquire them on their own is linked with the obligation of the children or adopted children to ensure their parents (or adoptive parents) a decent life which derives from natural connections. Possible residence in a shared household or living in an institutional care as conditions for acknowledging special tax relief puts these individuals in an unequal position compared to those who do not live in such circumstances but whose children are also obliged to support them. We thus repeat the recommendation in full.

With regard to recommendation no. 38 (2017) which dealt with taxation of survivor's pension for children up to 18 or 26 years of age if they are a full-time student, **the MF again expressed its disagreement and rejected it.** The Ombudsman agrees that survivor's pensions are not a social allowance, but these cases involve families who lost their members and they are particularly affected in a material and emotional sense, especially children, which is why the Ombudsman insists on this recommendation.

Findings of cases considered

We received a few complaints from **dissatisfied cross-border migrant workers.** The Ombudsman proposed that with an extraordinary legal remedy the FURS systemically arranges the situation when tax relief for maintained family members is recognised *retrospectively* only for applicants with ongoing complaint or court procedures.

In 2018, we further discussed **the issue from 2016 referring to proceedings dealing with deceased taxpayers with debt higher than EUR 80.** The Ombudsman informed the FURS that the issue of unresolved claims against taxpayers with debt higher than EUR 80 (there are 100 such cases according to the FURS) who died before 15 September 2016, i.e. before the enforcement of clarifications (sent by the FURS to financial offices for comprehensive modification of conduct in cases of deceased taxpayers with debt higher than EUR 80) remains topical to this day. The Ombudsman asked the FURS to start actively resolving open claims against taxpayers with debt higher than EUR 80 (e.g. by sending enquiries to obtain necessary information from the courts) and, if this is possible, present its claim in inheritance proceedings and thus more promptly inform possible heirs about the tax debt of the deceased person.

As every year before, **self-employed persons contacted the Ombudsman in 2018 about the tax debt due to unsettled social security contributions** (e.g. 14.3-11/2018, 14.3-27/2018, particularly personal interviews). We explained to the complainants that paid social security contributions enable individuals to exercise many short-term (health care) and long-term (right to pension) rights, and we also noted that majority of them were aware of the fact that the debt from performing an activity cannot be written off even if they find themselves in severe financial distress and they learn about the options to terminate activities when it is too late.

The Ombudsman continued to consider the **issue of not recognising a special tax relief to parents who care for children with the status of unemployable persons but have no decisions required by the Personal Income Tax Act.** The discussion of such complaints was completed with the opinion that the solution should not be sought in the tax field, but in a suitable arrangement of the social solidarity system (direct assistance in the form of social benefits).

2.14.5 Administrative procedures

Findings and realisation of the Ombudsman's recommendations

The subsection, Administrative procedures, includes matters referring to **circumstances of the course of an administrative procedure**, whereby it should be emphasised that concrete or systemic procedural errors are discussed at this point, and the material content of individual administrative matters is included in individual problematic fields of work. Since division is not always possible, individual complaints, which also include procedural errors, are discussed in other parts of the report. The number of cases recorded in this section does not require special consideration in this regard.

The key topics examined encompass lengthy decision making, failure to issue an administrative act, insufficient implementation of the obligation to explain compliant with the principle of protection of clients' rights and the protection of public interest, the issue of expert opinions, and inspection procedures. We detected several problems in procedures relating to the establishment of permanent residence. We also highlight problematic procedures for exercising the right to follow-up rehabilitation.

When considering complaints, we particularly established violations of legality, the constitutional principle of the rule of law and a social state, the right to equality before the law, equal protection of rights, the right to personal dignity, and the principles of equity, good administration and undue delays in proceedings. **Violations of the rights of the disabled are particularly highlighted.**

Cooperation with competent authorities

At the Ombudsman's head office, we met Ksenija Klampfer, Minister of Labour, Family, Social Affairs and Equal Opportunities, and Dragica Hržica, Chief Inspector of the Environment and Spatial Planning, and their colleagues. We also met with the representatives of the Health Insurance Institute of Slovenia and others.

The Ombudsman's recommendation no. 39 (2017) on the urgent provision of suitable working conditions for inspection services is being repeated in its entirety because we are aware that this is an acute ongoing issue in spite of the efforts of the Government of the Republic of Slovenia, which are evident in the Government's response report to the 2017 Ombudsman's Annual Report.

Regarding **the Ombudsman's recommendation no. 40 (2017)** relating to necessary amendments to Article 251 of the General Administrative Procedure Act (ZUP) stipulating that second instance authorities should be obliged to decide on matters upon the merits instead of only having the possibility to decide thereof for themselves, the Ministry of Public Administration (MJA) wrote in the response report that it was aware of the actual problem, but that the proposed amendment would denote an inadmissible encroachment upon a two-step decision making and the right to equal legal protection. The Ombudsman agrees with the reply and adds that it was thinking about exemptions in the given recommendation, which are permitted by the ZUP in certain circumstances. We stress that the recommendation referred to the cases of repeated referral from a first instance authority to a second instance authority and back, and would in such cases somehow break such exchanges. The MJA promised that it would carefully monitor such unlawful cases and point them out, and the Ombudsman will also pay special attention to this in the future. In connection with the report and our findings, we submit to the competent authorities a proposal on additional compulsory training of public employees on the contents of administrative procedure.

Findings from the complaints discussed

Free urban line transport pass obtained only after the Ombudsman's intervention

On the basis of the Ombudsman's note on incorrect interpretation of the term 'disabled worker', the Municipality of Ljubljana (MOL) will in the future and compliant with indent one of Article 25 of the Ordinance on the Organisation and Method of Providing Urban Line Passenger Transport (*Odlok o organizaciji in načinu izvajanja mestnih linijskih prevozov potnikov*) enable the acquisition of a free pass for individuals with the status of a disabled worker of category I irrespective of the reason for their disability if they have rights from disability insurance. **5.7-64/2017**

Implementation of declaratory proceedings as a necessary condition for de-registration of a temporary residence

An administrative unit asked all employers to de-register temporary residences of foreign workers due to the risk of fictitious registrations. Since the appeal was sent to the employers without prior declaratory proceedings of determining actual residences of foreign workers, the Ombudsman considered this to be an unfounded encroachment upon their constitutional rights and consequently the loss of trust in the rule of law. **5.0-13/2017**

A client must receive replies to their letters and applications

If a client is entitled to expect an additional response from an authority, the latter cannot cite Article 17 of the Decree on Administrative Operations. As per the principle of good administration, the Administration of the Republic of Slovenia for Food Safety, Veterinary Sector and Plant Protection could at least have sent a short note stating that nothing could be added to the original reply. **14.0-16/2018**

Even if a client is not presenting new facts and evidence, a social work centre must reply to every letter it receives

The Ombudsman discussed a complaint in which complainants claimed a lack of response from a social work centre. The Ombudsman examined the case and after an enquiry at the competent social work centre determined that the centre failed to reply to the letters received citing that they did not include any new facts and evidence, which was unacceptable according to the Ombudsman. The provision of new facts and evidence is namely not a condition stipulated in the Decree on Administrative Operations with regard to replying to letters. **5.7-71/2017**

The right of a child to personal identity applies for all children irrespective of their citizenship

Administrative authorities must enable a child that their actual father is entered in the civil register and thus protect their personality right to personal identity. In a concrete matter, the Ombudsman discussed a case of a child born in Slovenia whose mother was a foreign citizen (still during the marriage) and the father as well. Although the mother, her spouse and the child's father agreed that the father's name would be entered in the civil register, the administrative unit refused to do so as per Article 86 of the Marriage and Family Relations Act. Whereby it did not observe Article 87 of the same Act or the Rules on the Implementation of the Civil Register Act, and it also failed to comply with the law applicable for the child's actual father when recognising paternity. By refusing to register paternity in the civil register, the child's right to personal identity was violated. **14.5-21/2018**

The MOP failed to make a decision on the request for flood damage compensation in four years

In the procedure of allocating funds to a complainant for flood damage compensation, the MOP failed to act as per the ZUP in connection with the Natural Disaster Recovery Act, and it did not ask the complainant to supplement the application, it did not instigate a procedure and did not decide within statutory period about his rights and obligations. The MOP thus violated legality and the principle of equity and good administration.

In its reply, the MOP claimed that these requests are not subject to the ZUP, but it failed to provide further arguments. The Ombudsman informed the MOP that it was obliged to observe the existing legislation and decide within reasonable time on the applications received from beneficiaries. The MOP should submit its concerns about the compliance of the conduct of other authorities or compliance of executive acts with the Act and the Constitution of the Republic of Slovenia to the Government of the Republic of Slovenia. The Ombudsman is still examining the broader issue of flood damage compensation, and the concrete case is subject to supervision of the Public Sector Inspectorate. **5.4-16/2017 and 14.5-64/2018**

Deciding on the right to group follow-up rehabilitation

The Court of Audit and the Ombudsman assessed as disputable the fact that the Health Insurance Institute of Slovenia transferred the responsibility to decide on the right of insured persons to group follow-up rehabilitation onto the organisers of such rehabilitation which do not decide on these rights in an administrative procedure. The aforementioned is not compliant with Articles 84 and 85 of the Health Care and Health Insurance Act.

The relevant arrangement does not provide insured persons compulsory legal protection. The Ombudsman expects the existing legislation be amended. **5.7-42/2017**

2.15

JUSTICE ADMINISTRATION

Field of work	Cases considered			Resolved and founded		
	2017	2018	Index 18/17	No. of resolved	No. of founded	Share of founded among resolved (in %)
15 Justice administration	487	410	84.2	377	18	4.8
15.1 Pre-trial proceedings – prosecutor's office	26	28	107.7	24	1	4.2
15.2 Criminal proceedings	63	64	101.6	61	4	6.6
15.3 Civil proceedings and relations	242	200	82.6	186	5	2.7
15.4 Proceedings before labour and social courts	17	16	94.1	15	0	0.0
15.5 Minor offence proceedings	50	41	82.0	35	2	5.7
15.6 Administrative judicial proceedings	3	1	33.3	1	0	0.0
15.7 Lawyers and notaries	22	14	63.6	12	2	16.7
15.8 Other	64	46	71.9	43	4	9.3

2.15.1 General findings

In 2018, 410 cases were considered in the field of judiciary (2017: 487 cases), and 322 cases in the narrower field of judicial proceedings (2017: 375). 64 of these were complaints related to criminal proceedings (2017: 63), 200 with civil proceedings and relations (242 in 2017), 16 with proceedings before the labour and social courts (2017: 17), 41 to minor offence proceedings (2017: 50) and one with administrative judicial proceedings (2017: 3). In the sub-field of pre-trial proceedings, 28 cases were considered (2017: 26), 14 in the sub-field of attorneys and notaries (2017: 22), and 46 other cases related to this sub-field of our work (2017: 64). **An increase in the number of considered (and received) cases was recorded in certain sub-fields of this field, while in others, the number dropped.**

The reason for this is the further decline in the number of complaints referring to the problem of lengthiness of judicial proceedings due to the progress of the court in the reduction of court backlogs. **The share of justified complaints regarding judicial proceedings is related to our (limited) jurisdiction in regard to the judicial branch of power.** The Human Rights Ombudsman Act stipulates explicitly that the Ombudsman may not consider cases which are subject to judicial or other legal proceedings unless undue delay in the proceedings or evident abuse of authority is established (Article 24 of the ZVarCP). 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. The Ombudsman's intervention thus does not extend to the field of trials but particularly to

judicial administration. Therefore, we comment again that assessment of the work of justice cannot be based solely on the number of such complaints filed with the Ombudsman and/or their justification.

When handling cases, we continued to turn to the presidents of courts and other competent bodies (for example, heads of prosecution offices) by way of enquiries and other interventions, and when necessary the Ministry of Justice 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 when concerning procedures carried out by the police as a minor offence authority. **We were satisfied with responses of the competent authorities in addressing complaints, as they regularly responded to our enquiries and other interventions.**

We discussed further cooperation and work plans in the field of judiciary at the introductory working visit of the new Minister of Justice and her team on 19 October 2018. **The Ombudsman commended the current response practice of the Government of the Republic of Slovenia to the Ombudsman's recommendations, which is successfully coordinated by this Ministry; the Minister promised to continue the current best practice and stated work plans for her term of office; we also briefly discussed certain other topics that affect both institutions.** We addressed the planned amendments to the normative regulation in the field of judiciary, such as the Personal Data Protection Act, the Non-Contentious Civil Procedure Act and the State Prosecution Service Act, the Criminal Procedure Act and other regulations.

The partners agreed that educating judges, prosecutors and other actors in the judiciary on human rights is crucial, which is successfully carried out by the Judicial Training Centre, also in cooperation with the Ombudsman in certain fields. The Ombudsman and the Minister agreed that authorities can do the most to build the reputation of the judiciary.

From complaints received and the Ombudsman's recommendations relating to judicial proceedings in 2018, it was possible to discover issues which, on the one hand, (still) refer to the lengthiness of individual judicial proceedings and to the quality of trials on the other. The complaints primarily address the right to judicial protection, equal protection of rights, right to legal remedy, legal guarantees in criminal proceedings and other rights.

In addition to the right to trial within a reasonable time, it is also important that parties obtain a legal and regular court decision. Judges also have their obligations and responsibilities, must do their work correctly, fairly and responsibly, and must ensure efficient implementation of the judicial function. The independence of judges does not mean that they are inviolable or may act irresponsibly. **In addition to suitable regulations and working conditions, we have pointed out several times that it is the judiciary that can most contribute to the quality of the operation and reputation of the judicial system.** To this end, the Ombudsman supported the definition of priority working tasks of courts at the opening of the judicial year on 14 February 2018 at the judicial palace in Tavčarjeva ulica in Ljubljana.

Better quality of the work of courts, an enhanced role of the Supreme Court in the role of the precedence court, criminal proceedings and administrative judiciary were emphasised as priority working tasks of courts. **We continue to support the orientation of the judiciary to so-called procedural fairness with measures for a more efficient and friendlier judiciary, which marked the 100th anniversary of supreme judiciary in Slovenia in 2018.**

Within the scope of this amendment, we pointed out to the Ministry of Justice proposals for amendments to the ZKP prepared by the Association of State Prosecutors of Slovenia intended to additionally protect children who are victims of crime in the pre-trial investigation. We assessed that proposals and amendments to the ZKP (to prevent multiple examinations of children and their secondary victimisation, and to introduce special training for all actors in proceedings which include children who are victims) along with explanations are worth a thorough examination.

In practice, child-friendly rooms, which were shown as a useful acquisition, are rarely used for examination and other procedures. Therefore, we agree with the finding of the Ministry of Justice that the implementation of the Children's House (Barnahus) project also supported by the Government of the Republic of Slovenia with the decision of 8 June 2017, with which the Ministry of Justice is tasked to appoint an inter-ministerial

working group to implement the project, in which the Ombudsman took part, is extremely important for the comprehensive treatment of children in one place. The Ombudsman encourages all the competent authorities to complete all required inter-ministerial activities to prepare and finance the Barnahus project, develop policies and procedures for the Children's House, prepare checklists, training programmes for forensic interviewers and clinical psychologists employed at the Children's House, develop tools and procedures for easier inter-ministerial cooperation in such treatment of children, which will facilitate the management of individual cases, in order to take into account child's best interest, and ensure the participation and protection of children.

In the first quarter of 2018, the Ombudsman received several complaints which pointed out a judge's decision not to close to the public criminal proceedings, to which special attention was also paid by the media. Due to the relevance of the issue, the Ombudsman's position was introduced to the public with its online publication, which was also summarised by the STA. It was also fully published on the website of the Slovene Association of Journalists. We invited the media to be sensitive when reporting from public hearings. We highlighted that the fact that the main hearing is public cannot mean that the media can freely report on all details from the private lives of either party or victim of crime, which are disclosed during trials. From the aspect of the right to fair trial, the content that shows the appropriateness of the conduct of public authorities (the court) is particularly crucial in relation to reporting of the media on trials. Therefore, only the release of correct information, which summarises what was stated at the main hearing, is in the public interest, while (other) details, according to the Ombudsman, cannot be included among information that can be marked as public interest.

In addition to the right to a fair trial and an individual's personal rights, it is also important to point out the right to freedom of expression in media reports. The content of releases, messages, opinions and views generally depends on the judgment of the person who provides such information, while media releases generally depend on the editorial policy of the media. **However, the ECHR emphasises that the respect of freedom in democratic societies presumes obligations and responsibilities.** The right to freedom of expression is only protected up to a point of the protection of other human rights and fundamental freedoms provided by the Constitution. In any case, public interest in relevant topics and an individual's personal rights protected with Article 35 of the Constitution of the Republic of Slovenia must be weighed. Therefore, the duty of the media is to ask each time when their work does not exceed the threshold of admissibility of media reporting prior to release. Such reporting must, without a doubt, take into account respect for the deceased. Acknowledging the right to respect also protects the deceased person's assets and valuable things they created.

2.15.2 Realisation of the Ombudsman's recommendations

In **recommendation no. 22 (2017)**, the Ombudsman encouraged the Ministry of Justice and its project group that prepares and harmonises the preparation of action plans and reports to for the enforcement of judgements of the ECHR to continue its work, since the preparation of systemic measures (along with individual measures) is significant in prevention of future violations established by the ECHR and in reducing the number of convictions of our state for violations of the European Convention on Human Rights (ECHR).

The need to realise these recommendations is also highlighted by decisions of the ECHR which established violations of the European Convention on Human Rights in five cases in 2018.

As pointed out by the Ministry of Justice in the Report on the Work of the Inter-Ministerial Working Group for the Enforcement of Judgments by the European Court of Human Rights, its priorities include more efficient and speedier enforcement of judgments of the European Court of Human Rights (ECHR). **The systemic approach has proven suitable, which is supported by significantly lower number of non-enforced judgments of the ECHR since the establishment of the inter-ministerial working and project group in 2016, including the Lukenda cases (trial within a reasonable time).**

By the end of June 2018, the Committee of Ministers of the Council of Europe had adopted 25 final resolutions.

In addition to the final resolution in the Ališič pilot case (foreign currency deposits in the former Ljubljanska banka), final resolutions in 16 so-called cloned cases of the Mandič and Jovič leading cases were adopted

(a violation of the prohibition of inhuman or degrading treatment pursuant to Article 3 of the ECHR due to overcrowding and unsuitable conditions in Ljubljana Prison, and a violation of the right to an efficient legal remedy pursuant to Article 13 of the ECHR due to inefficiency of legal remedies). After the prepared action reports were studied, final resolutions were also adopted in cases Peruš (partiality of the court, i.e. the same judge was involved in both instances in a labour dispute), L. M. (detention in closed wards of the Ljubljana and Idrija psychiatric clinics and treatment of patients in open wards of psychiatric clinics), Perak (violation of proceedings due to unserved requests for protection of legality) and B. K. M. Lojistik (unlawful removal of a lorry from a company in the case of trade in illicit drugs).

As reported, the Ministry of Justice set up a website in 2017 with detailed information on the enforcement of judgments of the ECHR to better inform the public of measures taken. **The Ministry of Justice ensures that, in cooperation with other competent ministries, it will continue to strive for coordinated preparation of required individual and systemic measures to enforce judgments of the ECHR in cases when violations of the European Convention on Human Rights are established by the ECHR, and report on it to the Council of Europe.**

Recommendation no. 22 (2017), which is an ongoing task, is being realised, which is right, since our state must respect and take into account all final judgments of the court which refers to it, as it signed the ECHR and is member of the Council of Europe. It is also bound to do so by the Constitution of the Republic of Slovenia. **Therefore, the Ombudsman pays special attention to the enforcement of judgments of the ECHR, and again welcomes the progress our state made in this field, particularly through the operation of the Ministry of Justice.** The Council of Europe recognised Slovenia as a responsible and serious member.

In this field, the press release of the Supreme Court of the Republic of Slovenia of 24 October 2018 received strong responses.

The Supreme Court of the Republic of Slovenia explained that the press release had been prepared in the context of its decision to enhance the transparency of its operations, which does not only include information on adopted decisions in judicial proceedings but also information on positions regarding various issues and problems the Court encounters in its operation. However, attention was particularly paid to the part that had been clumsily and unsuitably written in the first release instead of to the substantive message which was in this way overlooked and in the opinion of the Court, required a wider discussion particularly at the level of all three branches of government – i.e. together with the executive branch with the Ministry of Justice preparing particularly sectoral legislation, and the legislative branch that adopts such legislation. **According to the Court, the basic purpose of the release was to point out Slovenian legislation (in this case the Prevention of Restriction of Competition Act) that is not harmonised with established case law of the ECHR in defining judicial proceedings as penal proceedings, although under national legislation they are not.**

Prior to adopting a decision, the Supreme Court of the Republic of Slovenia sent the Prevention of Restriction of Competition Act to the Constitutional Court of the Republic of Slovenia for consideration, which did not establish the unconstitutionality of the disputable provisions of this Act. From this aspect, the first release raised the issue of the positions of the ECHR in the case, which was unsuitably expressed in the first two introductory sentences of the release and obviously, brought a completely different connotation and understanding of the release. This and the public reaction were the reasons why the Supreme Court of the Republic of Slovenia withdrew the release and replaced it with a new one, in which it again pointed out the problem encountered by our case law in point two, emphasising that the initial release did not state that the decision of the ECHR would not be taken into account in the work of the Supreme Court.

The Ombudsman welcomes the decision to withdraw the disputable release published on the website of the Supreme Court of the Republic of Slovenia and to reiterate the respect for decisions of the ECHR.

We comment again that it is not only important to eliminate any violations established by the ECHR, but particularly measures that prevent these violations from recurring; for this reason, good cooperation among state authorities is imperative. Therefore, it is not sufficient to pay potentially awarded compensation, but that a judgment of conviction dictates not only changes to case law but in certain cases also amendments to

legislation. To this end, legislation must be drafted from the aspect of the respect of the European Convention on Human Rights and standards regarding the protection of human rights introduced by the ECHR with its decision. **The Ombudsman encourages a wider discussion and reconsideration of the suitability of current normative regulation of the enforcement of judgments of the ECHR; if necessary, the act that violated the European Convention on Human Rights should be infringed upon.** The obligation to do so is also imposed by the decision of the Committee on Justice of 9 November 2018, which addressed the problem of the enforcement of judgments of the ECHR against the Republic of Slovenia, with which the ECHR established violations of the European Convention on Human Rights.

In **recommendation no. 23 (2017)**, the Ombudsman encouraged all courts to pay special attention to improving their operation and the quality of trials, while the Ministry of Justice should continue to ensure enhanced operations of the judiciary for efficient and high-quality implementation of the judicial power, in addition to the concern dedicated by the Supreme Court to uniform case law.

As emphasised by the Supreme Court in its Annual Report on the efficiency and effectiveness of courts for 2017, regular publication of case law is an important factor of its harmonisation, and the provision of publicity, legal security and equality. The entry of anonymised decisions into the uniform case law database and publication on the website of the Slovenian judiciary for them to be available to experts and laypersons are the basic factors of the harmonisation of case law. In this way, a knowledge database is created, contributing to better quality of the work of the Court and suitable information for experts and laypersons. As part of this effort, the Supreme Court encourages all courts to enter anonymised decisions in the publicly accessible uniform case law database. **In 2018, priority areas related to the quality of trials partially followed guidelines formed from 2015 and are limited to a manageable number of handled cases in individual years, whereby the objective is a comprehensive long-term consideration of the quality of the work of judges and courts.** Priorities and activities for 2018 were particularly an upgrade of what had been implemented, and certain activities were transferred among ongoing tasks (e.g. mentorship of new judges).

Regarding the quality of the judiciary, which, in a narrower sense, is understood as the quality of court decisions, the Slovenian judiciary focused in 2018 on the quality of trials and the conduct of proceedings, writing of high-quality decisions, access to courts, and career development of judges and court staff.

At the beginning of the judicial year of 2018, the Supreme Court of the Republic of Slovenia emphasised among priority areas the project to improve the quality of the judiciary to ensure, while taking into account the principles of procedural fairness, court decisions of higher quality, which will be explained in a language that persons who are not lawyers also understand.

A link to the IKS – Improving the Quality of the Judiciary with products and tools which help with both new and experienced judges in their work is published on the intranet pages of the Slovenian judiciary. The Ministry of Justice also contributes to better quality of the judiciary with supervisions carried out by the Service for the Supervision of Court Administration (SNOPS).

The realisation of his recommendation is an ongoing task. The need for this is reflected in the complaints considered in this field, which is why we reiterate the recommendation.

In **recommendation no. 24 (2017)**, the Ombudsman recommended to the courts to respond to serious allegations regarding the legality of their work and ensure a suitable level of communication with the public, by justifying their decisions if necessary. In relation to this recommendation, the Ministry of Justice explained that the relation between the judiciary and the public in expert discussion is recognised as an important aspect of the operation of the judiciary. **The Slovenian judiciary is also aware of the importance of these relations, and therefore, it is gradually enhancing their ability to communicate with the public more efficiently.**

Certain data show that the trust in the judicial system remains low. We believe that more appropriate responses of the judiciary to allegations against it exposed in the media could contribute to a better image of the judiciary in the public, particularly allegations regarding the transparency of the operation of the judiciary, which was advocated by the president of the Supreme Court in the announcement of its strategic programme.

In one of the cases considered, i.e. publications in the media which highlighted doubt about the fairness of the judiciary and diversity of court decisions in cases with similar situations, we **invited the Supreme Court to state its position regarding the allegations against the judiciary and respond to them**. Equality before the law is one of the fundamental rights that must be provided to everyone in accordance with the Constitution of the Republic of Slovenia. In addition, judges must respect the Constitution and the law when performing their function. **Therefore, the Ombudsman believed that these two publications in the media could convince the public that they are not provided with equal constitutional rights in judicial proceedings, even more so if the judiciary does not respond to them.**

The president of the Supreme Court agreed with the Ombudsman's position that the judiciary must suitably respond to serious allegations regarding the legality of the work of courts, and stated that the Supreme Court or any individual court should respond at its own discretion in a suitable and sensible manner whenever it believes that such a response is necessary. He also stated that the said publications did not receive such a reaction, but reports on this topic continue to be monitored and potential responses will be decided each time.

Lengthiness of judicial proceedings

The complaints considered still included complaints in which complainants claimed that judicial proceedings were lengthy, despite the reduction of court backlogs, which continues to be reflected in lower number of complaints due to backlogs received by the Ombudsman. The Judicial Council believed that the judiciary shows good results and that indicators of its operation continue to be positive; however, it points out certain problems. These include the fact that the productivity of courts is decreasing, particularly in important cases in which the time expected for them to be resolved is longer. **Creditors highlight lengthy bankruptcy proceedings and related procedures**, although the law provides that courts and other state authorities must as a priority address cases in which a debtor in bankruptcy is involved as a party or whose outcome affects the course of bankruptcy proceedings.

Particularly problematic is the lengthiness of certain judicial proceedings conducted to compensate damage suffered by complainants in pre-trial proceedings due to slow judicial decision making and in which parties should use legal remedies again to expedite judicial proceedings referred to in the Protection of Right to Trial without Undue Delay Act (ZVPSBNO).

Of course, turning to the Ombudsman is not the only way to speed up a lengthy trial and, consequently, eliminate possible violations of the right to trial within a reasonable time. **The Ombudsman's intervention is usually an option only when a party has not been successful in applying 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 still include appeal with a motion to expedite the hearing of the case (supervisory appeal) and a motion to set a deadline (motion for deadline). Said legal remedies are decided by the president of the court before which judicial proceedings are conducted, and if decision making involves a motion for deadline, the president of the Higher Court.

Whether a court case may be defined as court backlog in view of the provisions of the Court Rules and whether the right to judicial protection was violated may be assessed by the court if legal remedies foreseen by the ZVPSBNO for cases of lengthy trials are used.

Generally, complainants are advised to use legal remedies to expedite judicial proceedings. An intervention by the Ombudsman can thus be justified if the party uses such a legal remedy, but the decision on it is not made within the time limit determined by law. **Discussions with complainants and their complaints reveal that they are not familiar with the ZVPSBNO and are afraid to use expediting remedies referred to in this Act, as they believe that it will affect the outcome of judicial proceedings.**

If a supervisory appeal or motion for a deadline is granted, this may be the basis for enforcing 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 to them within the scope of implementing the tasks of the judicial administration pursuant to the Courts Act, since the legal basis for the use of measures in accordance with the ZVPSBNO has not been provided. **In this regard, we must point out the statements of certain complainants that they encounter many (procedural) barriers on their path to obtain compensation damage incurred as a result of the violation of the right to trial without undue delay.**

Certain complainants also deem problematic that the ZVPSBNO does not refer to pretrial investigations (some of) which are lengthy (e.g. in the field of financial crime), but cases are completed by the prosecution following lengthy proceedings. It does not matter to the injured party or the complainant which authority is responsible for lengthy proceedings. It is important that the injured party did not obtain the final decision in reasonable time, whereby they could not influence the course of the proceedings, but still showed interest in the proceedings by posing questions about the case to the competent institutions, attempted to expedite it and filed the prescribed legal remedies, including a supervisory appeal.

Quality of decision making

In recent years, the Ombudsman has received more and more complaints which point to the need for fair and just judicial proceedings and meticulous and critical supervision of court decisions. This also applies to cases considered in 2018.

When accepting confiscated items for storage, their recipient must ensure that a suitable record is made, in which the receipt and review of individual items are confirmed. This obligation also arises from the commitment that the recipient must store and protect confiscated items with due diligence. If the recipient does not ensure that a suitable record is made when accepting confiscated items, reference to the said does not justify their behaviour.

Example:

Due diligence is also required when accepting confiscated items

In 2013, the police confiscated several items from a complainant. Following completed proceedings, he requested Maribor District Court to return them to him, but the court did not return all items. Therefore, he believed that the court was making fun of him and that it would not return items that were valuable and precious to him, although they were not related to the crime for which he served a prison sentence.

The documents submitted to us by the complainant showed that all the complainant's items confiscated with an order were sent to Maribor District Court on 23 April 2013 (a letter from Maribor District Court of 25 July 2017, number Mb-Kt/4/2013/KA/km), while the proceedings were conducted by the court under ref. no. II K 65944/2012.

To establish all the circumstances in which items were confiscated, we made additional enquiries in the complainant's case at the Ministry of the Interior, the District State Prosecutor's Office in Maribor and Maribor District Court. The police claimed that all confiscated items had been submitted to the prosecutor's office which claimed that it had handed them over to the court. The court explained that the stamp of 24 April 2013 confirmed the receipt of the order of the prosecutor's office regarding the confiscated items which had allegedly been sent to the court, but no acceptance report or another official note was drawn up which would show that items had actually been received by the court from the prosecutor's office. After receiving the complainant's requests for items to be returned, the court checked the confiscated items in storage several times and established that certain items whose return had been requested by the complainant were not stored by the court. The data in the file do not show that the confiscated items whose return was requested by the complainant were submitted to another authority, and not even a court decision was issued to the complainant regarding the confiscation of items.

We believed that the court was responsible for the drawing up of a record when items were confiscated, which would confirm the receipt of individual items and their review (as stipulated by Article 6 of the Decree on the procedure of handling of seized objects and assets). This obligation also arises from the commitment that the

court must store and protect confiscated items with due diligence. Obviously, the court did not make any record when it confiscated items, and therefore, reference to the said does not justify its behaviour. We think that this constitutes an irregularity in the work of the court, which may be subject to liability for damages. Since the complaint was considered founded, we enquired which measures the court took to find a suitable solution to the situation.

If the Ombudsman establishes irregularities, they may propose the method for eliminating them (Article 39 of the Human Rights Ombudsman Act). Therefore, we proposed to the court to make contact with the complainant for him to state whether any damage had been incurred to him as a result of the established irregularity of the court and if so, for the court to suitably respond to his potential request for damage compensation (we commented that the Ombudsman's proposal does not interfere with civil rights as stipulated by law). We requested information from the court on how the acceptance of confiscated items for storage is conducted and why the court does not draw up a suitable record when accepting items. We also enquired whether it had taken any measures regarding the case considered to improve the storage and protection of the confiscated items.

In its response to our opinion and proposals, the court explained that the procedure of accepting confiscated items for storage at Maribor District Court includes a review of each confiscated item upon receipt from the state prosecutor's office (and other authorities), an inventory of all confiscated items and their entry on the list of confiscated items shown in the iK system. If a registrar finds that the list of the sent confiscated items does not comply with the actually received items, they invite the authority that sent these items to explain the established irregularities. For transparency and subsequent verifiability of the location of individual confiscated items, the court invites the authority that sent these items in writing, not orally, as was the practice five years ago in the complainant's case. As a measure to improve the storage and protection of confiscated items, the head of the criminal and specialised department sent a written notice with instructions on the acceptance of confiscated items to the criminal office of Maribor District Court on 12 November 2018. **6-1-36/2018**

Free legal aid

To realise the right to judicial protection, the state continues to **ensure free legal aid to a limited extent** and according to the principle of equality, while taking into account the social position of the person who could not realise this right without harm to their support and support of their family. Free legal aid and the condition for its allocation are regulated by the Legal Aid Act (ZBPP) adopted on 31 May 2001, which entered into force on 11 September 2001. Such aid, whose purpose is to realise the right to judicial protection, is provided by district and labour courts, and the social and administrative court. **Gaps in the field of free legal aid are filled by certain Slovenian municipalities and non-governmental organisations** (e.g. the Botrstvo project – free legal aid managed by the Association of Friends of Youth Ljubljana Most, which is carried out in several towns), and **free legal aid is also provided by certain attorneys according to the pro bono principle**. In 2018, Slovenian notaries joined the action on European Day of Civil Justice for the third time. In October 2018, interested parties were informed of the rights under the civil law, particularly of the rights under the property, inheritance and contract law. In 2018, the Detective Chamber of the Republic of Slovenia organised the first Pro Bono Day. Many detective agencies did not charge for their advice on this day.

In complaints regarding free legal aid, complainants most frequently expressed their disagreement with the rejection of their request for free legal aid. After reviewing available documents, it was established that most requests for free legal aid were rejected due to failure to meet the conditions stipulated by the ZBPP.

2.15.3 Minor offence proceedings

Slightly fewer cases (41) were discussed in this sub-field than in 2017 (50), while the problems addressed did not change significantly. Most complaints related to dissatisfaction with fines or decisions taken in minor offence proceedings, claiming irregularities in proceedings. **We must particularly point out complaints that individual decisions on requests for judicial protection were taken without examination and that generally, there is no special appeal against court decisions in expedited proceedings.** Complainants also stated their inability

to pay fines and options to defer the payment of fines, and highlighted individual actions in minor offence proceedings (e.g. alcohol tests and the termination of the validity of a driving licence). Complaints concerning participation in road traffic and the police as a minor offence authority were still predominant. Certain relevant findings are also included in the chapter on police proceedings. The number of such complaints has been declining, which is promising; however, the number of complaints regarding traffic wardens is growing.

In **recommendation no. 25 (2017)**, the Ombudsman recommended to the Ministry of Justice, the Ministry of the Interior and other competent authorities to provide the necessary training to minor offence authorities and courts to ensure consistent respect for fundamental guarantees of fair proceedings in minor offence proceedings too. In its response, the Ministry of the Interior ensured that the Ministry of the Interior and the Police will continue to pay special attention and required time within each training of authorised officials of minor offence authorities with 5th and 6th levels of education in order to reduce the number of established irregularities. The Ministry of Justice added that the Judicial Training Centre will again organise training in minor offence law; therefore, it may be deemed that this recommendation is being implemented as an ongoing task. The programme of training in minor offence law in 2017 included topics which, according to the Ministry of Justice, enhance respect for fundamental guarantees of fair proceedings: constitutional guarantees in minor offence proceedings, loss of rights for failing to observe a time-limit in minor offence proceedings, cases of the termination of the validity of a driving licence with case law elements, the *non bis in idem* principle in minor offence proceedings, oral hearings in practice, deaf, hearing-impaired and deafblind people in minor offence proceedings.

Payment of court fees

Regarding costs of expedited proceedings, paragraph two of Article 58 of the Minor Offences Act (ZP-1) states the application *mutatis mutandis* of the ZP-1 in regular judicial proceedings unless otherwise stipulated by this Act. **Paragraph two of Article 147 of this Act, which refers to costs of proceedings with legal remedies, stipulates that a court fee is not determined if a higher court decision was fully or partially to the benefit of the accused.** Therefore, violators who (partially) succeed with an appeal against a payment order do not pay court fees.

Example:

Case law also if an appeal against the payment order is successful?

A complainant won the filed appeal against the payment order of the minor offence authority of the Inter-Municipal Administration of the municipalities of Šempeter-Vrtojba, Renče-Vogrsko, Miren-Kostanjevica, Vipava and Ajdovščina of 30 January 2018, no. 009016, since the alleged violation was differently legally defined, and in the minor offence decision of 15 March 2018, no. Pn2243-24/2018 (009016), it was decided that he was responsible for a minor offence that brings a lower fine, but still had to pay a court fee. He emphasises that it would have been simpler for him if he could have immediately paid half the fine, although it was issued incorrectly. He felt that he suffered damage, since he had to file an appeal due to a wrong decision of a traffic warden and pay a court fee imposed by the minor offence authority.

In this case, the violator filed an appeal against the payment order, which was (partially) successful. **We pointed out to the minor offence authority that it was our position that an appeal is deemed a legal remedy in minor offence proceedings. With a decision of the minor offence authority, it was (partially) decided to the violator's benefit, but the violator still had to pay the costs of the proceedings (court fee). Therefore, we requested the minor offence authority to explain the legal basis for the imposed payment of a court fee.**

In response to our intervention, the minor offence authority explained that the decision in this case was not final, since the complainant filed a legal remedy in time. The minor offence authority announced that it would carry out a test pursuant to Article 62 of the ZP-1 in proceedings with legal remedies, and if violations of provisions are established, the authority will render a suitable decision pursuant to Article 63 of the ZP-1.

The complainant informed us that the minor offence authority issued a new decision on minor offence, setting aside the part of the previous decision, which referred to the payment of a court fee pointed out in the complaint

to the Ombudsman. He found that our intervention contributed to such a decision, which is therefore deemed successful and his complaint founded. **15.5-9/2018**

2.15.4 Prosecution service

General findings

In the sub-section of pre-trial proceedings, where most complaints concern the work of state prosecutors, 28 complaints were considered in 2018 (2017: 26). Complainants' claims were verified at heads of state prosecutor's offices if necessary (and we informed the Office of the State Prosecutor General of the Republic of Slovenia thereof) who responded regularly to our enquiries and other requests.

The content of complaints related primarily to the dissatisfaction of complainants with individual decisions of prosecutors (e.g. dismissal of complaints), the lengthy processing of their criminal complaints or (non-) responsiveness to individual complaints, and conclusion of cases without issuing a decision dismissing the indictment.

The planned amended ZKP-N, i.e. legislative amendments that strengthen the position of victims of crime and of vulnerable groups, foresees many additional activities for state prosecutors. **For them to work effectively and well, additional prosecutors must be provided if necessary.** When preparing these amendments, we pointed out to the Ministry of Justice the importance of efficient legal remedies if a prosecutor dismisses a criminal complaint or decides not to initiate criminal prosecution, bringing the need to amend legal regulations in this relation.

We would like to emphasise that this is all the more important when handling cases in which an individual dies. In this regard, we reiterate that the Constitutional Court of the Republic of Slovenia, with decision no. Up-555/03-41, Up 827/04-26 of 6 July 2006 (Official Gazette of the Republic of Slovenia, No. 78/2006), pointed out that the actions of the state when handling cases when individuals died under the authority of repressive authorities does not correspond to paragraph four of Article 15 of the Constitution of the Republic of Slovenia in connection with Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, pursuant to which the state should ensure an independent investigation of the circumstances of events and enable relatives of the deceased to have access to such an investigation. In the case Matko v. Slovenia, the European Court of Human Rights (ECHR) decided that Slovenia violated Article 3 of the European Convention on Human Rights for the lack of effective investigation of the alleged police violence against the applicant. We should also point out the judgment of the ECHR in the case Šilih v. Slovenia, which highlights the obligation to ensure effective investigation of cases of deaths as a result of a medical errors. An independent investigation does not need to be conducted as part of criminal proceedings; nevertheless, it is important that such an investigation in criminal proceedings (or in the pre-trial investigation) includes the investigation and explanation of all circumstances that point to suspected criminal offence. In the case Butolen v. Slovenia, the ECHR emphasises that the duty of a state prosecutor (not the applicant) is to ensure an official independent investigation and take action in view of the outcome of the investigation. The ECHR highlighted this problem again in 2018 in the case Francka Štefančič v. Slovenia.

It points out as problematic the fact that decisions of investigation bodies were unsuitable and did not provide a response to numerous questions which should have been studies to ensure the effectiveness of the investigation.

Realisation of the Ombudsman's recommendations

Only one recommendation in the 2017 report referred to the operation of the prosecution service. In **recommendation no. 26 (2017)**, the Ombudsman encouraged the prosecution service to continue to provide for the speedy and effective criminal prosecution of perpetrators of criminal offences, and to consistently inform

injured parties of clear and substantiated reasons for decisions on the potential dismissal of indictments and a legal notice.

The finding of the Ministry of Justice that such a recommendation is not new and also appears in the Ombudsman's reports for previous years is true. The promptness, effectiveness and legality of state prosecution service is what the state prosecution service constantly strives for. The principle bases of the Prosecution Policy of the State Prosecutor General state among other things that the work of a prosecutor must be carried out without any undue delays, within predictable and optimum periods, depending on the significance of a case; furthermore, the results must always achieve previously determined quality standards. The material and human resources used must be proportional to the difficulty of the task.

The Ministry of Justice further explains that the information obtained from the joint annual report on the operation of state prosecution services does not include any information on the basis of which decisions dismissing indictments would deviate from the adopted criteria. The Office of the State Prosecutor General of the Republic of Slovenia supports the initiative for state prosecutors to also make prompt decisions on criminal complaints pursuant to Article 82 of the State Prosecutor's Order. It points out that the criteria have been exceeded in a set of supervisory inspections, while state prosecutors, in accordance with the Prosecution Policy of the State Prosecutor General, pay special attention to priority cases that include older unresolved cases.

Regarding the recommendation for state authorities to explain to applicants their decisions and reasons for them on each application received at least in one (the first) response, **the Office of the State Prosecutor General of the Republic of Slovenia explains that we must distinguish between a message to the complainant (the injured party) on the prosecutor's decision on the filed criminal complaint and the response of the state prosecution service as a state authority.** The Ombudsman agrees with this. Regarding the prosecutor's handling of a criminal complaint, the law and the State Prosecutor's Order stipulate proceedings which state prosecutors must respect. However, the response of the state prosecution service (as a state authority) to numerous letters from applicants, which (perhaps) are not even related to individual proceedings or cases handled by the state prosecution service, must be treated separately from the prosecutor's handling of a criminal complaint and informing of eligible persons. The Office of the State Prosecutor General points out again the practice of prosecutors that, regardless of the content and clarity of letters, **applicants always receive a suitable response when it is clear from the content that feedback from a state prosecutor's office might be useful or beneficial for applicants when potentially enforcing their rights and legally protected interests.** Only when the content of a letter does not give any clear grounds for a response or further action by a responsible state prosecutor, or a letter is without any proper content and incomprehensible, should the state prosecutor close a case without sending a response to the applicant.

Regarding the recommendation that the prosecution service must consistently inform injured parties of clear and substantiated reasons and a legal notice if indictments are dismissed, the Ministry of Justice finds that this is already required from state prosecutors as due diligence by regulations, i.e. Article 60 of the ZKP and Article 82 of the State Prosecutor's Order. Article 80 of the State Prosecution Service Act (ZDT-1) particularly stipulates that a disciplinary sanction may be imposed on a state prosecutor who violates state prosecution obligations, intentionally or out of negligence.

In light of the above, the Ministry of Justice finds that the Ombudsman's recommendation is suitably standardised in sectoral regulations, as are standardised suitable agents within the state prosecution administration, which prevent violations or determine sanctions for them.

This a comprehensive content of the basic organisation and status-related regulation (ZDT-1), which, together with the State Prosecutor's Order and taking into account Article 60 of the ZKP, is a satisfactory framework that facilitates consistent implementation of the recommendation if the framework itself is consistently implemented.

This is a recommendation whose implementation should constitute an ongoing task of state prosecutors. The need for this is also pointed out by cases of founded complaints handled in this field in 2018; we therefore reiterate the recommendation.

Based on information of the Office of the State Prosecutor General of the Republic of Slovenia and joint annual reports on the operation of state prosecution services, the Ombudsman finds that the supervision of the implementation of the state prosecution service is not only a dead letter but is actually carried out. Sometimes, supervision is also carried out on the basis of the Ombudsman's intervention, as evident from the following case. It refers to the compliance with paragraph one of Article 60 of the ZKP, which stipulates among other things that a state prosecutor must inform the injured party within eight days and advise them that they may commence prosecution if the state prosecutor is aware that there is no basis for the prosecution of a criminal offence for which the perpetrator is prosecuted *ex officio*. **The state prosecutor's failure to do so constitutes behaviour that is in contravention of legal obligation and the principles of good management.**

Example:

Prosecution decision without a decision dismissing indictment and notice to the complainant

A complainant informed the Ombudsman that the District State Prosecutor's Office in Ljubljana finished hearing a criminal complaint the complainant filed against a known perpetrator for allegedly falsely testifying in criminal proceedings against the complainant, of which the complainant was not informed by the Office. The complainant found out that the hearing of the criminal complaint had been concluded only after requesting information on the handling of the case in writing. Even then the State Prosecutor's Office did not inform him of the fact that the injured party may commence prosecution.

In its enquiry at the District State Prosecutor's Office in Ljubljana, of which the Office of the State Prosecutor General was also informed, the Ombudsman pointed out paragraph one of Article 60 of the ZKP.

The District State Prosecutor's Office in Ljubljana informed us that the complainant filed a criminal complaint at the Ljubljana Centre Police Station on 31 May 2016. Following a pre-trial investigation, the police station submitted a report pursuant to paragraph ten of Article 148 of the ZKP to the District State Prosecutor's Office in Ljubljana on 26 August 2016, as it assessed that there was no basis for a criminal complaint. The competent state prosecutor established that the cases includes no legal basis for further action and closed the case, of which the complainant was informed following his own enquiry. **After reviewing the case and following the intervention of the Office of the State Prosecutor General, the District State Prosecutor's Office in Ljubljana established that the prosecutor's decision in this case was made without a decision dismissing indictment and notice to the complainant.** Partial expert revision thus established that the actions of the state prosecutor were not correct, and an instruction was made that the complainant's criminal complaint must be decided with a decision on dismissal. The case, which had been entered in the Ktr register (register of criminal and general cases not entered in another register), was consequently transferred in the Kt register (register of criminal proceedings against known adults and legal persons). The District State Prosecutor's Office also ensured us that the complainant would be informed in accordance with suitable provisions of the ZKP after it has studied the case on the prosecutor's decision again.

The Ombudsman's intervention in this case proved necessary and successful. We justifiably expect for the Office of the State Prosecutor General to point out this case to other state prosecutor's offices to prevent the established irregularities from recurring. **6.2-16/2017**

2.15.5 Attorneys

On the basis of complaints, the Ombudsman has been attentively monitoring the work of attorneys, as they play an important role in maintaining and strengthening of public security, and protecting of human rights.

In 2018, the Bar Association of Slovenia, which brings together all attorneys and ensures their independence with its operation, celebrated the 150th anniversary of its operation. To mark this jubilee of attorneys in Slovenia, the Ombudsman commended the role of attorneys and their contribution to the justice administration and strengthening of the rule of law.

The Ombudsman cannot directly consider complaints against the work of attorneys. The Ombudsman may take action (particularly) when the circumstances of a case show that the Bar Association or its disciplinary

bodies failed to exercise their public authority. The disciplinary bodies of the Bar Association have the power to establish whether an attorney's actions constitute a violation of obligation when performing the job of an attorney, which is subject to disciplinary liability. Therefore, the grounds for the Ombudsman's intervention at disciplinary bodies of the Bar Association are provided when the Bar Association fails to respond to an individual's complaint or if the procedure for handling the complaint by the disciplinary bodies takes too long.

Attorneys may be subject to liability for damages and disciplinary liability. The enforcement of liability for damages depend on the party, if they believe that they suffered damage due to an attorney's actions. The injured party may request the assessment of potential liability for damages of an attorney due to a violation of obligation when performing the job of an attorney. Pursuant to the Attorneys Act (ZOdV) and the Statute of the Bar Association of Slovenia, disciplinary bodies of the Bar Association (a disciplinary prosecutor, the Disciplinary Committee of the first and the second instances) are responsible for the handling of such violations.

On 20 June 2018, we discussed the work of attorneys in more detail with the president and secretary of the Bar Association. The president of the Bar Association emphasised that the Bar Association strived for flawlessness of attorneys, particularly for suitable qualifications and specialisation of attorneys, which, however, should be normatively regulated in individual legal fields, e.g. representation of minors.

We commended again the willingness of members of the Bar Association to also provide pro bono legal aid to weaker clients on so-called Pro Bono Day in accordance with ethical principles and the rules of this service.

We believe that such willingness of attorney should also be stimulated with suitable state measures, which is pointed out in the overview of the realisation of recommendation no. 28 (2017). We reminded of the recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which was highlighted by the Ombudsman in its 2017 report, that all *ex officio* representatives should remind themselves of the importance of the role of attorneys in preventing ill-treatment by the police or intimidation, and the need to report such behaviour.

The importance of attorneys' legal aid was also particularly pointed out at the conference on 2 February 2018 entitled "*Realising the right to an attorney and legal aid*". The conference was organised at the end of the Peace Institute project entitled "*Strengthening procedural rights in criminal proceedings: effective realisation of the right to an attorney/legal aid on the basis of the Stockholm Programme*". The objective of the conference was to discuss the significance of Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and Recommendation C(2013) 8179/2 on the right to legal aid for suspects or accused persons, and the main challenges in this field. Findings of the Slovenian national study of the right to an attorney and legal aid in criminal proceedings, and international standards in this field were discussed. Their views of it, in addition to the theoretical aspect, were also provided by representatives of the judiciary, prosecution service, the police and attorneys.

The analysis of the regulatory framework in Slovenia showed that most provisions of Directive 2013/48/EU had been suitably transposed in the Slovenian legislation, which is encouraging. Deficiencies are shown particularly in provisions on the renunciation of the right to an attorney and other barriers when exercising the right of access to an attorney, and in the field of the provision of legal aid.

Realisation of the Ombudsman's recommendations

In **recommendation no. 27 (2017)**, the Ombudsman recommended that the Bar Association of Slovenia further ensure effective response to irregularities committed by their own members by taking efficient action in their disciplinary bodies, and providing swift and objective decision making on reports filed against attorneys. In response to this recommendation, the Ministry of Justice explained that, pursuant to paragraph two of Article 60 of the ZOdV, the task of the Bar Association and its disciplinary bodies is to provide effective, impartial and transparent enforcement of liability of its members for disciplinary violations. Certain provisions of Chapter VIII.A of the ZOdV, which prescribe time limits for the implementation of individual action within disciplinary proceedings (articles 64, 64.a, 64.b and 64.c of the ZOdV) bind disciplinary bodies to swiftly carry out disciplinary proceedings.

On its website, the Bar Association, pursuant to paragraph three of Article 60 of the ZOdv, publishes the names of members of disciplinary bodies and bodies responsible for assessing violations of the Code of Professional Conduct of the Bar Association, the number of complaints or requests received, the number of proceedings, the number of measures issued or opinions accepted, the number of time-barred proceedings and types of measures issued, final disciplinary measures issued together with an explanation for the period of two years after the measure was issued without publishing personal and other protected information, opinions of bodies responsible for assessing violations of the Code of Professional Conduct of the Bar Association without publishing personal and other protected information for individual years and updates them with new information at least every three months.

In **recommendation no. 28 (2017)**, the Ombudsman recommended to the Ministry of Justice and the Ministry of Finance to find a comprehensive solution to the problem of tax arrangements regarding free legal aid from the aspect of income tax and value added tax.

Both ministries stated their positions on this recommendation in the Government's response report to the 23rd regular Annual Report of the Human Rights Ombudsman for 2017. **We found that the findings of the Ministry of Finance that, in view of the current arrangement of pro bono legal aid, the conditions for tax exemption of such legal aid are not met, the provision of such aid by attorneys should be systemically regulated at the state level, such aid should be substantively defined, and that uniform criteria for such aid should be determined were crucial.** Encouraged by the proposal of the Ministry of Justice that "*if individual actors desired different regulation, they may submit an initiative for a legislative amendment to the competent authority at any time*", **we proposed to the Bar Association to consider the option to prepare draft amendments to the legislative framework (including required amendments to tax legislation) to enhance the accessibility of pro bono aid, send them to the Ministry of Justice and the Ministry of Finance for consideration, and informs us thereof to receive support.** We would like to put in further efforts to eliminate potential tax barriers so that attorneys could continue to provide (even) more free legal aid pro bono. We believe that the open issue of the value of attorney tariff point must be resolved as soon as possible, since it is an important element of attorneys' independence.

2.15.6 Notaries

We establish that 2018 did not see the already planned amendments to the legislative regulation of notaries, while the Family Code brought additional tasks to notaries.

There are few complaints related to notaries; on this basis, we may conclude that notaries generally work well. Nevertheless, we verified the functioning of the sanction system in cases of violations when performing the tasks of notaries and of the supervision of the legality when performing the tasks of notaries within the consideration of wider issues important to protect human rights and fundamental freedoms, and for the legal security of residents of Slovenia.

The information collected shows that the Chamber of Notaries of Slovenia regularly supervises the operation of notaries; if violations are established, suitable disciplinary sanctions are imposed in disciplinary proceedings.

We met with the president and the secretary-general of the Chamber of Notaries, who outlined certain problems encountered by notaries in practice due to premature new legislative solutions lacking proper consideration. They highlighted problems in the implementation of the Building Act (GZ) which commenced to apply on 1 June 2018. The Act demands from notaries to, prior to certifying contracts and concluding credit, insurance, hire, lease, work and other legal transactions, verify whether a building permit has been issued for the building when prescribed, and whether a notice of prohibition has been entered in the land register, which is determined for unlawful buildings and incompatible use of buildings. According to the president and the secretary-general, these facts cannot be verified by notaries with certainty, since there are not suitable public records.

2.16

POLICE PROCEEDINGS

Field of work	Cases considered			Resolved and founded		
	2017	2018	Index 18/17	No. of resolved	No. of founded	Share of founded among resolved (in %)
16 Police proceedings, private security service, detectives and traffic wardens	97	94	96.9	84	10	11.9
16.1 Police proceedings	97	83	85.6	75	10	13.3
16.2 Private security service		1		1	0	0.0
16.3 Detectives		0		0	0	0.0
16.4 Traffic wardens		6		6	0	0.0
16.5 Other		4		2	0	0.0

2.16.1 General findings

In 2018, 83 complaints were considered, most of which referred to police proceedings (certain complaints were also considered in other fields, e.g. in the sub-field of minor offence proceedings which is described in more detail in the chapter Justice administration – Minor offence proceedings). This means that 14 fewer complaints were considered than in 2017 (97 complaints). In 2018, professional assistants solved many issues with complainants in phone conversations, contributing to the fact that these cases did not have to be considered in further, more formal procedures. In addition to considering complaints, we visited several police stations in 2018 as part of the implementation of the tasks and powers of the NPM.

In 2018, we enquired about procedures relating to complaints about the work of police officers particularly at the Ministry of the Interior, and in certain cases, directly (during the visits) at the police stations. We can again commend the prompt responses of the Ministry of the Interior and the Police.

After receiving complaints referring to the work of police officers, we usually encourage the complainants to actively enforce complaint procedures on the basis of the Police Tasks and Powers Act (ZNPPol) if they do not agree with police proceedings; we instigate procedures only in particularly founded cases. We believe that it is appropriate to first verify potentially questionable proceedings of police officers within the system in which an alleged irregularity occurred. We inform complainants that our intervention in such cases is possible if they are dissatisfied with the anticipated complaint procedure, or due to unduly long procedures or even a lack of response from a competent authority. We further ascertain that few complainants contact us again after we have suggested they use a complaint procedure pursuant to the ZNPPol, which means either they were satisfied with the result of the complaint procedure or are no longer interested in our further intervention. In such cases, we cannot continue the procedure, and the case is closed with clarifications only, without actually stating a position on the alleged violations, i.e. the justification or non-justification of complaints. The share of founded complaints corresponds to this (13.3 per cent). We must note again that an assessment of police

officers' actions in terms of respect for human rights and freedoms cannot be based solely on the number of complaints sent to the Ombudsman and/or their justification. The fact that the share of (un)justified complaints is frequently the result of the lack of complainants' participation must also be taken into account,

As several years before, complaints in this field in 2018 referred to all aspects of police officers' actions. The complaints considered most frequently referred to violations of the protection of a person's personality and dignity, the principle of equality, the right to personal dignity and safety, legal guarantees in minor offence proceedings, the right to equal protection of rights, and others. The recurrent complaints sent to the Ombudsman in this field refer to dissatisfaction with the (in)action of police officers due to fragile relations and disputes between neighbours, domestic violence and other risks. To this end, we reiterate that in such cases, the police must respond to reports or requests for further action, and establish the actual situation of each complaint considered diligently and properly, since this is the basis for potential further actions by police officers, which must be effective.

We should point out that it is encouraging that the number of cases in which complainants stated irregularities in police proceedings in which the police acts as a minor offence authority has reduced (as usually, these findings are described in more detail in the chapter Justice administration – Minor offence proceedings. These cases include violations of public order and peace, and traffic offences or accidents, and other offences. The (in)action of police officers, 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.

In 2018, we were surprised by allegations of certain non-governmental organisations and media of alleged unsuitable actions of Slovenian police officers, who allegedly rejected the submission of applications for international protection when they apprehended foreigners, since we had never considered such allegations regarding the work of police officers. This problem is described in more detail in the chapter Restriction of personal liberty – Foreigners and applicants for international protection.

In preparation to implement guidelines and obligatory instructions for preparing the police work plan and planning supervision of the police, we met in the year in question (as usual) with the Police and Security Directorate at the Ministry of the Interior. We met Simon Velički, Director General of the Police, to discuss cooperation in the consideration of complaints against police officers' actions. The Director General ensured that the established and good cooperation will fully continue. We also discussed individual aspects of the police's work, including police officers' actions regarding migrants and refugees, and problems (including staff shortage) encountered by police officers as they perform their daily tasks to provide safety. Individual problems were also discussed directly with the Minister of the Interior and other representatives of the Ministry of the General Police Directorate. As an external expert, Deputy Ombudsman Ivan Šelih continued to work in the Expert Council on Police Law and Powers, a permanent, autonomous and consultative 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 the lawful, 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.

The Ombudsman advocates effective performance of tasks entrusted to the police by democratic rule of law, but also supervision with suitable and sufficient guarantees that will consistently prevent potential abuse of powers, and protect against arbitrary and excessive interference with human rights. The tasks and powers of police officers are regulated by the ZNPPol. **In November 2018, the Ministry of the Interior send us proposed amendments to the ZNPPol for inter-ministerial coordination.** In addition to the transposition of Directive (EU) No 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, additional solutions that refer to the powers of the police are proposed, as part of the amendments to the Act, to improve certain deficiencies of the ZNPPol, which came to light during the implementation of the Act in practice. Taking into account the content of the complaints considered in this field, the Ombudsman did not submit any special comments regarding the proposed amendments to the ZNPPol. However, we did not support an amendment to Article 34 of the ZNPPol. We believe that a person should be informed that the

submission of notifications is voluntary and that anonymity may be ensured, since we cannot expect each person to know which provision of the Act ensures that.

2.16.2 Realisation of the Ombudsman's recommendations

We are pleased to note that in most cases, the Ministry of the Interior and the Police follow our recommendations. This is also shown by an overview of the realisation of recommendations from 2018 regarding police proceedings. It is encouraging that the Ministry of the Interior and the Police continue to strive for consistent respect for human rights in police proceedings, appropriate communication and respectful attitude of police officers to individuals.

Police officers learn about the protection of human rights in police proceedings during their training, but training does not stop there. The Ministry of the Interior ensures that police officers receive training throughout their careers, whereby the topics of various police powers are discussed during various types of training, through proceedings in practice and with analyses of individual cases. The legality and professionalism of police proceedings are verified by the police at the level of police stations, police directorates and the General Police Directorate with regular and extraordinary supervisions or the provision of expert assistance, and findings from complaint procedures based on complaints from residents. **The Ministry of the Interior particularly emphasises that the special computer application Infopol, which is available to all police officers through the intranet, was developed for easy and comprehensive insight into legal bases which define the conditions and the manner of implementation of individual powers, implementing regulations, and instructions and guidelines for the work of police officers.**

Infopol is a solution developed by the Police to describe and explain various proceedings or processes, and as such, an example of best practice. The cases described in Infopol are used in the training of police officers, preparation of police officers to carry out tasks, the performance of tasks and in the subsequent analysis of proceedings carried out. The Police ensures that it will continue to prepare and publish in Infopol those police powers and proceedings, in which irregularities were established during supervision, in complaints and during visits by the Ombudsman, and in relation to which, the police wishes to improve the quality of police proceedings.

In **recommendation no. 29 (2017)**, the Ombudsman recommended that police officers do everything necessary to shorten the time of the detention of a foreigner who must be accommodated at the Aliens Centre as much as possible, and take appropriate care of the foreigner. In response to this recommendation, the Ministry of the Interior and the Police ensured that they put in constant effort to make that happen. We are pleased with the information that we did not consider a case in 2018 which would point to the contrary; this is an ongoing task.

Another ongoing task is the recommendation for police officers to inform individuals whenever their liberty is restricted, which means forced detention and deprivation of liberty, of their rights as stipulated by the Constitution of the Republic of Slovenia and the ZKP in more detail (**recommendation no. 30 (2017)**). In this regard, the Ministry of the Interior ensured that police officers do that whenever detainees request the exercise of their rights. To eliminate potential doubts, the Police has supplemented the form used by police officers to record information on tasks in relation to detainees, and by signing this form, detainees confirm that they were informed of their rights.

With regard to the recommendation for police officers to act particularly thoughtfully when treating children and adolescents, who need additional attention, assistance and care (**recommendation no. 31 (2017)**), the Ministry of the Interior and the Police ensured that they constantly strive to attain this objective.

They also keep putting in efforts for police officers to consistently observe legislative provisions and guidelines for work when establishing liability of perpetrators of offences and crimes (**recommendation no. 32 (2017)**). In relation to the problem of (non-)establishment of sanity in minor offence proceedings before a minor offence authority, the Police prepared guidelines for work, which comprehensively define actions of authorised officials of minor offence authorities with the 5th level of education (primary stage of minor offence proceedings) and at least 6th level of education (secondary stage of minor offence proceedings) when treating all perpetrators

of offences (not only persons included in special social care institutions) in relation to which circumstances were provided that raise doubts about their sanity. To make sure that a correct and lawful substantive decision is made regarding the liability of the perpetrator of an offence, providing a higher level of legal protection in minor offence proceedings before minor offence authorities of the Police, the said document determined personal responsibility of authorised officials of minor offence authorities with at least 6th level of education.

All of the said recommendations were accepted and are being realised by the Ministry of the Interior and the Police. The only recommendation to remain unrealised is recommendation no. 33 (2017), with which we recommended to the Ministry of the Interior and the Detective Chamber of the Republic of Slovenia to take our comments into account when renewing regulations that refer to detective activity. It is obvious that acts of the Detective Chamber were not renewed in 2018; however, the Ministry of the Interior informed us that it will participate in the renewal and take the Ombudsman's comments and findings into account.

2.16.3 Individual findings from complaints considered

When considering allegations regarding the work of police officers, the Ombudsman pays special attention to complaints that refer to the **deprivation of liberty, which is one of major interferences with human rights**. According to the ZKP, police detention may only last as long as it is necessary and must not exceed 48 hours. After this time limit, police officers must release detainees or bring them before the competent investigating judge. Police officers detain persons in the police detention premises and if this is not possible and only exceptionally, in another allocated place. If a detainee has health problems, police officers decide on further detention of this person after they have been informed of a doctor's opinion. If necessary, this may be carried out in a health care institution, where health care may also be provided, for a maximum of 48 hours.

Example:

Police detention may not exceed 48 hours

While visiting the Celje Police Station as the NPM, we checked a case when a person was detained pursuant to paragraph two of Article 157 of the ZKP while we reviewed randomly picked cases of detention. We established that the police proceeding commenced and that detention of this person was ordered at 16:45 on 22 April 2018. The section "Tasks during detention/custody" of the form "Implementation of tasks during detention/custody – official note" stated that detention was suspended at 19:30 on 23 April 2018, as the person remained in hospital for treatment. Nevertheless, records in this section continued between 10:00 and 14:25 on 25 April 2018, when the person was brought before the investigating judge.

We proposed to the Ministry of the Interior to review the detention case, and inform us of its findings and potential measures in this regard; we particularly requested the ministry to provide an explanation about the person's status at the time when detention was suspended and about the person's status following treatment between 0:00 and 14:25 on 25 April 2018. We also commented that our legislation does not know suspended detention, only its order and end.

The Ministry of the Interior explained that, in the case in question, police officers from the Celje Police Station ordered detention for the person at 16:45 on 22 April 2018 pursuant to paragraph two of Article 157 of the ZKP. For health reasons, the person's detention ended at 19:30 on 23 April 2018. Detention of this person was ordered again on the same legal basis at 10:00 on 25 April 2018 and ended at 14:25 on the same day, when the person was brought before the investigating judge. Following the first detention, police officers from the Celje Police Station were at the health care institution to reorder the person's detention after their health improved, since the person threatened to finish the crime. The Ministry of the Interior claims that, when the person was treated, police officers did not carry out any tasks.

It also explained that police officers must order detention the moment when statutory reasons for detention are met, and that detention ends when statutory reasons for which detention was ordered cease to exist. In most cases, particularly in minor offence cases, police officers end detention when a person is accepted for treatment, not because of treatment, but because the reasons for which detention was ordered cease to exist. In certain cases, like in the case in question, it is not necessary that the conditions for detention cease when

the person is accepted for treatment. The Ministry of the Interior believed that it would be more suitable if, pursuant to the ZKP on deprivation of liberty, police officers, after ordering detention (at 16:45 on 22 April 2018), informed the competent state prosecutor, collected all required information and evidence, drew up a criminal complaint and submitted it to the investigating judge prior to the expiry of the 48-hour detention pursuant to Article 157 of the ZKP. If the investigating judge decided on remand, the supervision of the person in the hospital should be assumed by prison officers or the person should be released. The Ministry of the Interior announced that the General Police Directorate would point out the stated and the opinion to the police unit, and to avoid similar cases, it would also inform all police units.

We agreed with the position of the Ministry of the Interior that detention may only end when the reasons for it cease. However, we wondered if or how the investigating judge could decide to order remand for the person solely on the basis of the criminal complaint and other collected evidence, without this person being brought before the judge. We emphasised that paragraph five of Article 157 of the ZKP stipulates: "(5) Pursuant to paragraph two of this Article, detention may last up to forty-eight hours. After this time limit, police officers must release detainees or act in accordance with paragraph one of this Article. If a detainee who is on a mission abroad cannot be brought before the investigating judge, who is competent pursuant to paragraph one of Article 29 of this Act, without delay due to distance or other exceptional objective reasons, the person who was deprived of liberty and a state prosecutor are promptly informed; when the person is brought before the judge, the delay must be explained in writing." As an extreme situation, the ZKP only regulates the detention of a person who is on a mission abroad if, for exceptional objective reasons, the person cannot be brought before the investigating judge without delay, but not other situations which perhaps (justifiably) prevent the person to be brought before the investigating judge (e.g. urgent treatment and other health problems, e.g. gunshot wounds). Article 203 of the ZKP, which regulates detention, also foresees a person to be brought before the investigating judge.

Therefore, we requested the Ministry of the Interior to supplement its response and additionally explain its opinion that the investigating judge could have ordered remand for the person if the person had not been brought before him.

In its response to the additional call, the Ministry of the Interior informed us that it agreed with our finding that paragraph five of Article 157 of the ZKP regulates only a certain exceptional situation. Regarding the order of remand of a person who is undergoing treatment, the Ministry of the Interior pointed out that Article 56 of the Court Rules (Official Gazette of the Republic of Slovenia, No. 87/16) facilitates external operations, which, in practice, is also carried out in a way that investigating judge examines a person at a health care institution and makes a decision on remand or orders detention for the person if they cannot examine the person immediately. In such cases (if the person is on remand or detention has been ordered for the person), the protection of this person at a health care institution is assumed by prison officers. The Ministry believed that police officers do not act in contravention of the ZKP by submitting a criminal complaint to the investigating judge for further consideration (decision on remand) within statutory time, and informing the judge that the person is in a health care institution (the difference is that, in the first case, the person is brought in, while in the second case, the judge is informed where the person is and whether the person is available; in both cases, detention ends). The Ministry of the Interior agreed that the said specialities regarding the extradition of a person to the investigating judge for further proceedings should be regulated in more detail in the ZKP for greater clarity. This need was pointed out to the Ministry of Justice as it prepared amended ZKP-N to provide suitable statutory amendments. We expect that the planned notice and opinion of the General Police Directorate will contribute to preventing such cases from recurring. **12.2-55/2018**

Each limitation of liberty which constitutes forced detention is deemed deprivation of liberty, which must be suitably recorded by police officers (paragraph three of Article 4 of the ZKP).

Example:

Deficiencies of police detention of a person

During our visit to the Tolmin and Bovec police stations on 14 June 2018 as the NPM, we checked a case of detention of a foreigner (another minor foreigner was included in the proceedings) who was in detention pursuant to paragraph two of Article 157 of the ZKP while we reviewed randomly picked cases of detention.

During the review of documents at both police stations, it was established that both foreigners had been apprehended by police officers (patrol) from the Tolmin Police Station at 5:05 on 2 April 2018. Upon apprehension, police officers from the Tolmin Police Station filled in the form "Official note on the arrest". The police officers did not record in any official form required for detention what happened with the person (adult foreigner) regarding whom we checked the course of detention or where the person was between 5:54 when they were brought to the Tolmin Police Station and 14:45 when their detention was ordered. At that time, the form "Implementation of tasks during detention/custody – official note" was filled in.

In the documentation, we could not find the filled in form "Official notice on the deprivation of liberty and detention", and the person was not served with the form "Decision on the deprivation of liberty and detention" until 19:00 on 2 April 2018. When reviewing the form "Implementation of tasks during detention/custody – official note", it was also established that police officers had not filled in the section "Person was detained/in custody until ___ hours on ___", which means that the actual end of detention had not been entered.

As certain other circumstances pointed to the fact that police officers had actually deprived the person of liberty before 14:45 on the day of apprehension (the person was informed of the rights held by suspects of crimes pursuant to paragraph four of Article 148 of the ZKP at 8:10 on 2 April 2018), we proposed to the Ministry of the Interior to review the detention case, and informs us of its findings and potential measures; we particularly requested an explanation about the person's status between 5:08 and 14:45 on 2 April 2018 (at the time when the person's detention was ordered according to the police records) and where the person was at that time.

The Ministry of the Interior informed us that police officers from the Tolmin Police Station responded to a call at 4:36 on 2 April 2018 from the injured party who informed the Operation and Communication Centre of the Police Directorate Nova Gorica that he had caught two burglars in his house, who had runaway afterwards. As they were driving to the scene, police officers noticed two persons on a local road before Kobarid. As they suspected them of committing a crime, police officers attempted to establish their identity pursuant to paragraph one of Article 40 of the ZNPPol, which was not possible as they were not carrying any suitable documents with them. To carry out the identification procedure, both persons were temporarily detained under restricted movement and were brought to the Tolmin Police Station pursuant to paragraph two of Article 57 of the ZNPPol. It was subsequently (at 8:10) established that there were reasonable grounds to suspect that these persons had committed the described crime and that there were grounds to detain them; therefore, **the Ministry of the Interior agreed that police officers should have ordered the foreigners to be detained at that time pursuant to paragraph two of Article 157 of the ZKP, and issued a decision on detention within the prescribed time limit.** Between 5:08 and 14:45 on 2 April 2018, the adult foreigner was in the only interview room opposite the office of the police officer on duty at the Tolmin Police Station, while the minor foreigner was submitted to his mother, who came from Italy to get him after being informed by Italian security authorities, on the same day.

The Ministry of the Interior informed us that the Police Directorate Nova Gorica responded to the established irregularities before receiving a report from the NPM, although the competent commanders at the visited police stations in Tolmin and Bovec had not informed representatives of the NPM that the case had already been handled and that certain activities stated by the Ministry of the Interior in its message, which are stated below, had already been carried out. The Criminal Police Division of the Police Directorate Nova Gorica studied the detention case and passed its findings (professional errors regarding the detention order, the recording of information on detention and correct entry of corrections into official documents) in writing to the heads of the police stations in Tolmin and Bovec on 6 April 2018, which informed all police officers at training on 25 April 2018. The head of the Criminal Police Division of the Police Directorate Nova Gorica passed the findings on to criminal investigators and pointed out the duty to provide expert assistance in such cases and the duty to include criminal investigators on duty in such police proceedings. The Ministry of the Interior

also stated that officials of the Operation and Communication Centre of the Police Directorate Nova Gorica had been informed of the findings, and that the case had been addressed at a wider professional board of the director of the Police Directorate Nova Gorica on 8 May 2018.

Based on the explanations included in the response from the Ministry of the Interior, we expect that such cases will not occur in the future. **12.2-40/2018**

Police powers, including to establish identity, are stipulated by Article 33 of the ZNPPol. Police officers may establish the identity of persons only in cases and under the conditions provided by law and other regulations on the exercise of police powers. Article 40 of the ZNPPol stipulates the conditions and circumstances, which justify the exercise of said police power.

Example:

Unjustified establishment of the identity of a person in police proceedings

The Ombudsman considered a case of a complainant who complained that he had to undergo frequent police proceedings of identity verification solely due to his skin colour. He felt uncomfortable during each of them, as they were carried out in the public. He particularly highlighted the last proceedings of identity verification when two off-duty police officers approached him and demanded that he show them his personal identity document without introducing themselves to him and explaining why they were demanding his documents. The police proceedings escalated with the use of coercive measures and the establishment of his identity at a police station.

The Ombudsman suggested to the complainant to use legal means, particularly a complaint against the police officers' actions pursuant to the ZNPPol, and checked at the Ministry of the Interior (and the police station) the reasons why the complainant had to undergo numerous verifications of his identity, particularly in the last instance.

The Ministry of the Interior could neither confirm nor deny the complainant's statements, which were undefined in terms of time and place, regarding numerous verifications of his identity, since only the last such event was recorded. The record of identifications only includes information on identified persons (which are processed), whose collection and processing are expected to be useful in further performance of police tasks.

In this case, the board of appeals found that the police officers who initiated the proceedings involving the complainant, which were the subject of the complaint, failed to plausibly justify with convincing arguments the legal grounds for initiating the proceedings. Therefore, it concluded that the complainant was stopped due to his appearance. It pointed out that establishing identity on the basis of appearance, in this case, on the basis of skin colour, is in contravention of Article 14 of the Constitution of the Republic of Slovenia, constituting a violation of equality before the law. In this regard, the complainant's complaint was deemed founded. Taking into account the findings of the board of appeals, the Ombudsman too believed that the complaint was founded. When considering the complainant's complaint about the police officers' actions, the board of appeals established additional irregularities committed in the police proceedings of the complainant's identity verification, i.e. unjustified and excessive use of physical force against the complainant and unjustified taking of photos of him.

The Ministry of the Interior informed us that, to eliminate similar police practice, it included the concrete complaint case in the document Examples of Founded Complaints in 2017 (also available on the Ministry's website), which was sent to the Police for training. In addition, all participating police officers were informed of the established irregularities and sent to training in the field of exercising police powers with special emphasis on the establishment of identity. Therefore, we expect the measures taken to help prevent similar cases from occurring. **6.1-11/2017**

If injuries allegedly occur when a person is under the authority of the state, making them vulnerable, this person must provide satisfactory and convincing evidence of facts which refute allegations of ill-treatment.

Effective and thorough investigation is required in such cases, which means that all the circumstances of the alleged event must be established. In the end, this is also important to protect police officers from unjustified allegations in police proceedings.

Example:

Dismissed allegations of ill-treatment

During the visit of the Human Rights Ombudsman (Ombudsman) to Koper Prison on 22 June 2016 as the National Preventive Mechanism, one of the remand prisoners (a foreigner) pointed out that police officers broke his tooth when apprehending him at the end of January 2017. This injury was recorded on 30 January 2017 in the medical record in Koper Prison during the medical examination upon admission to remand custody, which was established by our medical expert.

On the basis of our enquiry whether police officers used coercive measures when they deprived the person of liberty, and if so, whether the complainant was injured and provided with medical assistance, and whether the review of legality and professionalism when exercising police powers was carried out, to the Ministry of the Interior stated that police officers did not use any coercive measures against the complainant and he was not injured in police proceedings as he was deprived of liberty on 24 January 2017.

We invited the complainant in writing to provide an accurate description of police officers. In his description of the event, he again highlighted the police officers' ill-treatment and use of coercive measures, although the Ministry of the Interior denied that the police officers used such measures in his case. For this reason, we contacted the Section for the Investigation and Prosecution of Official Persons Having the Special Authority of the Specialised State Prosecutor's Office and proposed for the competent state prosecutor to verify the police officers' actions, i.e. whether they committed a crime. The prosecution service followed the proposal, but the competent state prosecutor dismissed the complainant's complaint following a pre-trial investigation, since she assessed that there were no reasonable grounds to suspect that the suspected police officers committed a crime. This assessment was based on the information that it was recorded in the documentation upon admission to detention that the person had no visible injuries and that he stated that he was healthy. All police officers involved in the proceedings denied using coercive measures against the complainant or ill-treating him. They said that he was calm, did not resist and was not hurt. The interpreter present said the same. Pictures of the complainant were taken at the police station, but they did not show any facial injuries.

In our additional enquiry at the prosecutor's office, we requested the information whether the existence of video recordings at the petrol station where the police proceedings involving the complainant commenced had been verified in the pre-trial investigation, and whether an additional interview with the complainant had been carried out in view of the discrepancies between his statements and the police officers' claims. We also enquired whether it had been verified with the investigating judge whether the complainant had claimed, in proceedings before the judge, any irregularities in the way the police officers had treated him. As emphasised by the European Court of Human Rights, if injuries allegedly occur when a person is under the authority of the state, making them vulnerable, this person must provide satisfactory and convincing evidence of facts which refute allegations of ill-treatment. Effective and thorough investigation is required in such cases, which means that all the circumstances of the alleged event must be established. In the end, this is also important to protect police officers from unjustified allegations in police proceedings.

In an additional response, the prosecution service explained that camera recordings had not been obtained, as they are not kept for such a long time – the incident occurred on 24 January 2014 and a report was filed on 3 November 2017. An additional interview with the injured party was not carried out, since he was not available due to his release from Koper Prison prior to the report. The prosecution service did not verify with the investigating judge whether he claimed that police officers were violent, as the photos taken six hours after the alleged violence show that he was not injured.

The prosecution service informed the complainant of the decision to dismiss the complaint and informed him that he may initiate criminal prosecution and what he can do to exercise this right (Article 60 of the ZKP). The complainant was thus given an opportunity to continue the proceedings regarding the alleged crime. If a state prosecutor decides against criminal prosecution, the ZKP provides injured parties with the right to take the

prosecutor's place as the prosecutor. The complainant has not informed us whether he took this opportunity, and has not contacted the Ombudsman again. Therefore, we could no longer consider the case, although the question arises whether all measures were taken in this case to establish all the circumstances of the alleged event. **6.1-42/2017**

2.16.4 Private security service, detectives and traffic wardens

In 2018, we did not discuss any complaints that would require our action (with the exception of enquiries that were made) due to the operations of security staff and traffic wardens. In this field, complainants were still provided with information on the duties and measures of security staff and the powers of traffic wardens, and on potential complaint channels. Since they did not contact us any more, we could not continue the procedure in these cases.

Below, a complainant's case is provided. The complainant informed us of a complaint she sent to the Mayor of the Municipality of Ljubljana for consideration due to the way traffic wardens treated her son who is a person with mental health problems. She blamed traffic wardens for numerous irregularities, including unjustified use of physical force. She was disappointed with the response to her complaint, which did not confirm her allegations, but we did not obtain her consent to consider her case further. The complainant did not believe us that she could succeed in these proceedings, so she focused primarily on the use of judicial (formal) proceedings.

Detectives

Detectives (like security staff with their measures and traffic wardens) can also severely interfere with human rights and freedoms when pursuing their activity, which is why the Ombudsman is also interested in the field of detective activity. The Ombudsman does not have direct powers to supervise detectives' work, since they are not an authority in relation to which the Ombudsman holds powers. Supervision may only be carried out indirectly through the supervision of the competent authorities which carry out for example inspections of the implementation of the Private Detective Services Act (ZDD-1) and regulations issued on its basis. The Ombudsman strives for the systemic regulation of detective activity to ensure also in this field consistent respect for legality, human rights and freedoms, and the principles of the rule of law with emphasis on education, regular training of detectives and effective supervision. In recommendation no. 33 (2017), we recommended to the Ministry of the Interior and the Detective Chamber of the Republic of Slovenia to take our comments into account when renewing regulations that refer to detective activity. It is obvious that acts of the Detective Chamber were not renewed in 2018; however, the Ministry of the Interior informed us that it will participate in the renewal on the basis of the Ombudsman's comments and findings.

At the beginning of 2018, we met with the president and the secretary of the Detective Chamber to discuss in more detail the issue of the implementation of detective activity and detectives' work pursuant to the ZDD-1, and the problem of unlawful exercise of powers granted to licensed detectives. They agreed that the legislation on detective activity is in need of urgent renewal to ensure the protection of human rights and effective legal protection. In this regard, the representatives of the Detective Chamber confirmed that the Ombudsman's current comment of the complaint procedure would be taken into account in the renewal of regulations, and the Ombudsman will monitor the renewal of legislation and cooperate with its comments and proposals if necessary.

As part of the 2nd Slovenian Private Detective Days in 2018, training of the Detective Chamber was also held. During the training, Deputy Ombudsman Šelih presented the Ombudsman's view of the pursuit of detective activity. On the day of pro bono detective services on 22 October 2018, Slovenian detectives provided free advice related to detective activity, marking the anniversary of the establishment of the Detective Chamber. The participating detectives provided free brief advice to clients and presented detective activity personally in their offices and by phone.

2.17

ENVIRONMENT AND SPATIAL PLANNING

Field of work	Cases considered			Resolved and founded		
	2017	2018	Index 18/17	No. of resolved	No. of founded	Share of founded among resolved (in %)
17 Environment and spatial planning	182	166	91.2	137	32	23.4
17.1 Activities in the environment	80	92	115.0	80	18	22.5
17.2 Spatial planning	35	22	62.9	17	2	11.8
17.3 Other	67	52	77.6	40	12	30.0

2.17.1 General findings

In 2018, the Human Rights Ombudsman discussed fewer cases in the relevant field than in 2017. The number of cases considered is still in the average of the recent few years.

The content examined referred particularly to disturbing noise, odour, other pollutants (PM particles, waste, heavy metals, light pollution) and the siting of developments in the environment (wind farms and other agricultural and industrial facilities, permanent plantations, etc.). We dealt with the rehabilitation of degraded areas, the Mežica Valley and the Celje Basin in particular, and we also discussed cases of rehabilitation after natural and industrial disasters. Whereby it is not possible to avoid the recurring topic within this field, i.e. the participation of the public in procedures of environmental and spatial planning decision making.

In the founded cases, the violations of the right to a healthy living environment, the principles of equity, good administration, legality, the rule of law, equality before the law and equal protection of rights were determined.

Cooperation with competent authorities. For the most part, communication with the competent authorities took place in writing. We met Dragica Hržica, Chief Inspector of the Environment and Spatial Planning, and her colleagues at the Ombudsman's head office. We also met representatives of non-governmental organisations (NGOs) at our head office and elsewhere several times. At meetings held outside our office, we discussed residents' problems and issues with relevant mayors. The Slovenian Environment Agency (ARSO) rejected the invitation to our meeting with NGOs at the Ombudsman's head office, which is an unparalleled response. **We are not pleased with cooperation;** we had to send urgent letters to certain municipalities and also to the Ministry of the Environment and Spatial Planning (MOP). Replies and clarifications which are not substantively complete are frequently the root of the problem.

Important legislative novelties. The Building Act (GZ) and the Spatial Planning Act (ZUrep-2) entered into force on 1 June 2018, and the Decree on Limit Values for Environmental Noise Indicators adopted by the resigning Government of the Republic of Slovenia entered into force on 7 July 2018. The Non-Governmental Organisations Act was adopted which, in the section on the status of NGOs working in public interest, repealed the Environmental Protection Act (ZVO-1).

2.17.2 Realisation of the Ombudsman's recommendations

Similarly to 2017, we also issued five recommendations to the competent authorities in 2018. It was evident from the Government's response report to the 2017 Ombudsman's Annual Report for most of them that they were partly realised, one was fully realised and one remained unrealised.

Recommendation no. 43 (2017) referring to the protection of real estate buyers, particularly relating to illegal building, was partially realised and is still being partly implemented. The GZ and the ZUreP-2 merely envisage a spatial information system that would contribute to protecting the buyers of real estate and would be fully operable only in 2021. **Due to the foregoing, the recommendation will not be repeated again, but we will closely monitor progress in the establishment of the said information system.**

Recommendation no. 45 (2017) stating that criteria for determining priorities of inspection services be defined in a regulation and not only in internal instructions was realised in Article 77 and paragraph two of Article 89 of the GZ.

Recommendation no. 44 (2017) on necessary regulation of noxious odours in the environment and recommendation no. 47 (2017) on implementing operational monitoring are repeated again despite the MOP's note in the Government's response report to the 2017 Ombudsman's Annual Report that they are partly realised because the recommendations remained unchanged for several years and the response of the competent authorities has also not changed in this period. There is no progress.

We repeat **recommendation no. 46 (2017)**, which referred to the provision of suitable working conditions for inspection services.

2.17.3 Cooperation with non-governmental organisations

In 2018, the Ombudsman organised seven meetings with NGOs, i.e. two in the field and others at the Ombudsman's head office.

We focused on the topics proposed by civil society. We thus discussed the issue of corruption, possible legal remedies in the field of the environment and spatial planning, rehabilitation of the Mežica Valley and the Celje Basin, the issue of inspection procedures and placing of wind farms in the environment. One of the meetings was attended by state secretaries at the MOP, Simon Zajc and Aleš Prijon, with their colleagues. In cooperation with NGOs, we considered important environmental issues, sought ways to resolve them and strove for the observance of the human right to a healthy living environment.

2.17.4 Adoption of environmental legislation

In 2017, we wrote about the disputable amending of the Decree on the Status of Soil and the Environmental Protection Act. Both regulations were withdrawn and have not been recast yet. We highlight the manner of adopting both disputable acts in order to prevent the previous situation when the right of the public to participate in procedures of adopting regulations was violated. Regulation must be adopted which will not encroach upon the human right to a healthy living environment protected by the Constitution while implementing a legislative procedure that will involve the public and while observing expert opinion. **The field of soil pollution must be addressed urgently and legal basis must be established for state monitoring of the condition of soil, determining areas with high or low burdens and the basis for classifying degraded areas, which will contribute to accelerated implementation of rehabilitation measures.**

Adoption of the Decree on Limit Values for Environmental Noise Indicators Based on several complaints in 2017, the Ombudsman examined the issue of drafting amendments to the Decree on Limit Values for Environmental Noise Indicators. **By 2017, the MOP had already tried to draft amendments to the relevant Decree twice, in 2014 and 2016. Both times the draft Decree received numerous comments from the public,** which was

one of the reasons the procedure did not continue. **The relevant Decree then underwent interministerial coordination for over a year, and the resigning Government of the Republic of Slovenia adopted it at its session in June 2018. The Ombudsman then filed a request for a review of its constitutionality or legality with the Constitutional Court.**

2.17.5 Inspection procedures

We have been detecting lengthy inspection procedures for years. The established system for prioritising reports, inspection and execution procedures depending on the gravity of the violation and determining the level of importance has proved to be questionable, as it opens the door too wide for non-transparency and arbitrary decision making. For some time now, the Ombudsman has noted the need to define in advance in a regulation and also publish the criteria for priority classifying of inspection reports depending on the gravity of the violation and determined relevance level for their discussion. This is the only way to suitably ensure the important principles of objectivity, publicity, and transparency of the work of the inspection services, and consequently to better fulfil the rights to equality before the law and equal protection of rights which are protected by the Constitution.

Complaints pointing to lengthy procedures by the IRSOP are thus considered founded from the viewpoint of violations of fundamental human rights. We demand immediate action from the Minister of the Environment and Spatial Planning and the Government of the Republic of Slovenia to establish an effective inspection supervision system at the IRSOP.

2.17.6 Pollution of the environment

The fact that **noise** has a major impact on people's quality of life is also evident from many complaints received by the Ombudsman annually. The expectations of the public that the MOP should involve civil and expert publics in the preparation of the new Decree on Limit Values for Environmental Noise Indicators are thus valid instead of withdrawing and arbitrarily classifying sources of noise in the relevant Decree and even increasing certain threshold values.

The Ombudsman frequently receives complaints in which individuals complain against **disturbing noise from bars**. We explain to the complainants which are their options and which complaint channels are available to them. Possible violations beside the fact that many complainants only complain about loud noise were not discovered.

In 2018, the Ombudsman discussed several complaints from the Municipality of Novo mesto, the Municipality of Ptuj, the Municipality of Izola, the Municipality of Litija and others, from which it was obvious that **local communities interpret and apply the Decree on the Method of Using Sound Devices Emitting Noise at Public Events and Public Meetings in different ways**.

We proposed to the MOP to send all municipalities in Slovenia guidelines regarding the use of the above Decree and the observance of the rules of the general administrative procedure in these procedures. **The MOP realised the relevant recommendation of the Ombudsman.**

Every year, the section on **environmental pollution** consists of particularly critical cases. We express anticipation regarding the urgent continuation of rehabilitation of the **Mežica Valley**, whereby we informed the MOP that the rehabilitation of this valley must be ongoing and the funding must not be reduced due to the health of the local population, particularly children. Simultaneously, we proposed that the anticipated funds are consistently provided over the years until the foreseen completion of implementing the Decree, including the funds which were reduced in recent years due to austerity measures.

The complaint dealing with the pollution of the **Celje Basin** has been discussed by the Ombudsman since 2011 and a comprehensive rehabilitation of this area has been proposed following the example in the Mežica Valley. We demanded acceleration of the rehabilitation several times since this was the only way to prevent

violations of the right to a healthy living environment and other rights. Unfortunately, we cannot report about any progress being made in 2017 and 2018.

Example:

The Ombudsman concerned about suspended rehabilitation after the fire at the facility of the Ekosistemi company in Zalog pri Novem mestu

A fire broke out at the facility of the Ekosistemi company for the treatment of waste in Zalog pri Novem mestu on 20 July 2017. Immediately after the fire, the Ombudsman did not establish any irregularities in the conduct of competent authorities. Several months later, we determined stagnation in the rehabilitation works at the site, which is why we expressed concern since the majority of waste is still located at the site.

At its initiative, the Ombudsman examined the issue of environmental pollution after the fire at the facility of the Ekosistemi company which broke out on 20 July 2017 in Zalog pri Novem mestu. Soon after the fire, we conducted enquiries at IRSOP, ARSO, the Administration of the Republic of Slovenia for Food Safety, Veterinary Sector and Plant Protection (UVHVVR) and the Municipality of Straža. It was evident from the replies of the above authorities that the intervention of competent authorities was swift and appropriate at the time of the fire and after it.

Several months later, complainants informed the Ombudsman that the site of the fire was supposedly almost in the same condition as it was immediately after the fire and that waste which remained there after the fire had not been removed. We thus conducted additional enquiries at the IRSOP on the basis of which we discovered that the rehabilitation of the site was not being implemented as anticipated in the schedule which was part of the rehabilitation plan.

In its replies, the IRSOP informed us that rehabilitation works were conducted at the site as per the schedule until November 2017. At that time, the works ceased and nothing was transported from the facility yard to the landfill or for incineration. The Ombudsman expresses great concern over this fact. In one of the IRSOP's replies, the Ombudsman discovered that although the waste was relocated to hard-paved surfaces and covered with foil, there is a risk that in the case of heavy rain the area would be flooded, which could cause uncontrolled washing out of the waste and subsequent spilling of polluted rainwater outside the area of the facility. The IRSOP believed that in the case of heavy rainfall the operator would not be able to control the situation, and immediate solution of waste disposal was thus urgent. The IRSOP had already informed the MOP that the activities within the rehabilitation works were not carried out as per the schedule, and regarding the critical conditions, the Ombudsman also proposed to the MOP to immediately initiate all activities to resume the rehabilitation works as soon as possible, and above all, to remove the remaining waste from the location of the fire in the shortest time possible. **7.1-35/2017**

Driving in the natural environment. The Ombudsman discussed a complaint in which a complainant wrote about frequent reckless racing with dirt bikes in nearby forests, fields and roads. We had already learned about this topical issue during our meetings outside the head office, i.e. at the Ombudsman's meetings with representatives of civil society in the field of the environment and spatial planning, which are occasionally conducted outside our head office. We became particularly familiarised with this issue in the Koroška region, the area which due to the proximity of the state border is frequently visited by individuals with mountain bikes, dirt bikes, four wheelers and other vehicles. We found that the Nature Conservation Act (ZON) also includes provisions on driving motorised and other human-powered vehicles in the natural environment. While examining the relevant complaint, it was evident that this field is not regulated accordingly and that supervision in practice is not effective. We thus submitted a suitable recommendation to the competent authorities.

2.17.7 Siting

Several complainants wrote to the Ombudsman with the issue of **siting wind farms in connection with several types of noise** generated by these farms. On this note, it must be stressed that Slovenian legislation does

not determine a minimum distance between wind farms and residential buildings. We believed that this was a systemic issue and we discussed it at our own initiative. We discovered that the criteria for siting wind farms, i.e. minimum distance from residential buildings, were not defined in Slovenia, which could denote an encroachment upon the right to a healthy living environment. Since the field is thus not yet regulated accordingly in Slovenian legislation, and we are waiting for the recommendations of the World Health Organisation and the European Commission currently being drafted, **the Ombudsman recommends that in procedures of siting wind farms taking place before the adoption of suitable regulations the precautionary principle be observed, which is one of the fundamental principles in the ZVO-1.**

The Ombudsman also examined the **issue of siting new permanent plantations (hops plantations, intensive orchards, vineyards), particularly in the immediate vicinity of residential areas.** These cultures require an intensive use of plant protection products. This was also the topic of our meeting with the representatives of the MOP and the Ministry of Agriculture, Forestry and Food (MKGP). Both ministries are aware of the problem; they acknowledge it and anticipate certain activities in this regard.

The Ombudsman is of the opinion that the competent ministries should cooperate in resolving this issue and draft suitable solutions together. We proposed the acceleration of activities and demanded a report.

2.18

REGULATED ACTIVITIES

Field of work	Cases considered			Resolved and founded		
	2017	2018	Index 18/17	No. of resolved	No. of founded	Share of founded among resolved (in %)
18 Regulated activities	69	72	104.3	53	6	11.3
18.1 Municipal utility services	33	38	115.2	28	4	14.3
18.2 Communications	5	6	120.0	5	0	0.0
18.3 Energy	12	7	58.3	5	1	20.0
18.4 Transport	11	12	109.1	9	0	0.0
18.5 Concessions	2	1	50.0	1	0	0.0
18.6 Licences	0	0		0	0	0.0
18.7 Other	6	8	133.3	5	1	20.0

2.18.1 General findings

As part of regulated activities, we discussed and resolved similar problems in 2018 as were recorded in the year before and were described in the chapter on public utility services.

The field encompasses matters referring to the circumstances of those who have no access (or their access is restricted) to water, electricity, the Internet, television channels, and who have problems with transport links, the payment of costs for certain services and supplied goods, and other matters included in the framework of regulated activities for which prescribed conditions must be met prior to their execution. We also received complaints relating to the provision of cemetery and chimney-sweeping services.

As emphasised over the years, the Human Rights Ombudsman frequently receives complaints from individuals who are unable to explain individual items on the invoices received. The root of the problems is that service users or buyers of goods do not understand invoices, which is particularly critical when amounts are high (too high even) and are unable to pay them due to social distress, loss of employment or other reasons. They do not know what to do at that time, who to contact, how to reject the invoice and which are their rights in the case of non-payment. We provided them with suitable advice. *Disconnection of water and electricity is the last measure possible only under exceptional conditions and in procedures determined in advance.*

Cooperation with competent authorities. Communication with various authorities took place mainly in writing. About individual cases and possible solutions, we spoke to mayors and responsible persons in municipalities where the Ombudsman's monthly meetings outside the head office were organised.

Legislation. The Rules on the Criteria and Methodology for the Revision of Basic Requirements for Small Combustion Units were adopted.

In complaints recorded as founded, we particularly noted violations of the principle stating that Slovenia is a state governed by the rule of law, the principles of constitutionality, legality and good administration, and the rights to drinking water and dignity.

2.18.2 Realisation of the Ombudsman's recommendations

The Ombudsman's criticism about the issue of invoices, money order forms and their specifications was mentioned on page 314 of the 2017 Annual Report. Although this is a burning issue about which dissatisfied individuals often contact the Ombudsman, and which was highlighted several times and action was also requested thereof (also in the 2016 report on pages 256 and 257, the 2015 report on page 256 and the 2014 report on page 251) nothing improved in this regard; as a matter of fact, the competent authorities did not respond at all. We point out that this is a case of public services and other regulated activities and the establishment of a special regime for their implementation due to the nature of the service, whereby public interest and the principle of a social state are particularly emphasised, which is why the supervision of invoices is even more important. The existing complaint channels are lengthy and complicated; with a different approach to issuing invoices and money order forms, these problems could even be avoided, and doubts about possible arbitrary charging of certain services would be eliminated. **We repeat the criticism of the current practice of issuing invoices in the field of regulated activities, and expect a response from the Government of the Republic of Slovenia and amendments.**

The Ombudsman's proposal relating to the urgent regulation of taxi transport (we wrote about this in the 2017 report on page 314, the 2016 report on page 256 and the 2015 report on page 257) was not observed from the viewpoint of possible legalisation and realisation. In the Government's response report to the 2017 Ombudsman's Annual Report, the Ministry of Infrastructure (Mzl) only anticipated (as in the years before) the planned novelties in this field. **In this section, we thus again repeat the requirement regarding the necessary new regulation of taxi transport service.** Due to many irregularities in the implementation of this transport, the safety of road users may be endangered, particularly of the most vulnerable groups (children, the elderly, the disabled and others).

The Ombudsman's recommendation no. 48 (2017) referring to the adoption of executive acts on protection of the right to drinking water stipulated in the Constitution of the Republic of Slovenia remained unrealised until the prescribed deadline, 25 May 2018, and we therefore repeat it again.

2.18.3 Municipal utility services

Example:

Entry of the right to drinking water in the Constitution of the Republic of Slovenia only a show for the public?

The Government of the Republic of Slovenia violated the principle of constitutionality and legality under Article 153 of the Constitution of the Republic of Slovenia in connection with Article 2 of the Constitutional Act Amending Chapter III of the Constitution of the Republic of Slovenia (UZ70a) as it failed to act as per Article 2 of the Constitutional Act Implementing the Constitution of the Republic of Slovenia according to which acts governing the content from the new Article 70a of the Constitution of the Republic of Slovenia must be harmonised with this Constitutional Act 18 months after their enforcement. The 18-month deadline for transposition expired on 17 May 2018, and up to that day, the Government of the Republic of Slovenia had not proposed to the National Assembly of the Republic of Slovenia to adopt legislative amendments relating to environmental protection, public utility services, water and other related fields. The Ombudsman believes that due to lengthy procedures and a delay in the preparation of amendments to the relevant legislation the Government of the Republic of Slovenia consequently violated the constitutional right to

We also dealt with excessive water metering and limited transparency of charging drinking water supply and wastewater discharge. **We examined the rationality and purpose of adopting regulations stipulating that the price of emptying a septic tank or a small municipal wastewater treatment plant is based on the quantity of water used and no longer on the quantity of sludge pumped.** In this regard, we found arrangements for users not connected to the public water supply network problematic.

The Ombudsman recommended to the MOP to re-examine these arrangements and proposed the drafting of suitable legislative amendments to resolve this issue.

2.18.4 Transport

We received several complaints in which individuals expressed their dissatisfaction with traffic arrangements on local roads, e.g. Šutna in Kamnik, and the municipalities of Medvode, Ormož, Piran and Kranj. In the cases discussed, we made enquiries with the competent municipalities or we explained to the complainants that the matter fell under the jurisdiction of local self-government. Municipalities are responsible for safe and smooth traffic on municipal roads, and also determine traffic arrangements on municipal roads. Nevertheless, municipalities must adopt ordinances by means of which they arrange traffic according to the anticipated procedure and must observe expert rules.

2.18.5 Chimney-sweeping services

The Ombudsman discussed a complaint by a civil initiative for a constitutional review of the Chimney-Sweeping Services Act (ZDimS). The civil initiative claimed that the MOP failed to include the public in the procedure of drafting the relevant act. The public was supposedly overlooked. The initiative also stated that the ZDimS violated Article 35 (Protection of the Rights to Privacy and Personality Rights), Article 36 (Inviolability of Dwellings) and Article 38 (Protection of Personal Data) of the Constitution of the Republic of Slovenia.

The Ombudsman thoroughly examined the complaint and did not file the request for the review of constitutionality of the ZDimS. We are of the opinion that the ZDimS is not contrary to the Constitution of the Republic of Slovenia or articles explicitly provided by the civil initiative in the complaint. The review of constitutionality of an act must be separated from the question of suitability and likeability of the arrangements in an individual field, in this case the field of implementing chimney-sweeping services. The ZDimS established a regulated market system, which replaced the system of concessionary public service. The new market system is restricted by many regulations typical of the public service legal system, and the Ombudsman saw no unconstitutionality in this. Expedience of individual solutions and measures adopted to balance market activities on the one hand and public interest on the other involve questions linked to the fact how competent entities interpret content of the ZDimS in concrete situations in the anticipated procedures. The complaint was particularly a criticism of the applicable legislation and was also not the only one we received in this regard. Supervision of chimney-sweeping service providers is the field which is of the most concern to the users. Since safety of people and property is at stake, the Ombudsman issued a recommendation to the competent authorities.

2.19

2.19 SOCIAL ACTIVITIES

Field of work	Cases considered			Resolved and founded		
	2017	2018	Index 18/17	No. of resolved	No. of founded	Share of founded among resolved (in %)
19 Social activities	76	64	84.2	60	7	11.7
19.1 Education		56		52	6	11.5
19.2 Sport		5		5	1	20.0
19.3 Culture		2		2	0	0.0
19.4 Other social activities		1		1	0	0.0

In this chapter, we discuss complaints regarding education, sport and culture, which according to their content are not classified in other fields (e.g. children's rights protection). We particularly discussed complaints linked with administrative or other procedures conducted by individual authorities in the field of education. The Ombudsman examined 46 complaints in this field in 2018, which is significantly fewer than the year before when 82 complaints were discussed.

2.19.1 Education

The content of the complaints varied: problems when enforcing reduced kindergarten fees, dissatisfaction with scores in the *matura* exam or grades in the report card, inappropriate conduct of teachers in various situations, problems when recognising secondary education obtained in Slovenia abroad, problems when exercising the right to subsidised meals in schools and free textbooks, problems when exercising the right to review written tests of a pupil and problems when enrolling a child in a kindergarten due to overcrowding of the institution. Similarly to previous years, we also received few complaints in 2018 relating to professional examinations of kindergarten and school staff, the issue of peer violence and the problem of organisation and execution of school knowledge competitions. In the autumn, we were also informed about the strike of employees in education. Some of the topical issues are discussed in more detail below.

Peer violence in schools

For several years, the Ombudsman has been examining the problem of peer violence in schools since we receive about ten complaints every year. The problem cannot be resolved without decisively set boundaries and insisting on them. It should be resolved by teachers in schools in cooperation and strong support by the counselling service, the management and parents. Schools take different measures to resolve peer violence. Many parents believe that children with violent behavioural patterns have more rights than other calmer pupils in a classroom and they also exercise them more easily. When parents present this to schools, they frequently do not receive a suitable response.

Most frequently, parents expected the Ombudsman to provide advice on how to help children so that all children could fully exercise their rights to education, dignity and security.

We explained to parents that all children have the right to security and a supportive environment in school. Expert school workers are responsible for enforcing rights, particularly headteachers, who are obliged to ensure that all children feel at ease in school and no one is subject to verbal or even physical violence from their schoolmates. The right to security and physical integrity in school refers not only to time spent on lessons, but also includes breaks, the time before and after lessons, and during organised field trips and excursions, which is why we believe that a school which was informed of violence between its pupils is responsible for appropriate response which must be swift and decisive. Delaying a decision denotes a violation of the children's right to security in the school environment.

Irregularities when assessing knowledge and inappropriate attitude of a teacher towards a secondary school student and parents

The Ombudsman discussed a complaint by the mother of a secondary school student. The complainant wrote about irregularities when completing the grading of her son in Slovenian lessons and the unacceptable attitude of the teacher towards him and her. She submitted the letter equipped with enclosures to the Inspectorate for Education and Sport of the Republic of Slovenia. She expected that in addition to the school inspector the matter would also be reviewed by the Ombudsman which would provide its opinion.

The school inspector informed us that irregularities were determined at the school relating to the assessment of knowledge of the complainant's son. The school was thus asked to eliminate irregularities which was also done according to the inspector. The secondary school student then progressed to a higher grade.

We informed the complainant that it was appropriate that parents are sensitive to events taking place in a school, which may denote heavy pressure or even violence for an individual. Parents are the first ombudspersons of the rights of their children, and their care for the course of work at a school, atmosphere and the observance of children's rights should not be a burden for schools. It is not right if the school staff understand this as intervening in their competence and autonomy. On the other hand, when parents intervene on certain occasions, they should be aware that their rights are limited by rights of others (pupils, parents and the staff).

Ongoing and close cooperation with the school is essential for a quick detection and resolution of the problems that occurred before these become too numerous. Teachers are committed to this objective professionally. Being a teacher requires sensitivity, tolerance, patience, fairness, adaptability, consideration and many other positive qualities from a person who chooses this profession. Those who do not possess these qualities find this difficult to understand and it is even harder to prove the mistakes in their conduct. School staff are frequently insufficiently aware that as public employees they are also responsible for high-quality relationships and pleasant atmosphere. Trust and mutual respect are the foundation of cooperation between teachers, children and parents. In every school, cooperation is the key to success of children, the feeling of self-esteem and thus satisfaction of everyone who enters the school, i.e. children, parents and the staff.

Discussion of anonymous reports in education

The Ombudsman discussed complaints by several complainants: the Teachers' Association of Slovenia, the Association of Headteachers of Primary and Music Schools of Slovenia, the Community of Kindergartens of Slovenia, the Association of Headteachers of Kindergartens of Slovenia and the Association of Secondary Schools and Residence Halls of Slovenia to which 7,187 signatures of the petition against the current arrangement regarding the discussion of anonymous reports in education were enclosed. The complainants also sent the letter to other representatives of the state in hope that a prompt amendment to the School Inspection Act would be made so that school inspectors no longer discuss anonymous reports. They expected the Ombudsman's support and active engagement in the realisation of their proposal.

The Ombudsman acknowledged the opinion of the complainants, but did not support the proposed amendments. In our opinion it would not be suitable to fully abolish a provision allowing the discussion of anonymous reports from the School Inspection Act without thoughtful consideration. Anonymous reports may also be important which should be established by the chief inspector after reviewing their content. We were of the opinion that the discussion of anonymous reports could be regulated accordingly with regulations.

The Ombudsman receives some 30 anonymous complaints regarding the violation of human rights every year (over one per cent of the total number of complaints). Every complaint is examined individually and it is established whether the content points to a more significant question of realising human rights and fundamental freedoms. As per the regulations, the Ombudsman is not obliged to respond to anonymous complaints, but we examine their importance in every case separately and then decide on the response. Perhaps the arrangement of inspection procedures in education could be supplemented in the same way.

Implementation of a strike by employees in kindergartens and schools

The Ombudsman received a complaint in which the complainant expressed his disagreement with the strike in kindergartens and schools. He was certain that by organising and implementing the strike on school days during lessons the organisers and its attendees violated the children's right to education.

We explained that the right to strike is stipulated in Article 77 of the Constitution of the Republic of Slovenia, but the right to strike may be restricted by law if this is in the public interest while observing the type and nature of the activity involved. We communicated that the Ombudsman would not advocate any amendment to the Constitution since we believed that the right to strike was regulated accordingly by law so that it ensured the realisation of one of the fundamental rights of workers in a way to minimally encroach upon the rights of others (in this concrete case upon children's rights).

The Strike Act was adopted in 1990 and the state should update it; in particular, it should adjust it to individual fields of public service. Legislative solutions for education could, for example, comply with the requirement that disruption of lessons due to a strike is minimal and that the time of a strike be adjusted to these requirements. The Ombudsman recommends to the Government of the Republic of Slovenia and the competent ministry that after consulting social partners update the regulations determining the manner of realising workers' right to strike so that the nature of individual activity is observed and ensure that people on strike minimally encroach upon the rights of third parties when realising their rights.

2.19.2 Sport

The Ombudsman discussed problems when implementing the new Sports Act. The complaints included criticisms due to the lack of understanding and non-observance of certain provisions of the Sports Act referring to compensations to sports societies, clubs and associations when children/sportspeople transfer to another sports club, and reminders from parents relating to the participation of children at sports events.

Inappropriately dressed children at sports events

A complainant wrote that children participate in many football matches, which are organised late in the evening and in any weather. He also submitted the letter to the Slovenian Football Association. He believed that the Association should concretely and more strictly strive for the children to be dressed according to the season and weather similarly to adult footballers.

We explained to the complainant that the Ombudsman had already dealt with this problem in 2011. At the time, we formed an opinion by which we still insist:

Shorts and a T-shirt are definitely not suitable clothes for children at an ambient temperature of around 2 degrees Celsius. Accompanying national football team players is certainly a big event for children, which must

also mean a lot to their parents or guardians, but this should not be a reason to expose children to the cold, which could endanger their health. We assume that parents did not even think that this was a threat to their children's health or they would have demanded that the organiser have the children dressed more appropriately. Tracksuits in the colours of the club (or the national team) would be suitable. Since the Ombudsman is not responsible for handling violations of human rights committed by entities recognised by civil law (sports societies and associations and individuals), our opinion was published on our website with an expectation that organisers of similar sports events would also take weather conditions into consideration in the future.

Two years later, we submitted this opinion to the Slovenian Football Association which ensured that our warning would be observed, and they would recommend football clubs take appropriate care of children's well-being in the case of unfavourable weather conditions. We expected football clubs to observe the recommendations of the Association.

Since this has obviously not happened yet or the competent authorities forgot their promise when the management and bodies of the Association changed, we advised the complainant to remind them again of their promise.

Compensation when children/sportspeople transfer to another sports organisation

In 2018, we continued to discuss the problem of free transfers of children/sportspeople to another sports organisation. As stated in the 2017 Annual Report, Article 34 of the Sports Act (ZŠpo-1), which stipulates that every sportsperson has the right to transfer to another sports organisation, is interpreted in different ways, which means that transfers may not be restricted by means of any restitution or compensation except in the case stipulated by the Act, i.e. if a sportsperson is older than 15 years and has concluded a contract with a sports organisation on the basis of which they receive payment in the amount of at least gross minimum salary in the Republic of Slovenia. The Act stipulates an additional restriction stating that a sports organisation must not demand a payment of compensation if the actual costs covered by the sportsperson for preparing and competing in official competition systems are higher than the payment received as per the contract with the sports organisation.

We repeat the position that in the case of transfers of children under the age of 15, it is not permissible in any case to charge compensation, restitution or other remuneration since that would be contrary to the law. The legislator wanted to explicitly exclude any trading with children under the age of 15, which was also clearly stated in the Act. The obligations of the parents or individual clubs can thus not be prescribed by means of executive acts, entry-level contracts or other agreements. After the age of 15, compensation is possible and permissible only under the conditions stipulated by the Act. The rules of sports clubs and their associations which still prescribe such obligations are according to the Ombudsman contrary to Article 34 of the ZŠpo-1.

The Ministry of Education, Science and Sport agreed with our opinion. As per paragraph two of Article 33 of the ZŠpo-1, the Expert Council of the Republic of Slovenia for Sport is responsible for determining detailed conditions for registration and categorisation of sportspeople. The Ministry asked the Council again in June 2018 to amend the applicable Conditions, Rules and Criteria for Registration and Categorisation of Sportspeople in the Republic of Slovenia so that the legal provision of free transfer of sportspeople is clear, which means that sports organisations cannot prevent free transfer of sportspeople with their registration rules with the exception of conditions determined in the ZŠpo-1. We are unaware whether this has already been done.

We advised the complainants who wrote to us about such problems to contact the Inspectorate for Education and Sport of the Republic of Slovenia. As per Article 82 of the ZŠpo-1, the inspector may order the elimination of established irregularities if they among other things determine that a sports organisation prevents a sportsperson to transfer to another sports organisation without compensation or if remuneration is charged to the sportsperson which is contrary to paragraphs two and three of Article 34 of the ZŠpo-1.

2.19.3 Culture

We only dealt with two complaints in the field of culture. In one, a complainant expressed her dissatisfaction with the rejected application for the award of recognition allowance for past artistic achievements in culture, and the second complaint referred to the dissatisfaction of the person eligible for certain funds earmarked for the co-financing of programmes in the field of amateur culture in a municipality. We explained to the complainants their further legal options by means of which they could enforce the rights to which they were certain they were entitled to.

2.20

HOUSING MATTERS

Field of work	Cases considered			Resolved and founded		
	2017	2018	Index 18/17	No. of resolved	No. of founded	Share of founded among resolved (in %)
20 Housing matters	106	77	72.6	60	4	6.7
20.1 Housing relations	48	27	56.3	22	1	4.5
20.2 Housing economics	52	29	55.8	24	2	8.3
20.3 Other	6	21	350.0	14	1	7.1

2.20.1 General findings

Fewer complaints concerning housing matters were discussed in 2018 than in 2017. The number of cases will not be elaborated on due to the method of recording. Many complaints related to social situation of complainants (and housing problems) were recorded and classified under other substantive fields of work of the Human Rights Ombudsman of the Republic of Slovenia as per the principle of predominance. **It should thus be noted as in past years that the number of received and discussed complaints does not reflect the actual situation in the field of housing relations.** It is possible to assume the scope of the problem when carefully reading the entire Ombudsman's report, and it may be discerned particularly from the interviews with complainants conducted during the Ombudsman's meetings outside the head office.

It must be emphasised that the examined topic was especially linked with the circumstances of individuals and their families who found themselves in social distress usually because of the loss of work or job and then subsequently lost their apartment and home, and found themselves in the dilemma of finding a suitable dwelling and preserving their dignity.

The complainants most frequently complained about the lack of apartments and residential units, particularly non-profit dwellings, unsuitable living conditions, lack of action by the housing inspection, evictions, managers of multi-dwelling buildings, amount of rent and costs, rent subsidies, the reserve fund, and disputes between neighbours (particularly about noise). We also received letters from tenants and owners of denationalised dwellings.

The justification of complaints (7.8 per cent) is lower than the total average justification due to the Ombudsman's competence since the Ombudsman may only examine and discuss violations caused and executed by state authorities.

We have been determining violations of the right to housing for several years, but no noticeable improvements have been made. However, the **responsibility of the country to enable the exercise of the right to suitable housing (emphasised by constitutional democracy and subject to the European Social Charter) with its measures and activities** is absolutely clear and stated in the Constitution of the Republic of

Slovenia and international legal documents. In this regard, we pointed to Article 25 of the Universal Declaration of Human Rights (1948) in the 2017 report, which was also signed by Slovenia and **which acknowledges the right to housing**. We also add that the observance of the right to housing is an international obligation of EU Member States. This right was also written in the revised European Social Charter as a right to suitable dwelling and in the Charter of Fundamental Rights of the European Union as a right to housing assistance. We also mention the UN Istanbul Declaration and the Habitat Agenda, which are not directly binding, but they clearly stipulate the objectives of countries to provide suitable housing for all as one of the human rights and fundamental freedoms.

Cooperation with the competent authorities was good. The communication with responsible persons at the Ministry of the Environment and Spatial Planning (MOP) about urgent solutions in the field of housing legislation was conducted in writing. Housing issues are a recurrent topic, which was always explicitly highlighted in our conversations with mayors at meetings outside the Ombudsman's head office.

New legislation.

New legislation was adopted in 2018.

2.20.2 Realisation of the Ombudsman's recommendations

Recommendation no. 49 (2017) referring to the need for a detailed definition of additional obligations of municipalities in the field of housing remained unrealised; although, substantively the same recommendation was already included in all annual reports of the current Ombudsman (2013–2019) and before, so we repeat it again. In its response report to the 2017 Ombudsman's Annual Report, the Government and the MOP stated that they rejected the realisation of this recommendation due to disagreement. Whereby they provided the same explanation as was written in the response report to the 2016 Ombudsman's Annual Report, where they claimed that the recommendation was partly realised. Readers are referred to the 2017 Ombudsman's Annual Report (pages 322 and 323).

Recommendation no. 50 (2017) referred to urgent amendments to legislation regulating multi-dwelling buildings. In its response report, the MOP wrote that the recommendation was partly realised since a targeted action of the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning (IRSOP) and supervision of managers were implemented in 2017, including minor offence procedures relating to violations. Implementation of a similar action was also planned in 2018 according to the MOP. The recommendation actually remained unrealised since urgent amending of the legislation did not take place.

Recommendation no. 51 (2017) was also unrealised, which the MOP acknowledged in the response report. We thus repeat last year's recommendation about urgent staff reinforcement.

2.20.3 Analysis of complaints discussed

When discussing complaints in 2018, the following was established:

- 7.8 per cent of founded complaints,
- 9.8 per cent of unfounded complaints,
- 43.1 per cent of complaints whose discussion was not in the competence of the Ombudsman,
- 9.8 per cent of complaints for which it was determined that procedures at the competent authorities were still underway,
- 13.7 per cent of complaints in which there were no conditions for assessment, and
- 15.7 per cent of complaints which the complainants failed to complete accordingly.

The following substantive sets derive from the analysis of the complaints discussed for which individuals most frequently seek the Ombudsman's assistance.

A. Non-profit rental dwellings and the possibility of their exchange

The majority of complaints received in the field of housing referred to the issue of non-profit rental dwellings, i.e. 27.6 per cent. **We received letters from complainants who were high on the waiting list for allocation of a non-profit rental dwelling, while the competent municipality did not dispose of a sufficient number of dwellings to allocate them to all applicants on the waiting list.** Similarly as in years before, we considered all complaints for which it was determined that the complainants applied to several consecutive calls for the allocation of non-profit rental dwellings, were always placed on the waiting list and the dwelling was not allocated to them due to the lack thereof, as founded.

B. Private sector and relations between neighbours

Many of the complaints discussed (21.6 per cent) were classified under the set entitled Private sector and relations between neighbours. The Ombudsman is not responsible for their discussion. However, due to its large share we provide circumstances the complainants most frequently mentioned as disturbing and would require a systemic change, i.e. noise, odour and other inconveniences, violation of fundamental rules of neighbourly harmony, interventions in joint premises or walls, poorly executed renovation and maintenance of an apartment. In these cases, we forwarded clarifications, advice and guidelines to the complainants.

C. Termination of lease contracts and evictions

Similarly to previous years, we also received several complaints in 2018 in which the complainants discussed terminations of lease contracts and subsequent evictions. There were 11.8 per cent of such complaints. **We found that lease contracts were most frequently terminated due to the inability to pay rent and current maintenance costs or the non-fulfilment of obligations arising from contracts.** We emphasise that the Ombudsman actually receives more complaints regarding evictions than derives from the above percentage, but the major part of these is discussed under the section on justice since the complainants claim irregularities in court proceedings or under the section on social matters if social distress prevails.

D. Management of multi-dwelling buildings

In 2018, many complaints also referred to the work of managers of multi-dwelling buildings, i.e. 9.8 per cent. The complainants wrote about the non-transparent work of managers, their unresponsiveness, irregularities when calculating operating and maintenance costs, problems when managing resources from the reserve fund and others.

E. Employer-provided dwellings

We considered two complaints regarding employer-provided dwellings. The complainants could not accept the fact that an employer-provided dwelling must be returned upon retirement. It is clear that better informing and stimulation of tenants to find suitable dwelling during employment are required.

Example:

Bedbugs – apparently an unsolvable case for the Government of the Republic of Slovenia

Since 2016, the Ombudsman has been discussing a complaint by the residents of the former Lipa Hotel in Ljubljana due to unbearable hygienic conditions or uncontrolled spread of bedbugs in the building. We wrote about this problem already on 4 October 2017. **When examining the complaint, the Ombudsman determined that there were no legal grounds enabling action by any of the inspection services in the case of mass infestation with bedbugs. We informed the Government of the Republic of Slovenia of this issue and demanded immediate action; however, the Government did not approach this problem, while health and dignity of people are being endangered.**

As per the above and the fact that according to the complainants this problem is also occurring in other buildings in Ljubljana, we expect the Government of the Republic of Slovenia to immediately start resolving this issue. The Ombudsman is appalled by the current ignorance of the Government. **20.0-2/2018**

2.21

CHILDREN'S RIGHTS

Field of work	Cases considered			Resolved and founded		
	2017	2018	Index 18/17	No. of resolved	No. of founded	Share of founded among resolved (in %)
21 Protection of children's rights	238	234	98.3	208	31	14.9
21.1 Contacts with parents	30	62	206.7	54	6	11.1
21.2 Child support, child benefits and child property management	32	26	81.3	24	4	16.7
21.3 Foster care, guardianship, institutional care	28	21	75.0	20	4	20.0
21.4 Children with special needs	25	32	128.0	30	5	16.7
21.5 Children of minorities and vulnerable groups	0	0		0	0	0.0
21.6 Domestic violence against children	11	15	136.4	11	2	18.2
21.7 Violence against children outside the family	6	2	33.3	1	0	0.0
21.8 Other	106	76	71.7	68	10	14.7

2.21.1 General observations

The number of complaints in this field in 2018 was almost identical to the number in 2017, but the structure within narrowly defined fields changed significantly. The number of complaints relating to children's contacts with parents (by 100 per cent), advocacy (by 64 per cent) and children with special needs (by 28 per cent) increased greatly. The increase in the latter field is the result of the new proposed act, which divided the supporters and opponents of new legislative solutions.

In general, we can assess that children's rights in Slovenia are quite well regulated. The legislation observes the requirements that children's rights as a particularly vulnerable group are especially protected. Following the ratification of the Third Optional Protocol to the UN Convention on the Rights of the Child and the enforcement of the Family Code on 15 April 2019, suitable legal bases will be provided in all fields, which will ensure that the child's interest as the basic principle will actually be in force when deciding on matters involving children. This will depend most on the executive and judicial branches of power which must make sure within the framework of their duties when making decisions that regulatory requirements are also realised. It must be said that **requirements from the Convention on the Rights of the Child must be respected and observed by all state authorities even if this requirement is not specifically determined in the sectoral legislation** (according to the principle of direct application of ratified and published treaties as per Article 8 of the Constitution of the Republic of Slovenia). If this obligation is acknowledged and observed when making decisions in judicial proceedings, the obligation is much less respected in administrative proceedings where decision makers require

explicit legal grounds for every decision. However, **life also takes place outside the General Administrative Procedure Act and sometimes mere general principles should be applied which would satisfactorily substantiate a decision.**

Realisation of the Ombudsman's recommendations

In the 2017 Annual Report, we recommended to the Ministry of Justice to examine the possibilities that the non-observance of a child's opinion obtained in the advocacy procedure is considered a violation of procedure which the competent authority must supervise *ex officio*. In its response report, the Ministry provided case law by means of which it proved that the courts already operate in that way and that amending of the law was unnecessary. **The Ministry of Justice also confirmed that the preparations for establishing a children's house (Barnahus) are underway, and thus the Ombudsman's recommendation no. 75 (2017) has also been realised.**

The Government of the Republic of Slovenia rejected the Ombudsman's recommendation no. 76 (2017) with which the Ombudsman advocated the compensation for damages caused by administrative authorities with incorrect interpreting of the legislation which supposedly prohibited simultaneous receipt of the child care allowance and the assistance and attendance allowance. The Ombudsman believes that beneficiaries were not injured intentionally, but because of different interpreting of legal arrangements. According to the Ombudsman, the damage was caused due to the conduct of state authorities and the state should thus settle the damage caused as per the principle of strict liability. In a personal dialogue, the new minister responsible for social affairs undertook that the open issue would be examined again and a suitable solution would be found.

The Government of the Republic of Slovenia rejected the Ombudsman's recommendation no. 77 (2017) stating that the Ministry of Education, Science and Sport draft an analysis of financing primary education from the viewpoint of individual municipalities.

2.21.2 Family relationships

Consent by both parents for the child's inclusion in extracurricular activities

We received a letter by a complainant stating that the father of her children refuses to give consent for the children to participate in extracurricular activities in the kindergarten or school.

The Marriage and Family Relations Act stipulates that both parents are responsible to co-decide on all questions important for a child's development after the dissolution of a domestic community. The parent to whom the child is entrusted for care and upbringing may decide on questions not important for the child's development, while the parents must seek consent about important questions. If such consent is not reached, the question may be submitted to a court for the decision to be made. The Act does not specify questions important for a child's development. Such assessment may be performed by a court in judicial proceedings in an individual case.

In our opinion, extracurricular activities may be an issue important for a child's development, although majority of extracurricular activities are probably not. The type, burdening, possible risks and time dedicated to an activity may be circumstances for which an activity could be understood as important for a child's development. Decision making about extracurricular activities which due to its schedules severely interfere with the time determined for the child's contact with the other parent could also be one of the questions worth considering.

Determining whether an extracurricular activity is such that a child may only participate in it with the consent of both parents depends on all circumstances of the case, and thus the decision of the school or kindergarten to not enable a child to enrol in an activity due to the lack of consent of one of the parents does not necessarily ensure the child's best interest.

We informed the complainant of the possibility of meeting at the social work centre where this question would be discussed explicitly. At such a meeting, the father could explain his reasons about why he understood the

enrolment of children in an extracurricular activity as important for the child's development. Such a meeting may be held also in the kindergarten or school or in cooperation with expert workers of the social work centre. We believe that if the father could not or did not want to explain why the inclusion in extracurricular activities could have a significant impact on the child's development, and if the kindergarten or school could not substantiate such position, then children should be enrolled in the desired extracurricular activity without the father's consent. Even if the father provides reasons, we believe that the kindergarten or school has competence to not request the father's consent if it is obvious that his reasons are not founded. In the event of any doubt about whether extracurricular activities may be important for the child's development, we find it sensible that the question be submitted to the court for decision making. **21.0-40/2018**

The Prison Administration of the Republic of Slovenia cannot change the court decision on contacts

We were informed of the content of the decision of the board of the Director General of the Prison Administration of the Republic of Slovenia of 15 March 2017, which stated that all contacts between convicted persons and children taking place at home or at social work centres on the basis of court decisions must be implemented in prisons.

We informed the Prison Administration, the Ministry of Justice and the Ministry of Labour, Family, Social Affairs and Equal Opportunities about our opinion that such decision has not suitable legal bases and is explicitly contrary to legal arrangements according to which only a court is competent to decide on the manner, scope and place of contacts between a parent and child if parents are unable to reach an agreement on this matter. The Prison Administration must not interfere with the final court decision, which is why such decision denotes an encroachment upon children's rights. Furthermore, this decision completely neglects a child's interest, which must be examined in every case individually according to the circumstances. Prison premises are certainly not the most suitable place for contacts between a parent and child. According to the contested decision, the (financial) burden of arriving at, and leaving, the prison would also be transferred to a child. It is also unclear how contacts determined by the court to take place under the supervision of an expert worker of a social work centre would be implemented – such supervision may not be conducted by prison officers who are usually not trained accordingly for such supervision.

We explained to the Prison Administration that we understood the reasons leading to such a decision since accompanying a prisoner means significant burdening of the staff who are already exceptionally burdened, but that must not justify the encroachment upon the jurisdiction of another authority, i.e. the court. We believe that the Prison Administration may inform the courts about its situation with the lack of staff and propose the possibility of implementing contacts in prisons. The courts will thus be able to consider all circumstances and decide on contacts in a manner which according to their judgement protects children's interests in the best possible way.

The Prison Administration revoked the relevant decision and informed all prisons thereof. The complaint was considered founded since the relevant decision was contrary to Articles 2 and 54 of the Constitution of the Republic of Slovenia. We are certain that consequences were not very severe due to prompt revocation of the decision. We commend the Prison Administration for taking prompt and suitable measures. **21.1-3/2018**

2.21.3 Children in school

Children's parliaments: Education and school system

Similarly to previous years, we also attended children's parliaments in 2018, which are organised by the Association of Friends of Youth and are the broadest form of children's participation in matters which affect them.

At the municipal children's parliament in Ljubljana and the regional one hosted by Dobrova pri Ljubljani Primary School, we heard very interesting, and above all, well-founded reasons for reintroduction of assessment of behaviour, which would also be one of the entry requirements for enrolment in secondary school. The

participants discussed the improvement of the school system and relationships in a school. They also voted in favour of a certain decision regarding assessment since they wanted more partial grades which would then form a grade that an individual could improve orally. The discussion about proposals that a class could conduct a type of a vote of no confidence in a teacher whom the school management would have to replace was also very interesting.

We expect that competent school authorities will express their positions about the proposed novelties at children's parliaments in 2019. We will be pleased to report to our foreign colleagues that the rights of children to participation is being realised in Slovenia to the general satisfaction of children, their parents and teachers.

Controversial youth literature

The Ombudsman discusses a complaint that the book, *Evangelij za pitbule* (Gospel for Pitbulls), by Jiří Bezlav issued in 2016 by the Mladinska Knjiga Publishing House, violates children's rights with content unsuitable for children. A while ago, the book was awarded as youth literature and a non-governmental organisation or a group of librarians under its auspices decided to recommend that children borrow it from libraries.

The Ombudsman does not discuss complaints relating to violations of human rights if the violators are not authorities, but it nevertheless decided to discuss this issue about which we were informed. We assessed that this opens a broader issue of placing literary works into literature suitable for children (i.e. up to the age of 18 as per the United Nations Convention on the Rights of the Child). In particular, we wanted to determine whether the state has instruments which ensure that children are not exposed to content inappropriate for their age within public services falling under the jurisdiction of the state. When discussing the complaint, we obtained the opinion of the Ministry of Culture, the Ministry of Education, Science and Sport and independent experts from the relevant field.

The Ombudsman cannot assess the content of literary works from the aspect of their suitability for children of a certain age. On that note, we also do not advocate the introduction of a state or any other authority which would assess or even censor literary or any other works of art. We sought to establish whether the state can in any way interfere with the spreading of controversial content between children when it is determined that this is not in their best interest, and how the authors' freedom of expression is ensured, which is also a right provided by the Constitution of the Republic of Slovenia.

In the regulatory framework, we found no criteria on the basis of which literature would be classified as literature for children and children would be advised against the selected content. It is thus also legally impossible to determine with certainty which content would be harmful for children's development, the assessment must be left to suitable experts. We believe that such assessment would require multidisciplinary knowledge, which would include the knowledge of child psychology and would find a suitable answer to the question about how certain literature could have a positive or negative impact on children's development. The practice that placing individual literary works among children's (youth) literature is left only to librarians does not meet all the requirements of the United Nations Convention on the Rights of the Child since it neglects the assessment of the literature's impact on a child's healthy development.

When classifying literary works among mandatory or recommended reading material for schoolchildren, the requirements of multidisciplinarity should be particularly strict. The Ombudsman does not advocate additional regulating of this field since it is aware that the issue of suitability of content of youth literature cannot be resolved by mere regulations. We thus strive for substantive unification of individual criteria which may affect this assessment and would help all expert workers when assessing whether certain literature should be recommended to children and for children's parents to trust in the suitability of literature recommended.

The Ombudsman proposes to the Ministry of Culture and the Ministry of Education, Science and Sport to jointly form guidelines for classifying literary works in children's and youth literature, which will ensure that reading stimulates suitable development of children and the formation of a relationship towards themselves and others without inciting any form of psychological or physical violence.

The Ombudsman believes that the content of a book alone cannot encroach upon children's rights only since according to general social criteria it is unsuitable for children because they are unable to fully comprehend its message. However, children's rights are being encroached upon by those who spread inappropriate content among children or even recommend it to them. Even if this content fails to meet the criteria to be defined as pornographic and consequently as criminal conduct, everyone's conduct must be compliant with the United Nations Convention on the Rights of the Child and ensure children's best interest.

We informed the Ministry of Culture of the relevant opinion and proposal, which responded with a substantial delay and emphasised that an exceptionally expert question was concerned about which experts must state their opinion. Any intervention by the Ministry would be inadmissible since as a political authority it would be subject to claims about ideological decision-making criteria and such conduct would "soon be understood as a form of censorship".

We were not pleased with such a reply because the Ministry fully avoided stating its opinion on the proposal to form joint guidelines for placing books in children's literature. It is evident from the entire context of the published case that expert and not political guidelines were proposed, and we thus assessed the Ministry's reply as unsatisfactorily or even intentionally misleading. In addition to the unsuitable attitude of the Ministry towards the Ombudsman (an unjustified one-month delay when replying), indifference towards a substantive problem of children's literature was also displayed.

Ensuring the right to privacy to pupils in schools

The Ombudsman discussed a complaint regarding the conduct of a primary school where children of the first three grades change in gym clothes for physical education together in their classrooms. This is very stressful for certain pupils (particularly girls). The children also have to take off their underwear – top. In spite of the mother's request for her daughter to change her clothes in the bathroom, the teacher did not permit this. The complainant believed that this was a case of violating the child's right to privacy. She also forwarded her complaint to the Inspectorate of the Republic of Slovenia for Education and Sport which performed an extraordinary inspection at the school.

During the inspection, the inspector obtained the headteacher's statement saying that the girl would be able to change in the bathroom before a physical education class. The inspector also requested the headteacher to examine the possibility for all children to change their clothes in the changing room next to the gym since the school has a separate changing room for girls and boys. The headteacher ensured that this would be enabled. The inspector particularly warned the headteacher that when communicating with pupils the teacher must not expose the relevant pupil and explain this decision to pupils. The Inspectorate's report was assessed as appropriate and we thus closed the case.

The complaint was founded because we assessed that with its conduct the school did not ensure the pupils their right to privacy and dignity. We recommended to the Ministry of Education, Science and Sport that all primary schools be informed of the problem by means of a circular at the start of a new academic year or at the consultation organised every autumn for senior managers in schools. **21.0-23/2018**

Publishing photographs of pupils

The Ombudsman discussed a complaint by displeased parents due to photographs of children published on the school's website. The photos showed children in swimwear since they were taken next to a swimming pool on a sports day. The parents believed that publishing photos of scantily dressed pupils which are available to anyone is inappropriate and interferes with the children's right to privacy. Furthermore, they criticised other supposedly disputed measures, e.g. unsupervised entry of external persons to school and unsupervised exit of pupils from school. Various passenger vehicles with foreign licence plates were occasionally seen in the vicinity of the school. The drivers talk to children and invite them into the cars. The parents conveyed their reservations and fears to the school, but they claimed that the school failed to respond accordingly.

After making enquiries at the school, it was determined that parents' claims were not fully accurate. The headteacher explained that the photos of pupils were removed from the website immediately after the receipt of the parents' request. He ensured that they would be more careful when selecting photos for publication in the future and they would fully secure children's privacy. Publication of photos of events and activities organised by the school was part of presenting the school's work to the public. The headteacher also explained the measures taken by the school to prevent uncontrolled entry of external persons to the school and unsupervised exit of pupils from the school. The problem occurred because physiotherapy and dental services for external users take place at the school. The school did not detect foreigners who would talk to pupils and invite them into their cars, and this problem was also not highlighted by any of the parents. The headteacher assured us that the school would pay special attention to this issue in the future.

Complications relating to food in kindergartens and schools are endless

The Ombudsman again discussed several issues and complaints about the right to vegetarian food in kindergartens and schools. At the beginning of the 2018/2019 academic year, kindergartens and schools began asking parents for statements from paediatricians or allergists that a child must not consume a certain type of food. The reason for such requirements were the Recommendations for Medically Indicated Diets, which the Slovenian Paediatric Society adopted in February and June 2018, and submitted them to educational institutions. Parents were certain that such requirements have no legal basis, and the recommendations are insufficient and inappropriate basis for decisions of kindergartens and schools that they are not obliged to provide medically indicated diets.

In the past, the Ombudsman has encountered several requests by parents that a kindergarten or a school should offer a possibility of vegetarian meals in connection with the duty of kindergartens and schools to observe parents' requests regarding diets. This issue was discussed in the Ombudsman's annual reports for 2007, 2010 and 2017. We also mentioned it in the special Ombudsman's bulletin (no. 13) issued in 2009 and sent to all educational institutions.

Since more and more children visit kindergartens or schools who are medically sensitive to certain foodstuffs, dietary food is prepared for them. Due to unchanged staffing standards, the preparation of these meals causes many problems. When observing the wishes of parents when preparing special meals, kindergartens and schools are limited by staffing, material and financial working conditions determined by regulations. When evaluating the content of the problem and before taking a position about the matter, we carefully weighted the content of children's rights which could impose the obligation upon kindergartens and schools to observe the parents' (and children's) wishes about diets.

As an institution for the protection of human rights and fundamental freedoms, the Ombudsman has no particular position about diets which would only contain a certain type of meat or no meat and various forms of vegetarianism and veganism. We believe that a type of diet is not a human right which could be enforced with legal remedies from holders of power or public service providers, but it is a person's free choice which all other people must respect, especially so as to not force them into something they refuse. Public institutions are not obliged to provide a special diet to individuals according to their wishes, beliefs and similar personal circumstances. Their duty is limited to the observance of individual's decisions and their right to choose and to be different. Only if the staff in kindergartens or schools insisted or forced a child to eat food which does not comply with the parents' requirements about the origin would such conduct be assessed as a violation of children's rights.

Nevertheless, we insist on the recommendation to kindergartens and schools that in the spirit of good cooperation with parents and the observance of the individual's right to choose they adjust meals accordingly for pupils who are vegetarian and others.

The Ombudsman was also contacted for advice regarding food in kindergartens by an organiser of meals and the health and hygiene regime. She stated that many parents are vegetarians who also do not want their children to consume meat. There are no major problems when meat is on the menu, which is separate from other components of the meal. The meat is then removed and not served to children whose parents do not want them to eat meat. The problem occurs when a stew is on the menu, which contains meat. The parents

of vegetarians do not want the sauce in which the meat was cooked to be served to their children. On these occasions, the children do not get the entire lunch, but only a dessert and compote. A bigger problem arises when the children of vegetarians want to eat the stew from which they could remove the pieces of meat, and they frequently also want to eat the meat and other meat products.

We advised the complainant to first have an honest conversation with each parent who has the requests described above. She should ask the parents how the staff should act if a child wants to eat a piece of meat, a hot dog or any other meat product, and how to act if a child cries when they do not get the desired food. The Ombudsman believes that the child's right to eat what they want (and if that is on offer) is above the right of parents to decide what a child should eat and what not, unless there is a question of medically conditioned restriction about the type of food they may consume.

Transport of children

The Ombudsman again discussed several complaints regarding the provision of right to children to be transported to and from school. The questions by parents referred particularly to the organisation and implementation of transport.

We explained to the complainants that a primary school agrees on the manner of transport with parents and the local community, which has the opportunity to organise transport from the pupil's home to the bus stop. Since the legislator pursued the objective that pupils be ensured free transport if they live more than four kilometres away from their school, organised school transport must cover the relevant distance from the bus stop to school. The same approach applies when first graders have the right to free transport irrespective of the distance of their residence from primary school. The section of the way referring to the distance from the pupil's home to the bus stop is a matter of agreement between parents, the school and the local community. Thus, different solutions may develop in this framework, i.e. pupils walk to the bus stop, parents bring them to the bus stop or transport to the bus stop is organised in some other way.

2.21.4 Children with special needs

The number of complaints in this field increased in 2018 comparison with 2017. The main reason were the latest amendments to the Placement of Children with Special Needs Act (ZUOPP) submitted to the legislative procedure of the National Assembly of the Republic of Slovenia in the beginning of the year by a deputy of the previous parliamentary term and which was to be adopted according to a summary procedure. Although the Ombudsman does not participate in the legislative procedure, we received many criticisms about the relevant amendments and requests for their removal, and a few letters of support that the amendments proposed improve the current situation and should be adopted as soon as possible.

1. Amendments to the Placement of Children with Special Needs Act

The proposed amendments referred particularly to the situation of temporary and permanent assistants allocated to an individual child with special needs with a decision on placement to a suitable educational programme. The proposal determined permanent assistants for providing physical assistance and generated the basis for systemisation of this workplace in schools where special needs children are being educated. We received many complaints from parents and societies to remove the proposal since the amendments in their opinion did not resolve appropriately all open issues and include all children with various types and levels of impairments and disorders.

In particular, the complaints referred to children with autism and blind and partially sighted children who in the preschool period and perhaps in the first three grades of primary school still require physical assistance provided by an assistant. These children may later not need the assistance any more, but they would require an assistant to help them overcome all critical situations in schools (breaks, activities in the playground, field trips). To provide such assistance, a person should hold suitable expert education and not only a secondary

education as anticipated for assistants providing physical assistance. These children would also require an assistant teacher with suitable education. The complainants asked for the new ZUOPP to provide the basis for systemisation of an assistant and assistant teacher and resolve the issue of their training.

The opponents of the proposed amendments to the ZUOPP stressed that the adoption of the amendments according to a summary procedure would be irresponsible. Since the Ombudsman cannot intervene in the legislative procedure or even suspend it as was proposed by some complainants, we advised them to address their comments and proposals to the proposers of the amendments and the Government of the Republic of Slovenia for they could further improve the text of the amended Act.

We also received a few complaints supporting the proposed amendments. The support was expressed by the Association of NGOs for Autism Slovenia, which believed that the amended Act would improve the situation of special needs children. The Ombudsman agreed with their opinion. **We strove for the proposers of the amendments to meet with the dissatisfied parents and present to them the key novelties. They should try in cooperation to improve sections of the Act which are perhaps insufficiently clear or understandable to everyone.** In connection with the ZUOPP, we propose to the Ministry of Education, Science and Sport to update it as soon as possible and regulate accordingly the issue of assistants for special needs children and possible other persons (personal assistants, tutors) helping children in the education system.

Other complaints relating to the rights of special needs children dealt with problems when educating autistic children and children with severe emotional and behavioural disorders in regular schools, problems when implementing a special educational programme and the reimbursement of travel costs for adolescents visiting the relevant programme, i.e. their parents who drive them to and from school every day. We examined the problem of insufficient capacities in occupational activity centres for all adolescents. One complaint discussed problems when enforcing the right to child care allowance, and we also discussed problems of a secondary school student with special needs when taking the *matura* exam, and a university student relating to the enforcement of a double status when enrolling in a faculty.

2. Education of autistic children and children with severe emotional and behavioural disorders in primary schools

The Ombudsman received several complaints relating to the education of children with autism and children with severe emotional and behavioural disorders in primary schools together with their peers. In this regard, parents of children with the above disorders contacted us several times, as well as parents of other children. We also received a few letters on this topic from schools. Certain cases also found their way into the media since parents of other children threatened to stop sending their children to school, which was also realised in one case. For the most part, the parents complained about inappropriate and slow response from school staff to the behaviour and conduct of children with autism spectrum disorders or severe emotional and behavioural disorders. They believed that these children had more rights than other pupils in a classroom and they easily enforce them with their behavioural patterns.

Children with the above disorders frequently disturb the regular work process in a classroom with their behaviour and endanger their own safety and that of their classmates. The problem is complex and difficult to resolve in a short time without decisively set boundaries and insisting on them. The right to education is the right of all pupils, including the right to dignity, security and physical integrity. Schools are obliged to organise lessons, other activities and time before and after lessons and during breaks in a way to ensure these rights to all pupils, and thus, school rules and procedures applicable in a school must be clear and in writing. Regarding the severe violence of pupils against other children, the school is obliged to turn to the Ministry of Education, Science and Sport for assistance and methods of action, including other expert institutions (Faculty of Education or the National Education Institute of the Republic of Slovenia).

The complaints from children and parents relating to violence require a serious and responsible approach by the school management: first, to take immediate and appropriate action in each case, and then to draft a comprehensive strategy for managing behavioural outbursts of any pupil with autism or emotional and behavioural disorders. It is advisable for such problems to be discussed by school authorities (parents' council

and school council) and for them to adopt a suitable strategy to resolve the issue because such an approach not only compels teachers and all other school staff to act in a certain way, but also pupils and parents, and particularly the parents of the problematic child. A school is an organisation where positive change cannot be attained without the cooperation of all the parties involved, irrespective of educational and (even more so) child-rearing matters.

Disruptive children who cause disorder in the classroom with their behaviour and occasionally make lessons completely impossible undoubtedly violate other children's right to education. **According to the Ombudsman, a child with severe behavioural disorders should never be left unattended and should be under constant supervision of an adult. This may continue for several years in some cases, but it seems that this is the only way to ensure the rights of all children.** With suitable expert treatment, emotional and behavioural problems may be reduced during the period of maturation, or may even disappear completely. Other expert workers, from counsellors to headteachers, must provide constant support and assistance to teachers working in classrooms with children with emotional and behavioural disorders. The appointment of at least a temporary person assisting pupils with a disorder would be sensible until it is determined how the disorders would develop in the future. In cooperation with their parents, methods of work must be found to make the disorders manageable. Their parents must be persuaded that it would be beneficial for children to initiate a procedure for placement in a suitable educational programme, which will include lessons of additional expert assistance by suitable experts. A procedure for placement of a child may be proposed by a school, which may do so without the parents' consent and only inform them on the matter. By means of a suitable decision on placement, a child may obtain the right to an assistant and additional expert assistance.

3. Problems involving education in a special educational programme

A complainant expected the Ombudsman to intervene at the social care institution implementing a special educational programme which his son is attending. He stated that his son would be 26 years old in mid-December 2018. Until that age, a young adult has the right to attend a special educational programme in which he was placed with a decision of the National Education Institute of the Republic of Slovenia. At the beginning of June 2018, the complainant received a notification from the social care institution's commission for admission, transfer and release that his son would complete the education in the relevant programme on 31 August 2018. He complained against the notification, but received no reply.

We first enquired at the institution since we believed that the young adult had the right to visit the special educational programme in which he was placed with a decision until the age of 26 as per the Basic School Act. The director of the institution explained that she had informed the Ministry of Education, Science and Sport and the Ministry of Labour, Family, Social Affairs and Equal Opportunities of the problem in June, but had received no reply.

We asked both ministries to reply to the institution and send us a courtesy copy. As per the ZOsn and the ZUOPP, the Ministry of Education, Science and Sport replied that the institution should also organise the implementation of the special programme in the academic year 2018/2019, which may be visited by all young adults who reach the age of 26 in that year (between 1 September 2018 and 31 August 2019). This position was also confirmed in the reply of the Ministry of Labour, Family, Social Affairs and Equal Opportunities which had sent its reply to the social care institution in mid-June. The problem should not have occurred at all since the social care institution received the opinions of the competent ministries early enough to have organised a suitable class at the beginning of the academic year.

4. Reimbursement of costs for transportation to and from school

The Ombudsman discussed complaints from parents of young adults above the age of 21 who visit a special educational programme. The parents experience problems in various fields, although the Expert Council of the Republic of Slovenia for General Education had already adopted the programme in 2014. On the basis of amendments to the Organisation and Financing of Education Act, social care institutions implementing this programme were able to register to implement the educational activity managed by the Ministry of Education,

Science and Sport already in 2016. The problem is that individual regulations such as the Basic School Act (ZOsn) failed to follow the changes enabling young adults with moderate, severe and profound mental disorders to stay in education until they reached the age of 26.

The complainant explained to the Ombudsman the problem of the reimbursement of transport costs for his foster child who attends primary school with adapted programme outside the town of their residence. The young adult has Down Syndrome, is 23 years old and attends a special educational programme at a primary school with an adapted programme which he will compete at the age of 26. This requires daily transport from his temporary residence at the foster family to and from school. The transport is a large expense for the family. However, Article 56 of the ZOsn restricts free transport to school and back or the reimbursement of transport costs to parents or foster parents once the young adult is 18 years old. The Act on Social Care of Persons with Mental and Physical Impairments (applicable only until 1 January 2019) does not provide the basis for the reimbursement of relevant costs. Reimbursement of transport costs thus depends on individual municipalities, which can resolve parents' problems with special rules or a decision of the municipal council. Unfortunately, many municipalities are not in favour of such resolving of problems, which is why problems with the transport of their children fully burden the parents. The Ombudsman recommends to the Ministry of Education, Science and Sport to amend accordingly Article 56 of the ZOsn and thus resolve the problem of the reimbursement of transport costs for young adults above the age of 18 who attend special educational programmes.

We are familiar with several examples of good practice by municipalities, which understand the distress of parents or guardians due to high expenses required for regular expert treatment of children, adolescents and young adults with special needs. Therefore, we also proposed to the competent municipality to adopt such rules since we are of the opinion that the number of these children is not so large that the costs of reimbursement for their transport to and from school would have a significant impact on the budget of the municipality or even threatened it. The Ombudsman recommends to the municipalities to provide funds for the reimbursement of transport costs for young adults above the age of 18 who attend special educational programmes until the ZOsn is amended accordingly.

5. Including young adults with special needs in the service of guidance, care and employment under special conditions

A father of a young adult with special needs who completed education and training in a special educational programme pointed to his desperate situation since his son could not be included in the service of guidance, care and employment under special conditions. There are no vacancies for the implementation of this service. His statements were verified at the Ministry of Labour, Family, Social Affairs and Equal Opportunities, which confirmed the poor situation in this field. Some 500 persons are waiting to be included in the relevant service. In the past three years, the Ministry has enabled some 350 new users to participate in the service and provided about 120 new jobs. The problem lies in the limited financial resources since the service is free for the users and fully financed from the state budget. According to the Ministry, it was not possible to ensure funds for additional vacancies for new users in 2018. It ensured that on the basis of the analysis of needs in April 2018 it would start planning further development of the network of occupational activity centres in the territory of Slovenia and it would strive to obtain additional budgetary resources for this purpose. The Ombudsman proposes that the Ministry accelerate development of the network of occupational activity centres to improve access of young adults to the services of guidance, care and employment under special conditions.

6. Decision on placement has effects also on other fields

The Ombudsman received a complaint by a mother of a blind secondary school student who needed help resolving the problem about her daughter's taking the vocational *matura* exam. As per the expert opinion of the Commission for the placement of children with special needs and the decision on placement, the student needed certain adjustments to meet her school obligations. However, the National Commission for Vocational Matura failed to acknowledge all suitable adjustments in its decision. The notification of the National Examinations Centre, the decision of the National Commission for Vocational Matura, her daughter's request

to amend the decision, the decision on placement and an expert opinion were attached to the complaint. The complainant requested the Ombudsman's intervention.

After a thorough examination of all documents, we determined that the decision on placement issued in 2015 was insufficient. The section which provides suitable aids and adjustments for implementing school obligations lacks all proposed and recommended adjustments defined in the expert opinion of the Commission for placement. The National Commission for Vocational Matura observed only the provisions of the decision and failed to observe the expert opinion when making its decision since the decision was an administrative act which members of the commission are obliged to observe.

We were unable to help the complainant in the way she expected. Furthermore, the complainant received the notification of the school about adjustments and the decision of the National Commission for Vocational Matura very late (22 May 2018), and the vocational *matura* exam started on 28 May 2018. The Ombudsman could not have achieved any changes to the decision of the National Commission for Vocational Matura in such a short time.

We explained to the complainant that her daughter would have the possibility of using the legal remedies available: review of her test and complaint against the grade if it is determined that she got a negative grade in any of the subjects. We advised her that for the further needs of her daughter's education they request suitable amending of the decision on placement or the issue of a new one.

With the above case, we want to particularly express the importance of the decision on placement since rights which the complainant and her daughter were not informed about on a timely basis also depend on them. The question of the National Examinations Centre observance of only the decision on placement also arises, although the Centre was informed of the expert opinion of the Commission for the placement which was more beneficial for the affected person.

7. Observance of a double status when enrolling in higher education programmes

The Ombudsman discussed a complaint by a profoundly hearing-impaired grammar school graduate who had a status of a top sportsperson throughout secondary school due to supreme skiing results among deaf sportspeople. In the past year, the student had already passed the *matura* exam, but because she was displeased with the results, she applied to sit for the *matura* exam again. Unfortunately, she had not achieved the success she wanted and which would help her enrol in the desired faculty at the second attempt either since the faculty limited the enrolment due to too many applicants. The complainant complained about the grades, but was unsuccessful. She claimed that the criteria for enrolment to a desired faculty were too high for graduates with special needs particularly because she wanted to exercise two statuses simultaneously during the studies: the status of a higher education student with special needs and the status of a top sportsperson. After reviewing the Rules on the Call for Enrolment and Enrolment in Higher Education, we determined that the relevant regulation does not clearly regulate a double status, at least not in a way for the faculty to be able to accept a grammar school graduate with a double status when limiting enrolment and with an insufficient number of credit points. Since new Rules on the Call for Enrolment and Enrolment in Higher Education are being prepared by the Ministry of Education, Science and Sport, the Ombudsman recommends that the right of students with special needs and special statuses (e.g. status of a sportsperson) be regulated more comprehensively.

2.21.5 Domestic violence against children

On this sub-field, we received fewer complaints in 2018 than in previous years, which we ascribe to the fact that the Domestic Violence Prevention Act is actually being applied and the competent authorities respond accordingly to the reports about violence.

A child's opinion is not observed in the family help at home service and the preparation of the assistance plan of the social work centre

A complainant wrote a letter to the Ombudsman in which she described a family situation of her current partner in connection with his 6-year-old child from a previous relationship who lives with his mother. She said that the child's mother is violent towards him and the child confided in her. The complainant lives with her two adult children and the partner, and her stepson feels comfortable at his father's home because he is always warmly welcomed, which cannot be said about the boy's life with his mother. The complainant thus wrote to the Ombudsman to take action since according to her opinion the local social work centre did not protect the child's interest, although it was informed of the circumstances. She complained that she cannot attend the meetings at the social work centre relating to the parental relationship about the care of the boy.

We explained to the complainant that she was not invited to the social work centre because she was not a party to the procedure of protecting a minor victim of violence since the boy's parents are alive and hold a full parental right. Based on Article 102 of the Marriage and Family Relations Act (ZZZDR-UPB2), the boy's father has, in spite of the dissolution of the previous partnership in which a son was born, a parental right and duty to protect his son from violence and other acts harmful for his mental and physical development, while the complainant as his new partner cannot instigate procedures on his behalf without his consent, although she signed his name in the complaint. We also explained that in the case of claims about violence of one parent against a child while the other parent does nothing to protect the child neglect is noted as per Article 3 of the Domestic Violence Prevention Act as a form of violence in the sense of omission of due care for the victim (i.e. a child), which they need because of illness, disability, age, developmental or other personal circumstances. The child's father may and must instigate all procedures to protect the interests of his child if he believes that his son is endangered due to his mother's actions.

After the Ombudsman's reply to the complainant, the competent social work centre submitted a request to the Ombudsman to appoint an advocate to the 6-year-old boy to determine his actual wishes, needs and interests. The social work centre wanted to use the child's statement and the advocate's report to provide help to the family and prepare a plan to help the boy within the tasks to prevent domestic violence.

The parents are very conflicting and blame each other. The social work centre attached consent from the boy's father to the written request and stated that the parents were offered suitable help. To facilitate their parenting, the parents were advised to use the family help at home service, which they refused. Since the boy's endangerment was twice within the framework of a multidisciplinary team assessed as low, the social work centre did not anticipate special measures. The social work centre did not conduct an interview with the boy because they believed that he was under suitable care with his mother, that the mother was attentive and responsible and was in therapy to mentally recover after the divorce.

After receipt of the letter, we contacted the social work centre and spoke with them about the family situation, current activities of the centre and the expectations about the advocacy. We informed them that we assess the complaint as unfounded for establishing the boy's opinion. The expert worker explained that according to the assessment of the social work centre the mother does not endanger the boy, but the father who through his current partner reports the mother to various institutions was not prepared to file a motion with the court to change contact or custody over the child. Suitable care of the mother for the child was also evident from the opinion of the kindergarten attended by the boy.

We agreed with the expert worker that she would inform us of possible changes or the introduction of the procedure to change custody. After our explanation of the purpose of appointing an advocate, the expert worker realised that the time was not right to appoint an advocate to the boy. The request to appoint an advocate in the case of assumed violence against a child, establishing the family help at home service and the preparation of the assistance plan was assessed as unfounded. **21.6-28/2018**

Testing of secondary school students for alcohol and illicit drugs

The Ombudsman received a request to provide its opinion regarding the testing of secondary school students for the presence of alcohol and illicit drugs. In 2015, the Ombudsman had already discussed the case of a secondary school teacher who sought our opinion and recommendations regarding the testing of students to the presence of THC in their saliva (the entire text of the case is available at <https://bit.ly/2D6EYMb>).

We submitted our reservations to the complainant. In the Ombudsman's opinion, the use of tests for the presence of alcohol or drugs denotes an encroachment into the student's right to privacy or even an encroachment into the right to dignity. **However, all students also have the right to security. If weighting between these three rights, the right to security would have an advantage before the other two in our opinion. A school is namely obliged to ensure security of students on the basis of regulations governing education and the field of health and safety at work. Nevertheless, there is no legal basis in any school act for testing of secondary school students in schools.** Based on an explicit legal basis, a provision on mandatory testing for drugs could be transposed in the school rules of a school if this is assessed by an expert worker (teacher, headteacher, counsellor). We emphasised that the results obtained could only be used for the purpose for which the provision was entered in the school rules (to protect students from accidents). The school rules would then have to be discussed by the students in their school bodies (class, students' community) and the parents' council, and adopted by the school council. According to the Ombudsman, this would then provide a suitable legal basis for the use of tests for alcohol and drugs.

We also believe that it would be more appropriate if the testing were done by a suitable health care service. Information about the use of drugs is medical information and sensitive personal information, which should be handled with particular care.

Since we thought that the problem was probably topical in secondary schools, we informed thereof the Ministry of Education, Science and Sport in 2015 which confirmed our concerns. The Ministry stressed that school regulations did not determine in detail the competence and methods of establishing possible presence of drugs or alcohol in secondary school students during lessons. The procedure was not determined and the Ministry was not familiar with the practice. The competent authorities advise the observation of legal legislation in procedures of determining presence of drugs or alcohol. In such cases, schools are obliged to inform the competent law enforcement authorities and the police which handle the possession and abuse of illicit drugs.

The Ministry of Education, Science and Sport concluded that suitable legal basis for testing students in secondary schools is missing. It thereby agreed with the Ombudsman that sensitive personal information would be gathered in the case of testing whose storage and protection are not regulated.

In the 2015 Annual Report, the Ombudsman recommended that the testing of secondary school students be included among the anticipated amendments to school legislation, including the keeping and processing of pertinent personal data. In the response report, the Ministry replied that school legislation was not supposed to generate bases for intervening in people's dignity, but must teach how to maintain and promote it. If a student must be protected from injury, the Ministry believed that the legislation and executive acts already include options and procedures, which enable the foregoing by means of educational measures. In cooperation with the Ministry of Health, the Ministry of Education, Science and Sport tried to prepare a protocol on conduct in such cases, but we have not been informed of the existence of such protocol yet. **Regardless of the aforementioned, we note that the Ombudsman thinks that a protocol, rules or any other form of an executive or any other act cannot substitute the lack of legal basis, which alone can regulate an encroachment upon human rights and fundamental freedoms.**

The Ombudsman participates in an interministerial working group which is preparing the basis for amending the Residential Institutions for Students with Behavioural and Emotional Disorders Act and helps form legal bases to regulate the examination of school bags and the testing for drugs and alcohol. We believe that the discussed authorisation must be arranged for the entire field of education and not only residential treatment institutions.

Psychiatric treatment of children and adolescents (patience is a virtue)

For several years, the Ombudsman has been highlighting the unsuitable hospitalisation of children with mental health problems who are accommodated in hospitals together with adults. In the 2016 Annual Report, we wrote that we held several meetings with the competent authorities and learned about the obstacles to organise a special closed ward for the psychiatric treatment of children. It was agreed that the Ljubljana University Psychiatric Hospital would renovate part of its premises and equip it in accordance with the expert requirements for working with children. We closely followed the developments throughout and strove to realise what was agreed as soon as possible.

In October 2017, the Ministry of Health explained that the premises for the establishment of the secure psychiatric ward for children and adolescents within the Ljubljana University Psychiatric Hospital were renovated, and the Health Council approved the start of implementing the programme at its session in September 2017. The Minister of Health ensured us at the meeting in November 2017 that financial resources were provided and the start of financing and implementing the activity were planned for 1 December 2017. The financing for 2017 was ensured in Annex 1 to the General Agreement for Contract Year of 2017, and for 2018 with the adoption of the General Agreement for Contract Year of 2018.

According to recent official information received from the Ministry of Health, the secure ward for children in adolescents did not start operating in 2018 in spite of the funds provided. Part of the blame may be ascribed to the Ljubljana University Psychiatric Hospital which ensured the premises, but failed to provide sufficient staff.

As per the foregoing, we believe that all reasonable time limits for the start of the programme have expired, which according to the experts and in our opinion is needed urgently. The Ministry of Health and Ljubljana University Psychiatric Hospital have thus violated children's rights under Article 56 of the Constitution of the Republic of Slovenia and the principle of good administration under Article 3 of the ZVarCP. **3.4-48/2016 and 9.4-162/2018**

2.22

CHILD ADVOCACY

Field of work	Cases considered			Resolved and founded		
	2017	2018	Index 18/17	No. of resolved	No. of founded	Share of founded among resolved (in %)
22. Child advocacy	103	169	164.1	116	89	76.7
22.1 Applications to appoint advocates		85		54	31	57.4
22.2 Advocacy	103	84	81.6	62	58	93.5

2.22.1 Child advocacy – finally entered into law after ten years of efforts

After ten years of implementing the Advocate – A Child's Voice project, advocacy was legally regulated with amendments to the Human Rights Ombudsman Act in October 2017, and it is being executed in the same way as was confirmed by its ten-year practice. Based on legal authorisation, we regulated the advocacy by means of an executive act (Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 44/18). Since child advocacy is a novelty, we present its arrangements and operations in more detail below.

In the framework of advocacy, the Ombudsman manages the development of the network of advocates, the organisation and execution of training and testing of knowledge of candidates for advocates, organisation and execution of regular expert training of child advocates, and the organisation and implementation of their supervisions and intervisions according to their fields. The Ombudsman also informs the interested public about child advocacy, and organises and performs presentations of advocacy for the expert and general publics.

The advocacy is organised as a network of voluntary advocates who are particularly trained to speak with children and obtain their opinion, which is then used in legal proceedings where children's rights are being decided on. The network enables almost equal access to an advocate to all children in Slovenia, while regional coordinators are responsible for better organisation and coordination of advocates' work. The Act does not stipulate the tasks and role of regional coordinators, but they have been part of the advocacy since the start of the project's implementation and are defined in the general act.

The Ombudsman ensures the training of all participants in advocacy procedures and also organises intervision and supervision for the advocates. Intervision enables advocates to receive expert support, provides opportunities to learn from the experience of participants, mutual support and spreading examples of best practice. The intervision is organised every two months by regional coordinators. Supervision led by experts holding a licence from the Social Chamber of Slovenia particularly ensures the quality of professional work and resolves various open issues, personal distress and ethical dilemmas encountered by advocates in practice.

The work of coordinators is of technical and organisational nature since they organise the introductory and final meeting with children, cooperate with parents, guardians or legal representatives of children, and institutions

relating to the needs in specific cases of advocacy. Together with the advocate, the coordinator makes sure that the child's opinion is transferred and introduced in procedures and matters where a child is involved.

The purpose of advocacy is to provide professional assistance to a child to express their opinion in all proceedings and matters involving the child, and to forward and introduce the child's opinion to the competent authorities and institutions which decide on the child's rights and best interests.

Professional assistance includes psychosocial support for the child, discussions about their wishes, well-being and opinions, informing the child about proceedings and activities in a manner they understand in accordance with their age and development, seeking the most suitable solution together with the child, and accompanying the child before authorities and institutions which decide on the child's rights and interests.

In the advocacy procedure, the advocate obtains the child's opinion, establishes their wishes and interests, and help the child write a statement on the matter at the end of the procedure. Thus, acquired statements of the child which is their right and not a duty, may be used in any procedure in which the child's rights and interests are determined (paragraph one of Article 25č of the Act). For the statement not to be overlooked, the Act determines that the obligation of the authority which decides on the child's rights and benefits must particularly explain in its decision how the child's statement was taken into consideration and how it acted in the child's best interest. We expect the authorities to supervise in individual procedures *ex officio* how the child's right was observed at the first instance of decision making and how the duty of the decision maker was realised.

The advocacy has become the Ombudsman's regular task. Its realisation is monitored by the Expert Council appointed by the Ombudsman among the experts in the field of children's rights. Relating to the experience from the project which was evaluated by experts (Social Protection Institute of the Republic of Slovenia, Ljubljana, March 2017, available at www.varuh-rs.si) before the amendments were drafted, the Expert Council also has its working bodies among which the Ethics Committee is the most important, which establishes violations of the Advocacy's Code of Ethical Principles and oversees that all participants in advocacy observe privacy, protect sensitive data and act according to the advocacy scheme when performing their tasks (available at www.varuh-rs.si). This scheme was determined by the Ombudsman, but it is not determined as a legal act since it only defined in more detail the content of activities and relationships between the participants of advocacy.

The Expert Council is the Ombudsman's authority; it manages the realisation of child advocacy and functions according to the principle of professional autonomy.

The tasks of the Expert Council are in particular:

- discussion of conceptual and organisational questions regarding child advocacy;
- formation of opinions or proposals for resolving general questions of realising children's rights in child advocacy;
- discussion of individual questions in the field of child advocacy forwarded to the Council by the Ombudsman;
- discussion of broader expert issues of advocates, coordinators and supervisors, and the formation of joint opinions;
- discussion of complaints revealing general problems, but only in anonymised form;
- formation of proposals for educational content to train advocates and participate in training;
- formation of proposals to the programme, the training procedure and testing the advocates' knowledge, and
- the planning of promotional activities of advocacy.

The Expert Council whose term lasts three years is composed of a president, all (regional) coordinators, two representatives of the Ombudsman, two representatives of the advocates and five representatives of the expert public and non-governmental organisations selected by the Ombudsman on the basis of a public call for cooperation.

Appointment of an advocate to a child

The appointment of an advocate to a child (the law defines a request for the appointment) may be proposed by anyone who believes that the child cannot exercise their right to express their opinion. The provision is very broad,

but it was assessed when drafting the Act that it would not be sensible to limit the circle of authorised proposers regarding the second safeguard in the system only to narrow family members and social work centres.

In practice, the proposers are usually parents (particularly in family disputes) and school counsellors, staff of social work centres and courts. The simplest procedure is implemented on the basis of a consent by both parents or legal representatives, in which case the Ombudsman appoints an advocate only by means of a notification (without an order or decision), and the advocate can start to work promptly. If the Ombudsman assesses that the request to appoint an advocate is not founded, the proposer is informed thereof in writing.

The first meeting is organised by a regional coordinator and the number of subsequent meetings depends on an individual case, but no more than ten. The advocate usually meets the child once a week at neutral premises (libraries, the Ombudsman's office or premises of NGOs).

If a parent disagrees with the appointment of an advocate to the child, the Ombudsman informs thereof the competent authority which conducts the procedure (social work centre or court), which may decide on appointing the advocate and issues a decision on appointing a guardian for a special case or a procedural order.

A question arises in this regard whether appointing a guardian for a special case as anticipated by the Marriage and Family Relations Act (Articles 211 to 215) is the most appropriate solution for the appointment of an advocate to a child in this procedure. The basic role of such a guardian is to represent the child, which is not the task of an advocate. In paragraph two of Article 25a, the Human Rights Ombudsman Act explicitly stipulates that an advocate is not a child's legal representative. This is important particularly from the viewpoint of the role of parents, which is not affected with the appointment of the advocate. Thus, it will be necessary to examine whether certain procedures conducted by social work centres are to be arranged separately while observing special requirements of these procedures since they cannot be conducted optimally within the framework of general administrative procedure.

The Act lays down strict requirements that individuals have to meet to become child advocates. For proceedings to be conducted objectively, a particularly important provision is that there must be no reservations that could raise doubts that an advocate would act in the best interests of a child (last indent of paragraph two of Article 25b). Objectivity and impartiality are essential for understanding **the advocate as an actual assistant of a child, and not an assistant to one or the other party to judicial proceedings**.

The requirement of the utmost objectivity was also the main reason for the decision that a list of all advocates published on the Ombudsman's website would not contain all required personal data of the advocates, but only a name, surname and their code. All other data determined by the Act would be kept in the Ombudsman's records. It was believed that publishing the advocates' addresses could encourage one of the parents to make contact directly with the advocate, whereby both parents would no longer be in the same position, and the advocate would not be objective any more. All contacts of the advocate with the parents namely take place through a coordinator.

The Act stipulates the work of advocates and coordinators as honorary and voluntary; they are entitled to remuneration in the amount as determined by the general act and the refund of travel costs in the amount applicable for public employees. The general act defined a points system for individual tasks within the advocacy and the value of points, which may change according to the Ombudsman's annual financial plan. **Advocacy is free of charge for children and their parents.**

Some 61 advocates participate actively in the advocacy, including seven coordinators, five supervisors and three advisers employed full time at the Ombudsman.

Advocacy in practice

A child meets the advocate for the first time at the introductory meeting organised by the regional coordinator to which the child's parents or legal representatives are also usually invited, or a representative of the institution that proposed the appointment of an advocate. The purpose of the introductory meeting is to introduce the

advocate and the coordinator to the child and parents, the manner of work, precisely define tasks and goals, and agree on when and where meetings will be held.

After the introductory meeting, the advocate and the child meet on their own, usually once a week. The number of meetings depends on the case, but there are usually up to ten meetings. They meet in an informal environment (schools, libraries, NGOs, parks, playgrounds, etc.) and they communicate in a way adapted to the child's age and maturity. The advocate informs the child about what advocacy is, what its purpose is, and their right to express their opinion, wishes and views in the form of a statement at the end of meetings. The advocate continuously examines the child's understanding, and adjusts the methods and manner of work to the child's age, maturity and motivation. A report is written about every meeting and submitted to the relevant coordinator who forwards it to the Ombudsman.

The advocate informs the child of their options in relation to the statement and its importance for decision making in the proceedings or matter involving the child. The advocate verifies whether the child understands what was written in the statement and goes through its content several times together with the child. The child's statement does not have a prescribed form. In the statement, the child expresses their thoughts, emotions, wishes, views and positions, and experiences in relation to the people, events, circumstances and proceedings they consider relevant to their life and which affect their well-being and situation. The child decides independently whether they wish to forward the statement and to whom. The child's statement is always written in the presence of the advocate, it is never written by the child alone. It is the advocate's task to inform the child of information about the proceedings or matter in which they are involved, and their role when submitting and observing the child's statement. At the final meeting, the parents or legal representatives may be orally informed of the statement if the child so wishes. If the child wishes, other persons or authorities may be informed of the statement.

In all cases, the advocate and the coordinator write so-called final reports which are enclosed with the child's statement. The Ombudsman sends a copy of the child's statement and the relevant reports to the authority conducting the proceedings, thereby completing the advocacy process.

Child-friendly justice and experience of child advocacy

Child-friendly justice and the participation of children are fields which were determined to have priority by the Council of Europe when realising the rights of children between 2016 and 2021.

In recent decades, proposals and findings of experts have been directed towards the changes in the observance of the role of children in judicial proceedings in which children are involved or decisions are being made about them. From a child, the object of rights, we are progressing to a child truly becoming the subject of their rights. We know that the right of a child to express their opinion has been laid down in the almost 40-year-old Convention on the Rights of the Child; however, the observance of this right remains a great challenge in practice, not only in Slovenia but in the whole of Europe and the world.

The Council of Europe determined that European legal systems are still insufficiently adapted to the needs of children. It was highlighted that the rights of children to be heard, accordingly informed and protected, and not a victim of discrimination are not always ensured in practice. The children assume various roles in judicial proceedings (victims, witnesses or perpetrators, other participants in family disputes, in other administrative procedures, etc.) and they all have their rights to which the judicial system frequently does not respond to accordingly. According to the Council, the judicial system is made to fit the adults, and not children.

Regarding the foregoing, the Council of Europe formed standards, recommendations and campaigns by means of which child-friendly justice is being promoted intensively among Member States. The objective of standards and recommendations is to improve a judicial system and adjust it to specific needs of children. In practice, this means to create a judicial system which would respect and truly observe all children's rights. The recommendations are collected in the Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice, also available in Slovenian.

The guidelines explain that child-friendly justice means judicial systems which ensure respect and effective realisation of all children's rights at the highest attainable level with simultaneous observance of the child's maturity, their comprehension and circumstances of the case. This is a judicial system which is accessible, adapted to age, prompt, diligent, adjusted and directed towards the needs and rights of a child, which observes the children's rights, including the rights of due conduct, participation in proceedings and their comprehension, to respect for private and family life and personal integrity and dignity.

Child advocacy, which after ten years of implementing the Advocate – A Child's Voice project became a legal standard in Slovenia, observes in its core the principle of child participation and the principle of child-friendly justice. Irrespective of the good results shown by the evaluation of the project and positive responses from majority of children, parents and experts encountering advocacy, the Ombudsman determines that many challenges are still ahead. The initial rejection of the idea of child advocacy and fear of it have passed and the idea has been accepted, while its realisation in practice has not yet been brought about in full. We note that regulating advocacy in law does not mean that children all over Slovenia have the same opportunity to obtain an advocate. Even if a child has an advocate, the latter may not have the same role in all courts. The child's opinion, which the advocate transfers and presents to the authorities and institutions which make decisions about the child, is currently not accepted and observed everywhere in the same manner. In one of the advocacy cases in 2018, we observed that the court appointed an advocate to a child in the procedure of determining contacts and then completed the procedure before the child was able to form their opinion and convey it to the court. In a few cases, children had advocates on the basis of both their parents' consents and the courts knew that advocacy was underway, but they nevertheless competed proceedings before they learned children's opinions.

These examples of poor practice open numerous questions and dilemmas. Is the right to trial within a reasonable time above the child's right to express their opinion? Is the right of parents to achieve settlement in family disputes above the right of the child to express their opinion to whom the settlement also refers? If we know that the child's interest must be the guideline in all procedures, the question arises of whether proceedings were conducted accordingly in all the above cases and whether they were thus lawful.

The Ombudsman has already appointed an advocate to 650 children as part of child advocacy, the majority of these in family disputes. Many of them were also appointed in procedures after a settlement, which was concluded recently without the participation of children in the decision making, was not feasible in practice. The Ombudsman thus believes that special attention must be paid that procedures where children are involved are not being resolved too quickly since the completion of a procedure brings only a temporary solution, while in the long term it is detrimental particularly for children.

Example:

An advocate was not appointed to a 12-year-old girl who rejects contacts with her mother

The Ombudsman received a proposal from a father asking for the appointment of an advocate to his 12-year-old daughter in order to express in the advocacy process what exactly is happening at her mother's home with whom she rejects contact.

In the letter and during a personal interview, the father explained that the procedure of rearranging contact had been taking place at the court for over a year. Several hearings were conducted, and a court expert was appointed who held several interviews with all family members. At the time, it was determined that the girl must have contact with both parents or a pecuniary penalty may be imposed on the parent disrespecting the agreement.

The father also stated that the daughter explicitly conveyed her opinion that she refused to have contact with the mother. She had said so at the social work centre, during an informal interview with the judge and the court expert, but her wish was not observed. The father expressed concern because his daughter had told him the reasons for rejecting contact in the past, but she later distanced herself and refused to talk. It happened frequently that after contacts with her father, she refused to return to her mother and the father supported her irrespective of the opinion of expert services that there were no reasons for not having contact with both parents. Other institutions also reported about emotional and behavioural problems, which is why

the daughter was treated by a psychologist. One of the experts hired by the father to help achieve that the child's wish to not have contact with the mother be observed advised the father to request the Ombudsman to appoint an advocate to whom the girl would relate what was happening at her mother's home and would thus relieve her of distress.

Similarly to every request for appointing an advocate, we examined this request at the team meeting of expert workers in the field of child advocacy and decided not to appoint an advocate to the girl. We explained to the father in our written reply that an advocate could not have helped his daughter in the way he expected at the time. Although we understood his concern because his daughter refused to talk about her distress and reasons for rejecting contact with her mother, we explained that we could not appoint an advocate in order for the child to start speaking about the problem since the advocate does not interrogate children. Whereby we must not neglect the important but not irrelevant fact that the girl refuses to speak, which is why the question arises whether she would be prepared to cooperate with an advocate as suggested by the father.

The child's advocate is not only their confidant but also their voice in the proceedings or matters that take place. Since the girl had already had several interviews at the social work centre and with the court expert, and an informal interview with the judge where she clearly stated her opinion, we believed that she did not need assistance when expressing her opinion. While observing all information we assessed that there were clearly problems requiring in-depth expert treatment which cannot be provided by an advocate. The assistance of a psychologist which the girl has been receiving is in our opinion more suitable than help of an advocate. Furthermore, the opinion of expert services is that the girl's wish is not compliant with her interest, which is why the appointment of an advocate is not sensible.

In the relevant case, the advocate was not appointed since the proceedings at the court were already in the final phase. The interest of the girl was established which differs from her wish with which the court making the decision had already been informed of. **13.4-4/2018**

Example:

The advocate's role when a child refuses contact with one of the parents

The Ombudsman frequently receives applications for appointing an advocate to children who refuse to have contact with one of the parents. In such cases, the applicants usually state that children reject contact and that they have expressed their opinion clearly several times but the social work centre or the court refused to listen or observe them. A child is frequently discussed by several institutions and different experts working with them, including those found and engaged by one of the parents. A family has also been frequently discussed by several court experts who provided their opinions that there were no reasons for restricting contact and proposed how the contact with both parents be determined.

A parent asking to an advocate to be appointed usually expects that the advocate would finally achieve that the child's will is observed by the court and there would be no contact. The complainants are convinced that the only right decision is that there is no contact and they thus refer to the child's wishes and rights.

But the matter is far from being simple. If it were, we would not have received the application for advocacy at all and the child would have contact with both parents if they were competent for parenting and did not endanger the child's healthy psychological and physical development. If the disputes between parents last several years and a child is growing up in such an environment, it is frequently already too late by the time the Ombudsman receives an application to establish the child's true will.

The reasons for the child's rejecting of contact with parents vary and sometimes they are also founded. Like in all other relationships, events and actions take place in the parent-child relationship which leave negative consequences and children do not know how, or dare, to tell that to their parents in their early childhood. As they grow older, they resist having contact and if both parents lack understanding for ongoing resolution of the child's distress and resistance and make efforts to establish a good relationship with the child, then problems

in the relationship may deepen after a longer suspension of contact and the path towards re-establishing contact may be more difficult.

Great maturity of parents is required to understand the child, but not support their avoidance and subsequent suspension of contact with the other parent. It is human that parents get caught in an emotional trap since they usually have more negative experience with each other, which is why they understand, and cannot separate, the child from their (unresolved) partnership relations from what is good and beneficial for the child in the long term. If a parent openly supports the child's refusal to have contact with the other parent, the child quickly becomes alienated.

What can an advocate do in such cases? When this has been going on for some time, a child clearly expresses their will and the court has already determined with the help of experts that there were no reasons to restrict contact, the appointment of an advocate is not reasonable any more. It is not the advocate's responsibility to determine reasons for the usually complicated situation that has occurred between all family members and is not trained to arrange their relations to re-establish contact. The foregoing may take place in family therapy, which the child and parents most frequently need in the cases described.

The appointment of an advocate is reasonable at sudden rejecting of previously regular contact whereby both parents are interested in reasons and wish for the parent-child relationship to be arranged again. The contact with the other parent was frequently established successfully in the past advocacy cases, after the child first formed their opinion in the advocacy process and then communicated it to the parent through the advocate. If the parent with whom the child rejected having contact was willing to hear and accept the child's opinion about their relationship and listen to the child's proposals about what they wanted, the advocacy was successful from the viewpoint of the child's relationship with the parents and in the procedure of determining contact which was usually underway at that time.

With the help of an advocate in one of the cases, a teenager was able to communicate her opinion very clearly to her father in a form of a list, and the father was even prepared to sign an agreement of some sort about their relationship since that was the daughter's wish. The mother, who supported the daughter's contact with her father and wanted the contacts to be re-established after a few months' suspension, was only briefly informed about the agreement between the daughter and the father at the final meeting. At the end of the advocacy process everyone was pleased, i.e. the teenager who was very burdened due to the suspension of contact visits and wanted them but did not know how to tell her father what bothered her, and the parents who knew that arranged relations were in the best long-term benefit of their daughter. **13.5-3/2018**

Example:

An advocate offers assistance and support to the child when determining their opinion, but does not establish the child's interest

A written request for appointing an advocate to a 13-year-old girl was submitted by the social work centre in order to determine the girl's actual wishes, needs and interests. The social work centre stated that the girl was in the crisis centre at the time due to a major conflict with her mother to whom she was entrusted for care and upbringing. Contacts with the father had not taken place regularly in recent years, although the girl wanted and the mother opposed them. The parents blamed each other for influencing the daughter's opinion, which is why the mother instigated proceedings with the court to change the daughter's contacts with her father. She wanted them to be implemented only under supervision and the father disagreed.

Before the request was submitted to the Ombudsman, several interviews were held with the girl who changed her opinion several times. The social work centre thus proposed to obtain an independent person, an advocate, since they were unable to determine what she really wanted and what was in her interest. The girl and her parents agreed with the appointment of the advocate.

After the receipt of the application, we spoke to the social work centre about current family affairs, ongoing procedures and expectations they have about the advocacy. We told them that we assessed the request as

founded in the section of determining the girl's opinion, but not her interests. We explained that the advocate would be able to meet her several times and provide information about proceedings, and support and assistance when establishing her opinion about contacts and relations with both parents. If so desired, the girl would be able to give her opinion in the form of a statement at the end of the process of which the parents, the social work centre and the court where the proceedings about the contacts take place would be informed. The advocate and the regional coordinator will also write reports about the course of advocacy, in which they will not state their opinion about the child's interest.

The advocacy is intended exclusively for the child and its course depends particularly on the child, while other institutions such as social work centres and courts know and work with the entire family, have access to numerous other evidence and reports and are familiar with all circumstances of the case on the basis of which they can assess the child's best interest. We also emphasised that the assessment of the child's interest must be done independently of the advocacy since the child's wishes are not necessarily their best interests. Forming of an opinion on the child's interest merely on the basis of their wishes would be very unprofessional and unethical since the burden of the assessment would be put on the child. The advocate may help the child to have their voice heard, equip the child with necessary information and explore with them their wishes and needs, but the advocate cannot assess whether these are the child's best interests since they lack sufficient information and are not competent to do that. After clarifying mutual expectations, the most appropriate advocate was chosen and the advocacy process commenced a little over two weeks from receipt of the application. **13.4-14/2018**

2.23

OTHER

Field of work	Cases considered			Resolved and founded		
	2017	2018	Index 18/17	No. of resolved	No. of founded	Share of founded among resolved (in %)
22. Other	272	302	111.0	273	16	5.9
22.1 Legislative complaints	33	26	78.8	24	9	37.5
22.2 Remedy of injustice	4	3	75.0	3	1	33.3
22.3 Personal problems	12	21	175.0	19	0	0.0
22.4 Clarifications	128	115	89.8	106	2	1.9
22.5 Courtesy copies	60	104	173.3	91	4	4.4
22.6 Anonymous complaints	33	33	100.0	30	0	0.0
22.7 Ombudsman	2	0	0.0	0	0	0.0

In 2018, the Ombudsman received 302 letters, which, given their content, we were unable to classify by individual substantive fields of the Ombudsman's work. We recorded them separately under the classification Other (legislative complaints, clarifications, courtesy copies, anonymous complaints). Certain cases were discussed in individual substantive fields, where their content was discussed in more detail.

Legislative complaints included proposals by individuals or authorities and non-governmental organisations to regulate a relevant field or open issue normatively or more appropriately. In 2018, the Ombudsman also received several proposals for new legislation and proposals for amendments to legislation from competent state authorities in order to examine how the proposed arrangements would affect human rights and fundamental freedoms. We explained to complainants which state authority is competent to draft normative changes, and also acquainted them with the Ombudsman's activities in the relevant field.

In this chapter, we thus recorded the discussion of the Exercise of Rights from Public Funds Act, the Patients' Rights Act, the Social Assistance Act, the Family Code, the Defence Act, the Service in the Slovenian Armed Forces Act, the Ski Area Safety Act, the Claim Enforcement and Security Act, the Enforcement of Penal Sentences Act, the Court Experts, Certified Appraisers and Court Interpreters Act, the Mental Health Act, the Act Regulating the Integrated Early Treatment of Preschool Children with Special Needs, the Agriculture Act, the Cooperation in Criminal Matters with the Member States of the European Union Act, the Roma Community in the Republic of Slovenia Act, the Health Services Act and the Act Concerning the Pursuit of Foster Care. We also discussed the proposal of guidelines for drafting the Energy Concept of Slovenia and the requirements for preparing amendments, the proposal of the Resolution on the Family Policy 2018–2028, the proposal of the Resolution on the National Plan of the Prevention and Combating of Crime 2018–2022, the Rules on criminal records and the records on educational measures, the Rules on the implementation of remand and the Rules

on police powers. The discussion of certain acts and executive acts mentioned above is presented in more detail in substantive chapters of the Report.

Complaints dealt with under the **remedy of injustices** are classified in the field to which they substantively belong, which also includes the issue of arranging war and post-war mass graves. We have highlighted in our clarifications the need to respect the dignity of post-war victims and further address of all remaining open issues. We also discussed a complaint referring to the adoption of the act enabling the payment of war damages caused by Italian, German and Hungarian occupying forces and their collaborators during the Second World War and the remedy of injustices done during the Second World War.

In 2018, we received somewhat more complaints by individuals when dealing with **personal distress classified under this chapter** (poor financial situation, relations with neighbours, poverty, lack of response from state or local authorities and other). In such cases, we explained to them the ways to resolve their distress.

The largest share present **clarifications** (115 from a total of 302 cases). Complainants asked for additional explanations of various letters which they received from state authorities and which they perhaps failed to understand in their entirety, for information on normative regulation of individual matters or about authorities' powers. We referred them to the competent authorities and advised them on the application of suitable legal proceedings. Furthermore, we informed them of the Ombudsman's positions if we have already dealt with substantively similar issues.

From letters received as **courtesy copies**, we try to establish whether it is possible to discuss these cases within the Ombudsman's powers. When certain formal procedures are already underway, we inform complainants that we have received their letters, and we ask them to keep us informed about the course of the procedure, so that the Ombudsman could take action within its jurisdiction if necessary.

In 2018, we received the same number of **anonymous complaints** as in 2017. Anonymous complaints concern violations of human rights, particularly in the field of labour relationships. Many people do not dare to reveal their identity in fear of possible consequences. In such cases, we inform them that the Ombudsman's procedure is confidential. If necessary, we inform the competent inspection services about the alleged violations and propose to them that they take action within their powers.

3

COMPILATION OF THE OMBUDSMAN'S RECOMMENDATIONS

2.1 EQUALITY BEFORE THE LAW AND PROHIBITION OF DISCRIMINATION

1.

The Ombudsman recommends that the Government of the Republic of Slovenia draft an act proposal as soon as possible, which would allow constitutionally compliant enforcement of the right to judicial protection regarding the already filed and future actions for damages dealing with deleted eligible liabilities based on the Banking Act (ZBan-1s) because the Constitutional Court of the Republic of Slovenia established the unconstitutionality of the Act with a decision (no. U-I-295/13-260).

2.

The Ombudsman proposes to the National Assembly of the Republic of Slovenia to adopt an act which would eliminate the unconstitutionality of the Banking Act (ZBan-1s) established with the decision of the Constitutional Court of the Republic of Slovenia (no. U-I-295/13-260).

3.

The Ombudsman recommends that the Ministry of Infrastructure prepare an act proposal as soon as possible, which will systematically arrange the rights of disabled students when commuting from their place of residence to their place of education, and that the Government of the Republic of Slovenia promptly determine the text of the aforementioned act proposal and submit it to the National Assembly of the Republic of Slovenia for discussion and adoption.

4.

The Ombudsman recommends to the National Assembly of the Republic of Slovenia to adopt suitable legal bases relating to the rights of disabled students on their transport from their place of

residence to their place of education as soon as possible, which would meet the obligations of paragraph three of Article 38 of the Equalisation of Opportunities for Persons with Disabilities Act (ZIMI) after suitably adjusting the study process for disabled students.

5.

The Ombudsman proposes to the Ministry of Justice to keep to its statement provided in response to three concrete Ombudsman's recommendations relating to its analysis of physical accessibility to courts for the disabled, and to strive to make physical accessibility to courts at least sufficient as soon as possible.

6.

The Ombudsman recommends that Slovenian courts consistently inform the persons invited about the right to equal participation in the proceedings, and that invitations to hearings in addition to the right to equal participation in the proceedings also include clarifications on the actual accessibility of a court (access to individual rooms, toilets, parking options).

7.

The Ombudsman proposes to the Ministry of the Interior and the Ministry of Labour, Family, Social Affairs and Equal Opportunities to start cooperating promptly on the joint issue of normative regulation of gender or legal recognition of gender and, in the case of disputable issues, turn to the Government of the Republic of Slovenia as per paragraph two of Article 61 of the State Administration Act (ZDU-1) to decide on the dispute and provide guidelines for resolution, or to request the Government of the Republic of Slovenia to take a position on the issue as per paragraph two of Article 58 of the ZDU-1.

8.

The Ombudsman recommends to the Prime Minister of the Government of the Republic of Slovenia to decide whether preparations of the act proposal, which would govern the change of gender or legal recognition of gender, are considered a project of the Government of the Republic of Slovenia for the management of which one of the ministers should be appointed as per Article 63 of the ZDU-1.

9.

The Ombudsman proposes to the Ministry of Health to determine whether there are suitable legal bases for permanent prohibition of blood donation to men who have had sexual relations with other men.

10.

The Ombudsman recommends to all 90 National Assembly deputies to decide whether to exploit the possibility provided in Article 88 of the Constitution of the Republic of Slovenia stipulating that deputies may propose acts, and file a proposal to amend sentence one of paragraph three of Article 2 (stating "Civil union partners cannot adopt children together.") and sentence one of paragraph four of Article 3 (stating "Partners living in a non-formal civil union cannot adopt children together.") of the Civil Union Act, which would allow the adoption of children by same-sex couples in formal or non-formal civil unions.

2.2 PROTECTION OF DIGNITY, PERSONALITY RIGHTS, SAFETY AND PRIVACY

11.

The Ombudsman recommends to the Government of the Republic of Slovenia to (again examine this issue and then) decide whether it should officially request from the Federal Republic of Germany to reimburse the damage caused during the Second World War or not.

2.3 FREEDOM OF CONSCIENCE AND RELIGIOUS COMMUNITIES

12.

The Ombudsman recommends that the National Assembly deputies decide whether to exploit the possibility provided in Article 88 of the Constitution of the Republic of Slovenia stipulating that deputies may propose acts and file a proposal to amend indent three of paragraph four of Article 72 of the Organisation and Financing of Education Act (ZOFVI) with a clear definition of organised religious

ceremonies (with at least an exhaustive list) not permitted in public kindergartens and schools, or propose to amend penal provisions with a fine for a minor offence when encroaching upon the autonomy of a school space by organising an unauthorised religious ceremony, or propose to amend the currently applicable text by deleting the prohibition of organised religious ceremonies in public kindergartens and schools or their explicit approval.

2.4 FREEDOM OF EXPRESSION

13.

The Ombudsman recommends that all who participate in public discussions, particularly politicians in their statements and writing, avoid inciting hatred or intolerance on the basis of any personal circumstance, and when such cases occur, to respond and condemn them immediately.

14.

Relating to the realisation of the standards on the prohibition of spreading hatred in the media (Article 8 of the Mass Media Act), the Ombudsman proposes to the Ministry of Culture to do everything possible within its power to also determine 1. the manner of protecting public interest (inspection and minor offence supervision), 2. measures to eliminate irregularities (e.g. immediate removal of unauthorised content), and 3. sanctions for the media permitting the publication of hate speech.

2.5 ASSEMBLY, ASSOCIATION AND PARTICIPATION IN THE MANAGEMENT OF PUBLIC AFFAIRS

15.

The Ombudsman recommends that the National Assembly deputies do everything to adopt suitable amendments to legislation which does not currently anticipate voting by post for persons who did not express this intention at least ten days before voting, and it also does not regulate the position of those deprived of their liberty or admitted to hospital or in the institutional care of a social care institution, and are thus unable to vote at a polling station or by post.

16.

The Ombudsman proposes to the Ministry of Labour, Family, Social Affairs and Equal Opportunities to provide suitable legislative amendments as soon as possible, enabling the appointment of a body for conducting of, and decision making in, minor offence proceedings in the case of an offence under indent one of paragraph one of Article 34 of the Disabled

Persons Organisations Act (operations or business activities contrary to Article 6 of this Act, which stipulates that operations and business activities of disabled people's organisations are public).

2.6 NATIONAL AND ETHNIC COMMUNITIES

17.

The Ombudsman recommends that the Government of the Republic of Slovenia pay special attention to the elderly Roma in the next National Programme of Measures for the Roma and then decide whether their care should be placed among the basic strategic objectives and also determine concrete measures thereof.

18.

The Ombudsman proposes to the Office for National Minorities of the Government of the Republic of Slovenia to determine whether it should suggest or submit an incentive to the Government of the Republic of Slovenia as per the task under indent five of Article 2 of the Ordinance on the Establishment of the Office of the Government of the Republic of Slovenia for National Minorities (Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 57/13 of 5 July 2013) to observe paragraph two of Article 56 of the State Administration Act and order the ministry mainly responsible for this field to examine the question of organising free bus transport for Roma children to primary school in the Municipality of Šentjernej or to execute the task thereof under sentence two of paragraph three of Article 88a of the Local Self-Government Act and determine whether the municipal administration is acting in accordance with the Basic School Act, the Organisation and Financing of Education Act, paragraph two of Article 4 of the Protection Against Discrimination Act and Article 3 of the Roma Community in the Republic of Slovenia Act and, if necessary, propose suitable measures and report to the Government on this matter.

19.

The Ombudsman proposes to the Office for National Minorities of the Government of the Republic of Slovenia to determine whether it should suggest or submit an incentive to the Government of the Republic of Slovenia as per the task under indent five of Article 2 of the Ordinance on the Establishment of the Office of the Government of the Republic of Slovenia for National Minorities to observe paragraph two of Article 56 of the State Administration Act and order the ministry mainly responsible for this

field to examine the question of (non-)existence of a detailed sectoral programme and measures in the Municipality of Šentjernej or to execute the task thereof under sentence two of paragraph three of Article 88a of the Local Self-Government Act and determine whether the municipal administration acts in accordance with paragraph two of Article 6 in connection with paragraph eight of Article 16 of the Roma Community in the Republic of Slovenia Act and, if necessary, propose suitable measures and report to the Government on this matter.

2.7 FOREIGNERS

20.

The Ombudsman recommends that the Government of the Republic of Slovenia adopt measures necessary to enable an effective procedure for obtaining a residence permit for persons residing in the Republic of Slovenia for several years and who have created here a circle of life interests, social and cultural ties and possibly families, and thus the observance of a constitutionally protected right to personal dignity and other fundamental human rights and freedoms as per the European Convention on Human Rights (ECHR).

2.8 RESTRICTION OF PERSONAL LIBERTY

21.

The Ombudsman recommends that the Prison Administration of the Republic of Slovenia further strive to improve conditions for the accommodation and treatment of vulnerable prisoners, such as the elderly, the sick, the disabled and others, in order to ensure conditions suitable for serving a sentence.

22.

The Ombudsman proposes to prisons to pay special attention when discussing prisoners' requests to attend funerals of their loved ones.

23.

The Ombudsman advises the Prison Administration of the Republic of Slovenia to ensure professional and respectful implementation of personal examinations, as necessary (while observing the principle of proportionality) according to the circumstances in each individual case.

24.

The Ombudsman proposes that the Prison Administration of the Republic of Slovenia ensure critical assessment of the use of coercive measures

in every case by establishing possible inconsistencies on both participating sides and evidence provided.

25.

The Ombudsman recommends that the Ministry of Justice in cooperation with the Ministry of Labour, Family, Social Affairs and Equal Opportunities adopt all necessary measures to ensure institutional accommodation for a convicted person if this is required.

26.

The Ombudsman proposes that the Ministry of Health in cooperation with the Ministry of Justice adopt all necessary measures to eliminate problems encountered by the Unit for Forensic Psychiatry when implementing its activities.

27.

The Ombudsman again recommends the adoption of all measures necessary to promptly compose and publish a list of health institutions meeting the conditions for implementing relevant security measures of compulsory treatment.

28.

The Ombudsman again calls for the adoption of measures to ensure more suitable involuntary admission and treatment of persons with mental disorders in social care institutions as per the Mental Health Act together with suitable spatial capacities and staff, which will enable adequate social care services to these persons.

29.

The Ombudsman recommends that social care institutions provide security for their residents, particularly those who require special protection and care, and consistently observe the Mental Health Act when restricting liberty.

30.

The Ombudsman proposes that the Ministry of Education, Science and Sport continue the drafting of the act on residential treatment institutions and observe cogent comments and proposals of the experts thereof.

31.

The Ombudsman recommends that the Ministry of Education, Science and Sport also pay more attention to providing and maintaining suitable living conditions for implementing the educational programme for children and adolescents in residential treatment institutions and youth homes at the legislative level.

32.

We recommend that the Ministry of the Interior adopt measures for more consistent documenting of all circumstances regarding police procedures with foreigners (including their statements), ensure that the implementation of repatriation agreements will not promote the adoption of disputable decisions about returning, and adopt measures for appropriate informing of foreigners about international protection procedures and their position within the return procedure.

33.

When an applicant is deprived of their liberty, we propose to the Ministry of the Interior to act swiftly and without undue delay, and to again consider additional amendments to the International Protection Act or additional, more lenient measures to enable more individualised discussion of applicants for international protection and thus more effective procedures, particularly less encroachment into the right to personal liberty, relating to defining objective measures on which grounds for suspecting that the applicant for international protection may abscond are based.

34.

We encourage the Ministry of the Interior to, in dialogue with the Administrative Court of the Republic of Slovenia, adopt all necessary measures, including legislative amendments (if these are needed), to enable the implementation of legally determined judicial supervision of the execution of all measures of restriction of movement.

2.9 PENSION AND DISABILITY INSURANCE

35.

In addition to the already planned amendments to the Pension and Disability Insurance Act, the Government should re-examine the suitability of the provision limiting individuals from its implementation at the account of free business initiative after obtaining the right to old age pension.

36.

In addition to the already planned amendments to the Pension and Disability Insurance Act, the Government should re-examine the suitability of the provision, which governs various rights arising from voluntary insurance and voluntary purchase of years of service as of 31 December 2012. If the Government of the Republic of Slovenia insists on this legal arrangement from 2017, it should enable all affected insured persons to decide on their own on

the possible reimbursement of funds paid since the initial purpose of the payment changed due to the state's conduct.

37.

The Ombudsman proposes to the National Assembly of the Republic of Slovenia that, when discussing each act proposal, to ask the proposer for an insight into a draft of the anticipated implementing regulations, and the Ministry of Health should, in agreement with the Ministry of Labour, Family, Social Affairs and Equal Opportunities, promptly determine the types and levels of physical impairment which serve as the basis for enforcing the rights to disability insurance.

2.10 HEALTH CARE

38.

The Government should draft amendments to the Patient Rights Act, which will observe the fact that regulations from the field of health insurance also govern the majority of these rights.

39.

The Ministry of Health should draft a comprehensive analysis of the reasons for waiting periods and the organisation of health care as a system and proposals for eliminating administrative barriers and simplifying procedures, which will also respect patients' time.

40.

In its response report, the Government of the Republic of Slovenia should examine the realisation of similar or the same recommendations from previous years, which have already been assessed as partly realised.

41.

The Ombudsman recommends the Contagious Diseases Act be amended accordingly after the completed analysis in order to further ensure suitable protection from contagious diseases and observe scientific and expert findings regarding risks and adverse effects of vaccinating.

42.

Decision making within statutory deadlines ensures the realisation of the constitutional provision stating that the Republic of Slovenia is a state governed by the rule of law. In the procedure of drafting amendments to the legislation, we propose to the Government of the Republic of Slovenia to examine

the possibility that a complaint against the decision of an appointed physician withholds its execution.

2.11 SOCIAL SECURITY

43.

The Ombudsman proposes amending the legislation so that the compensation for the damages paid to an individual by the state for violating their rights and fundamental freedoms will not be included in the individual's income when exercising rights to public funds.

44.

In cooperation with the Social Chamber of Slovenia and the Association of Social Institutions of Slovenia, the ministry responsible for social security should examine the suitability of staffing standards in retirement homes and adjust them more to the residents' needs.

45.

The Ombudsman recommends to the Ministry of Labour, Family, Social Affairs and Equal Opportunities and the Ministry of Health to adopt appropriate solutions for improved prevention and management of hospital-acquired infections in retirement homes.

2.12 LABOUR LAW MATTERS

46.

The Government of the Republic of Slovenia should ensure that procedures in all supervisory institutions are carried out within reasonable time limits. We propose strengthening the human resources of the Labour Inspectorate of the Republic of Slovenia wherever possible, including by reassigning.

47.

The Government of the Republic of Slovenia should monitor and implement measures to ensure a transparent, efficient and fast supervision system for the payment of salaries, i.e. for net amounts and withheld taxes related to salaries.

48.

The Ombudsman again proposes an amendment to the Vocational Rehabilitation and Employment of Persons with Disabilities Act so that disabled persons are entitled to a cash receipt in a proportionate share of the number of working hours, i.e. even in the case of fewer or more than 100 hours. Furthermore, snack costs should be reimbursed to disabled persons who

are being trained for a specific job or vocation within vocational rehabilitation.

49.

The Ministry of Justice and the Government of the Republic of Slovenia should immediately start resolving the issue of prison officers. They should adopt measures which will ensure consistent protection of rights of prison officers, protect their dignity and enable effective operating of Slovenian prisons.

50.

By providing national defence security and a stable working environment, the Government of the Republic of Slovenia should supply sufficient financial, human and other resources for work in the Slovenian Armed Forces.

51.

The Ombudsman expects the Minister of Public Administration to address the amendments to the Public Sector Salary System Act with priority.

2.13 UNEMPLOYMENT

52.

The Ministry of Labour, Family, Social Affairs and Equal Opportunities should amend Article 63 of the Labour Market Regulation Act so that an employee does not lose their right to unemployment benefits when, due to the employer's ordinary termination of the employment contrary to the provisions of the Employment Relationships Act stipulating special protection of the employee from termination, they did not request an arbitration decision or judicial protection to protect their rights.

53.

The Ombudsman encourages the Ministry of Labour, Family, Social Affairs and Equal Opportunities and the Employment Service of Slovenia to amend the existing records on implementing active employment policy (AEP) measures with data on how individual AEP measures are distributed among unemployed persons, the number of measures in which an individual unemployed person most frequently participated, the number of unemployed persons not participating in any of the measures while also observing regions, duration of a person's unemployment and the period of their inclusion in the unemployment register.

2.14 OTHER ADMINISTRATIVE MATTERS

54.

The Ombudsman encourages the Government of the Republic of Slovenia to ensure that competent authorities complete the denationalisation procedures as soon as possible.

55.

The Government of the Republic of Slovenia should prepare, adopt and ensure the implementation of concrete measures to arrange ownership of all categorised roads sited on private land.

56.

The Ombudsman encourages the Ministry of Finance to comply with statutory deadlines when making decisions about complaints.

57.

The Ombudsman recommends that the Government of the Republic of Slovenia regulate the right to a special tax relief for taxpayers for maintaining their family members (parents and adoptive parents) in a manner allowing taxpayers to always enforce this relief when they are actually maintaining family members, regardless of whether they live in a common household with them or in institutional care, or whether the costs of services are paid on their behalf.

58.

The Ombudsman recommends that the Government of the Republic of Slovenia examine the current taxation of survivor's pension and draft amendments to the Personal Income Tax Act that would allow the list of income arising from compulsory pension, disability and health insurance on which income tax is not paid to be supplemented by stating a survivor's pension the recipient of which is a child under the age of 18 or 26 if they are a full-time student.

59.

The Government of the Republic of Slovenia should provide suitable working conditions for all inspection services, i.e. material and financial resources, which will also enable hiring more staff and effective work of inspection services.

60.

The Ministry of Public Administration should consider amending the regulations of compulsory training of public employees so that training about the administrative procedure content would be obligatory again after a certain time period for those

public employees who conduct, and make decisions in, administrative procedures.

61.

The Ombudsman recommends that the Government of the Republic of Slovenia examine the nature of expert opinions of the Pension and Disability Insurance Institute of Slovenia and draft legislative amendments so that supplementary expert opinions become binding and an independent legal remedy may be filed against them.

2.15 JUDICIAL SYSTEM

62.

While maintaining uniform case law, the Ombudsman recommends that the Supreme Court of the Republic of Slovenia further encourages all courts to improve operations and the quality of trials, and it advises the Ministry of Justice to maintain enhancing the operations of the judicial system for effective and high-quality implementation of judicial power.

63.

The Ombudsman suggests that the Slovenian judicial system continues to suitably inform the public with deliberate measures, and responds accordingly to the complaints about their work highlighted by the media.

64.

The Ombudsman recommends that the courts continue to dedicate due attention to reducing the number of unresolved cases and shortening the time for their resolving, particularly in important cases, while obtaining appropriate spatial and staffing conditions.

65.

In order to provide legal certainty, the Ombudsman proposes that the Rules on central register of wills are promptly harmonised with the Notary Act in the section where the Rules stipulate a condition for the testators' right to be entered in the central register of wills based on a prior payment.

66.

We recommend that the Ministry of Justice re-examine the suitability of the legal provision for restoring rights and personal dignity to persons unduly discussed in a criminal procedure.

67.

The Ombudsman recommends that when deciding on the allocation of free legal aid for personal bankruptcy as bankruptcy courts and official receivers

in the personal bankruptcy procedure ordinary courts inform to a greater extent about the consequences of instigating the procedure, what individuals can expect from the procedure and how they can obtain information about the course of the procedure.

68.

The Ombudsman advises that minor offence authorities and courts consistently observe all guarantees of a fair procedure, impartial decision making and trial, including in minor offence proceedings.

69.

The Ombudsman recommends that the Ministry of the Interior see that the document, Description of Violation, which the minor offence authority must submit to the court as per paragraph five of Article 57 of the Minor Offences Act together with the request for judicial protection, is equipped with the date of its composition.

70.

The Ombudsman further encourages the prosecution service to continue to provide for the speedy and effective criminal prosecution of perpetrators of criminal offences, and to consistently inform injured parties of clear and substantiated reasons for decisions on the potential rejection of indictments and a legal notice.

71.

We recommend that the Bar Association of Slovenia consider the option to draft necessary amendments to the regulative framework (including necessary amendments to tax legislation) to improve accessibility of the lawyers' pro bono aid, and submit them for consideration to the Ministry of Justice and the Ministry of Finance, which should discuss them with affinity.

2.16 POLICE PROCEDURES

72.

We recommend that the Ministry of the Interior continue to dedicate attention to independent, impartial and expert discussion of complaints against police officers, to enhancing the awareness of the role of civilian oversight of police procedures and improving the quality of implementation of police tasks.

73.

The Ombudsman advises that police officers in every case of restriction of liberty or forced detention of a person observe all regulations and guidelines in this field, including detailed recording of their procedures and the provision of rights of the person detained.

74.

The Ombudsman recommends that police officers always conduct a careful assessment of conditions stipulated by the law and other regulations on exercising police powers when establishing identity.

75.

Prior to bringing a child or an adolescent to police premises, the Ombudsman proposes that police officers carefully examine the existence of legal basis thereof.

76.

The Ombudsman recommends that police officers consistently observe the Guidelines for work when providing police assistance and the Mental Health Act.

2.17 ENVIRONMENT AND SPATIAL PLANNING**77.**

The Ministry of the Environment and Spatial Planning should draft a regulation to govern noxious odours in the environment.

78.

The Government of the Republic of Slovenia should ensure all conditions (material, staffing and financial) for the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning for efficient management of inspection procedures.

79.

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 independent supervision and the financing of measurements.

80.

The Ombudsman advises that precautionary principle of the Environmental Protection Act be observed when siting wind farms until the adoption of suitable regulations.

2.18 REGULATED ACTIVITIES**81.**

The Ombudsman recommends to the Government of the Republic of Slovenia and the National Assembly of the Republic of Slovenia to promptly draft and adopt the regulations necessary to protect the right to drinking water determined in the Constitution of the Republic of Slovenia, and particularly in the Environmental Protection Act, the Services of General Economic Interest Act and the Local Self-Government Act.

82.

The Ombudsman calls on all competent authorities, particularly inspection services, to cooperate and provide expert and responsible supervision of providers of chimney sweeping services.

2.20 HOUSING MATTERS**83.**

The Ministry of the Environment and Spatial Planning should promptly prepare amendments to the Housing Act and clearly define the obligations of municipalities to ensure a certain number of residential units (taking into account the number of residents) of a suitable standard of living, and publish calls for allocating non-profit dwellings for rent at certain intervals (e.g. once a year).

84.

The Ombudsman asks the Ministry of the Environment and Spatial Planning to conduct a thorough analysis of management of multi-dwelling buildings and amend the legislation as per the findings, and especially to constantly supervise the work of managers of multi-dwelling buildings.

85.

The Ombudsman recommends that the Ministry of the Environment and Spatial Planning enhance housing inspection services, and define their competences in the Housing Act anew, so that housing inspection services obtain certain powers for taking action in the management of multi-dwelling buildings and the implementation of regulations on housing relations, regardless of the ownership of multi-dwelling buildings.

2.21 CHILDREN'S RIGHTS

86.

The Ombudsman proposes to the Ministry of Culture and the Ministry of Education, Science and Sport to jointly form guidelines for classifying literary works in children's and youth literature, which will ensure that reading stimulates suitable development of children and the formation of a relationship towards themselves and others without inciting any form of psychological or physical violence.

87.

The Ombudsman recommends that the Ministry of Education, Science and Sport regulate the rights of students with special needs and those with special status (e.g. status of a sportsperson) more comprehensively.

88.

The Ombudsman recommends that legislative solutions be adopted for the entire field of education, which will arrange accordingly the inspection of school bags and testing regarding the presence of drugs or alcohol.



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